CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
AUGUST 2, 2022

City Hall
303 East B Street, Ontario, CA 91764

MAYOR PAUL S. LEON • MAYOR PRO TEM ALAN D. WAPNER
COUNCIL MEMBERS JIM W. BOWMAN, DEBRA DORST-PORADA AND RUBEN VALENCIA

CITY CLERK SHEILA MAUTZ • TREASURER JAMES R. MILHISER
CITY MANAGER SCOTT OCHOA • CITY ATTORNEY RUBEN DURAN

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.

Anyone wishing to speak in person during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time. To comment by email, submit your comments no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comments to publiccomments@ontarioca.gov. All comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and will be entered into the record.

Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.

In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.

Remarks from those seated or standing in the back of the chamber will not permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ORDER OF BUSINESS

The regular City Council and Housing Authority meeting begins with Public Comment at 6:30 p.m.

immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council. (EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

Wapner, Bowman, Dorst-Porada, Valencia, Mayor/Chairman Leon

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Becky Dulay, Baha'i Faith

PUBLIC COMMENTS 6:30 P.M.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

To comment by email, submit your comments by email no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comment to publiccomments@ontarioca.gov. All Comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and entered into the record. As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on

them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 3 minutes.

---

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of July 5, 2022 and special meetings of the City Council and Housing Authority on July 8, 2022, and approving same as on file in the Records Management Department.

ATTACHMENT: 20220705 (Not Official Until Approved).pdf
ATTACHMENT: 20220708S (Not Official Until Approved).pdf

2. BILLS & PAYROLL

Bills July 1, 2022 through July 14, 2022, and Payroll June 19, 2022 through July 2, 2022, when audited by the Finance Committee.

3. ORDINANCES APPROVING A DEVELOPMENT AGREEMENTS (FILE NOS. PDA22-003-A, B, C, AND D) BETWEEN THE CITY OF ONTARIO AND OTC LOT OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV22-014)

That the City Council consider and adopt Ordinances approving a Development Agreements (File No.'s PDA22-003-A, B, C, and D) to establish the terms and conditions associated with a Development Plan (File No. PDEV22-014) to construct up to 694 residential units and 71,500 square feet of commercial/office/retail uses on 10.49 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corners of Via Piemonte and Via Villagio, within the Mixed-Use land use district (Subareas 8, 11, 16, and 17) of the Piemonte Overlay of the Ontario Center Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-003-A, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT A OWNER LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 384 RESIDENTIAL UNITS AND UP TO 25,256 SQUARE FEET OF COMMERCIAL/OFFICE/RETAIL USES, ON APPROXIMATELY 4.83 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ONTARIO CENTER PARKWAY AND CONCOURS STREET, WITHIN MIXED-USE SUBAREA 16 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: NORTHEAST PORTION OF 0210-205-01.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-003-B, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT B OWNER LLC, TO ESTABLISH THE TERMS AND

CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 112 RESIDENTIAL UNITS AND UP TO 20,802 SQUARE FEET OF COMMERCIAL/OFFICE/RETAIL USES, ON APPROXIMATELY 1.69 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ONTARIO CENTER PARKWAY AND FERRARI LANE, WITHIN MIXED-USE SUBAREA 17 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: SOUTHEAST PORTION OF 0210-205-01.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-003-C, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT C OWNER LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 94 RESIDENTIAL UNITS AND UP TO 11,047 SQUARE FEET OF COMMERCIAL/OFFICE RETAIL USES, ON APPROXIMATELY 1.93 ACRES OF LAND FOR LOCATED AT THE SOUTHWEST CORNER OF ONTARIO VIA PIEMONTE AND VIA VILLAGIO, WITHIN MIXED-USE SUBAREA 8 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-204-39.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FILE NO. PDA22-003-D, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT D OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 104 RESIDENTIAL UNITS AND UP TO 14,095 SQUARE FEET OF COMMERCIAL/OFFICE/RETAIL USES, ON APPROXIMATELY 2.04 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF ONTARIO VIA PIEMONTE AND VIA VILLAGIO WITHIN THE MIXED-USE SUBAREA 11 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-204-38.

ATTACHMENT: File No. PDA22-003-A OTC Owner LLC^01 EXHIBITS A,B,C & D
ATTACHMENT: File No. PDA22-003 OTC Owner LLC^02 PC Back-up
ATTACHMENT: File No. PDA22-003-A OTC Owner LLC 03 ORD^A^RM
ATTACHMENT: File No. PDA22-003-A OTC Owner LLC^04 DA
ATTACHMENT: File No. PDA22-003-B OTC Owner LLC 05^ORD^B^RM
ATTACHMENT: File No. PDA22-003-B OTC Owner LLC^06 DA
ATTACHMENT: File No. PDA22-003-C OTC Owner LLC 07 ORD^C^RM
ATTACHMENT: File No. PDA22-003-C OTC Owner LLC^08 DA
ATTACHMENT: File No. PDA22-003-D OTC Owner LLC 09^ORD^D^RM
ATTACHMENT: File No. PDA22-003-D OTC Owner LLC^10 DA

4. AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 3082 LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES)

That the City Council consider and adopt an amending and restating Ordinance No. 3082 levying special taxes within City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND RESTATING ORDINANCE NO. 3082 LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES).

ATTACHMENT: CFD No. 35 Countryside Phase 2 So Fac 01^ORD^RM

5. A DEVELOPMENT CODE AMENDMENT (FILE NO. PDCA22-004) PROPOSING CERTAIN CLARIFICATIONS AND REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE PERTAINING TO CHINO AIRPORT

That the City Council consider and adopt the Ordinance approving File No. PDCA22-004, a Development Code Amendment proposing certain clarifications and revisions to the City of Ontario Development Code, establishing the Chino Airport Overlay zoning district and Reference L, Chino Airport Land Use Compatibility Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA22-004, A DEVELOPMENT CODE AMENDMENT FOR CERTAIN REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE, ESTABLISHING THE CHINO AIRPORT OVERLAY ZONING DISTRICT AND REFERENCE L, CHINO AIRPORT LAND USE COMPATIBILITY PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF.

ATTACHMENT: File No. PDCA22-004 ^01 PC Back-up
ATTACHMENT: File No. PDCA22-004^02 ORD^RM

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

6. RESOLUTIONS CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION

That the City Council adopt Resolutions (1) Placing a measure to approve a general capital Transactions and Use Tax (Sales Tax) at the rate of one cent (1¢) on the November 8, 2022 General Municipal Election ballot; (2) requesting the Board of Supervisors of the County of San Bernardino render the General Municipal Election consolidated with the State General Election; and (3) setting rules for the filing of primary and rebuttal arguments regarding the measure.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PROVIDING FOR THE FILING OF PRIMARY AND REBUTTAL ARGUMENTS AND SETTING RULES FOR THE FILING OF WRITTEN ARGUMENTS REGARDING A CITY MEASURE TO BE SUBMITTED AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER

8, 2022 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THAT DATE PURSUANT TO §10403 OF THE ELECTIONS CODE.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE TO ENACT A GENERAL TRANSACTIONS AND USE TAX (SALES TAX) AT THE RATE OF ONE CENT (1¢).

ATTACHMENT: Setting Deadlines and Rules for Arguments and Rebuttals-Transactions and Use Tax Measure 01^RM
ATTACHMENT: Requesting Consolidation of Election with County-Transactions and Use Tax Measure RESO^02^RM
ATTACHMENT: Placement of General Transactions and Use Tax Measure RESO^03^RM

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Wapner
Council Member Bowman
Council Member Dorst-Porada
Council Member Valencia

ADJOURNMENT

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
July 5, 2022
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and Housing Authority were held on Tuesday, July 5, 2022 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

Mayor Leon called the joint meetings to order at 6:31 p.m.

ROLL CALL

PRESENT:	Mayor/Chairman	Paul S. Leon
	Mayor pro Tem/Vice Chair:	Alan D. Wapner
	Council/Authority Members:	Jim W. Bowman, Debra Dorst-Porada and Ruben Valencia
ABSENT:	Council/Authority Members:	None.

Also present were City Manager / Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran, and City Clerk / Secretary Sheila Mautz.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Valencia.

INVOCATION

Mayor Leon led a moment of silence in lieu of an invocation.

PUBLIC COMMENTS

There were seven emailed comments:

Alicia Castellano, in opposition of the TOP 2050 General Plan.
Jennifer Sarai Acosta-Godoy, in opposition of the TOP 2050 General Plan.
John Vo, in opposition of the TOP 2050 General Plan.
Jesus Pez, in opposition of the TOP 2050 General Plan.
Jill Lopez, in opposition of warehouses.
Maxine Bowden, in opposition of warehouses.
Ben Alirez,request for permanent pickleball courts.

Mayor Leon called on the first speaker:

Stephanie, thanked the Ontario Fire Department for their service and spoke on concerns regarding parking violations during large events.

*Ana Gonzalez*s, spoke in opposition of the Top 2050 General Plan.

Celina Lopez, thanked City Staff for the 4th of July parade and fireworks show and congratulated the FastPitch Softball team for being recognized.

Jesse Fonsenca, spoke on the Ontario International Airport and airplane noise.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

SPECIAL CEREMONIES

HONORING THE ONTARIO FASTPITCH SOFTBALL ASSOCIATION, 14U GIRLS ALL-STARS DIVISION

The City Council honored the Ontario Fastpitch Softball Association athletes and coaches.

RECOGNITION OF RECREATION & PARKS COMMISSION OUTGOING STUDENT REPRESENTATIVES 2021/22

The City Council recognized outgoing student representatives for Fiscal Year 2021-22, Diego Detres and Abril Escobosa and welcomed Monique Lynette De Haro of Ontario High School as the incoming student representative and Hannah Norton as the incoming alternate student representative.

PROCLAMATION OF JULY 2022 AS PARKS AND RECREATION MONTH

The City Council proclaimed the month of July 2022 as Parks and Recreation Month in the City of Ontario.

Mayor Leon recessed the meetings at 7:10 p.m. and reconvened at 7:22 p.m.

CONSENT CALENDAR

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman and carried by unanimous vote 5-0, to approve the Consent Calendar as presented.

1. APPROVAL OF MINUTES

Minutes for the Regular Meetings of the City Council and Housing Authority of June 7, 2022, approving the same as on file in the Records Management Department.

2. BILLS & PAYROLL

Bills from June 3, 2022 through June 16, 2022 in the amount of $20,591,317.39 and Payroll from May 22, 2022 through June 4, 2022 in the amount of $4,575,145.77, when audited by the Finance Department.

3. RESOLUTIONS ESTABLISHING THE ANNUAL SPECIAL TAXES WITHIN COMMUNITY FACILITIES DISTRICTS IN OLD MODEL COLONY AND ONTARIO RANCH FOR FISCAL YEAR 2022-23.

The City Council adopted Resolutions establishing the annual special taxes within City of Ontario Community Facilities Districts in Old Model Colony and Ontario Ranch for Fiscal Year 2022-23.

RESOLUTION NO. 2022-066 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 9 (EDENGLEN), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-067 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 10 (ONTARIO AIRPORT TOWERS), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-068 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 13 (CALIFORNIA COMMERCE CENTER - PHASE IV), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-069 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 19 (COUNTRYSIDE PHASE 1 - SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-070 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 20 (WAL-

MART), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-071 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 21 (PARKSIDE), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-072 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 23 (PARK PLACE SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-073 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES PHASE 1), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-074 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 25 (PARK PLACE FACILITIES PHASE 1I), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-075 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE 1II), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-076 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 27 (NEW HAVEN SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-077 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 28 (NEW HAVEN FACILITIES - AREA A), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-078 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE

LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 30 NEW HAVEN FACILITIES - AREA B), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-079 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE/AMBERLY LANE), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-080 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER - SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-081 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 33 (ARCHIBALD/SCHAEFER FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-082 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 34 (COUNTRYSIDE PHASE I NORTH - FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-083 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 37 (PARK & TURNER NE SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-084 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 38 (PARK & TURNER NE FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-085 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 39 (NEW HAVEN FACILITIES - AREA C), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-086 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 40 (EMERALD PARK FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-087 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 41 (CANVAS PARK FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-088 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-089 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 43 (PARK PLACE FACILITIES PHASE IV), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-090 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-091 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 45 (NORTHPARK AND COUNTRYSIDE), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-092 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 46 (AVENUE 176 FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-093 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 47 (COLONY COMMERCE CENTER WEST I SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-094 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 48 (TEVELDE SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-095 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 49 (AVENUE 176 SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-096 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 50 (WEST ONTARIO LOGISTICS CENTER SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-097 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 51 (ONTARIO RANCH LOGISTICS CENTER SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-098 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 53 (TEVELDE FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-099 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 54 (ESPERANZA FACILITIES), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-100 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 55 (PARKLANE), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-101 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT

NO. 56 (PARKSIDE/LA AVENIDA), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-102 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE), ESTABLISHING THE ANNUAL SPECIAL TAXES FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-103 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 58 COLONY COMMERCE CENTER EAST SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

RESOLUTION NO. 2022-104 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 60 (ONTARIO RANCH BUSINESS PARK SERVICES), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2022-23.

4. A PROFESSIONAL SERVICES AGREEMENT FOR WATER QUALITY MONITORING AND REPORTING SERVICES AND AN AMENDMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR THE MILL CREEK WETLANDS

The City Council took the following actions:

A. Approved and authorized the City Manager, or his designee, to execute a Professional Services Agreement with Group Delta Consultants, Inc. of Ontario, California, to provide water quality monitoring and reporting services for the Mill Creek Wetlands facility for up to 5 years with a total not-to-exceed of $602,055.
B. Approved and authorized the City Manager, or his designee, to execute an amendment with Natures Image, Inc. of Lake Forest, California, to provide landscape maintenance services for the Mill Creek Wetlands facility for Fiscal Year 2022-23 in the amount of $402,532, for a revised total expenditure of $1,715,734.

5. A CONSTRUCTION CONTRACT FOR THE 2022 FALL PAVEMENT REHABILITATION PROJECT

The City Council awarded a construction contract to All American Asphalt of Corona, California, for the 2022 Fall Pavement Rehabilitation Project in the bid amount of $3,959,700 plus a ten percent (10%) contingency of $395,970, for a total authorized expenditure of $4,355,670; and authorized the City Manager, or his designee to execute said contract and all related documents, and file a notice of completion at the conclusion of all construction activities.

6. STUDENT REPRESENTATIVE AND ALTERNATE APPOINTMENTS TO THE RECREATION & PARKS COMMISSION FOR FY 2022-23

The City Council confirmed Monique Lynette De Haro of Ontario High School as the Student Representative and Hannah Norton of Colony High School as the Alternate Student Representative to the Recreation & Parks Commission for the term set to expire June 30, 2023.

7. A CONSTRUCTION CONTRACT FOR AMERICANS WITH DISABILITIES ACT (ADA) CONCRETE RAMP CONSTRUCTION SERVICES

The City Council authorized the City Manager or his designee to execute a one-year Construction Contract with CT&T Concrete Paving, Inc., of Diamond Bar, California, for ADA Concrete Ramp Construction Services for a not to exceed amount of $175,000

8. A GOODS AND SERVICES AGREEMENT FOR PROCUREMENT OF ASPHALT MATERIALS

The City Council authorized the procurement of asphalt materials by the City Manager or his designee, for a one-year period at set pricing per Bid Invitation #1522 with All American Asphalt of Corona, California, for a not to exceed amount of $805,970 and Vulcan Materials Co. of Irwindale, California, for a not to exceed amount of $37,000, for a total not to exceed amount of $842,970 for Fiscal Year 2022-23.

9. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE LEVY OF THE ASSESSMENTS FOR FISCAL YEAR 2022-23 FOR THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT

The City Council adopted a Resolution for the Downtown Ontario Improvement Association (“DOIA”) authorizing the levying of the special assessments for Fiscal Year ("FY") 2022-23.

RESOLUTION NO. 2022-105 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE LEVY OF THE ASSESSMENTS FOR FISCAL YEAR 2022-23 FOR THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT.

10. RESOLUTIONS TO CALL AND GIVE NOTICE, CONSOLIDATE AND ADOPT REGULATIONS FOR CANDIDATE STATEMENTS FOR THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 8, 2022

The City Council adopted the following Resolutions:

A. A Resolution to call and set the date of the General Municipal Election as November 8, 2022;
B. A Resolution to request the San Bernardino County Registrar of Voters to consolidate the election with the General Election; and
C. A Resolution establishing regulations pertaining to Candidate Statements.

RESOLUTION NO. 2022-106 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES.

RESOLUTION NO. 2022-107 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, PURSUANT TO §10403 OF THE ELECTIONS CODE.

RESOLUTION NO. 2022-108 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENT SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022.

11. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ARDURRA FOR ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

The City Council approved an Amendment to the 3 year Professional Services Agreement with Ardurra Group, Inc., of El Segundo, California, to provide On-Call Construction Management and Inspection Services for a revised total not-to- exceed amount of $1,060,000.

12. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA21-007) BETWEEN THE CITY OF ONTARIO AND REMINGTON APG, LLC.

The City Council consider and adopted an Ordinance approving a Development Agreement (File No. PDA21-007) between the City of Ontario and Remington APG, LLC, to establish the terms and conditions associated with a Development Plan (File No. PDEV21-024) to construct three industrial buildings totaling 200,322 square feet on 10.2 acres of land, located at the northeast corner of Remington Avenue and the Cucamonga Creek Flood Control Channel, within the Industrial (PA-3) land use

district of the Colony Commerce Center East Specific Plan. First reading and introduction took place at a regular meeting on June 21, 2022.

ORDINANCE NO. 3214 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND REMINGTON APG, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV21-024) TO CONSTRUCT THREE INDUSTRIAL BUILDINGS TOTALING 200,322 SQUARE FEET ON 10.2 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF REMINGTON AVENUE AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL, WITHIN THE INDUSTRIAL (PA-3) LAND USE DISTRICT OF THE COLONY COMMERCE CENTER EAST SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 0218-311-07 AND 0218-311-13.

13. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 66 (OLIVE AND OLEANDER FACILITIES).

The City Council considered and adopted an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities). First reading and introduction took place at a regular meeting on June 21, 2022.

ORDINANCE NO. 3215 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 66 (OLIVE AND OLEANDER FACILITIES).

14. A CONSTRUCTION CONTRACT FOR CITYWIDE ASPHALT GRINDING SERVICES

The City Council authorized the City Manager, or his designee to execute a Construction Contract No. SM2223-03 with Vance Corporation located in Bloomington, California for Citywide Asphalt Grinding Services, for up to five years, in an amount not to exceed $835,500.

15. A RESOLUTION APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO PLACE D BLOCK, LLC IN ACCORDANCE WITH GOVERNMENT CODE SECTION 37350 ET. SEQ.

The City Council (“City”) considered and:

A. Adopted a Resolution approving the Disposition and Development Agreement (“Agreement”) between the Ontario Place D Block, LLC. (“Developer”).

B. Authorized the City Manager/Executive Director, or his designee to sign all documents necessary to implement the Agreement.

RESOLUTION NO. 2022-109 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO PLACE D BLOCK, LLC WITH RESPECT TO APPROXIMATELY 2.13 ACRES OF LAND LOCATED AT 404, 416 AND 414 NORTH EUCLID AVENUE AND 401 AND 418 NORTH LEMON AVENUE (APNS: PORTION OF 1048-363-02, 1048-363-03, 1048-363-04, AND 1048-363-05).

PUBLIC HEARINGS

16. A PUBLIC HEARING TO RECEIVE AND RESPOND TO PUBLIC COMMENT ON CITY'S WATER QUALITY RELATIVE TO PUBLIC HEALTH GOALS

The City Council received and responded to public comment on the Public Health Goals Report relative to the City's drinking water.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one wishing to speak, Mayor Leon closed the public hearing and opened the item for Council discussion. Hearing no discussion from City Council, Mayor Leon received and filed the item.

17. A PUBLIC HEARING TO REVIEW INITIAL DRAFT DISTRICTING MAPS FOR THE DISTRICT-BASED ELECTIONS UNDER THE CALIFORNIA VOTING RIGHTS ACT

The City Council held a Public Hearing to review, consider, and provide direction regarding the initial draft maps.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There was one written communication- Raymond Smith, in favor of map 10.

Mayor Leon opened the public hearing; City Manager Ochoa provided a brief introduction to the item and asked Assistant City Attorney Guiboa for the presentation.

Assistant City Attorney Guiboa provided background on the item, presented the 16 maps for review and indicated that City Council should take input from the public.

Council Member Dorst-Porada inquired why the airport was singled out during the presentation.

Assistant City Attorney Guiboa responded that the airport is a large point of interest in the City and some of the maps have the airport in one district and some have it in two districts.

Council Member Dorst-Porada thanked all those who submitted maps and noted some of her areas of interest are Eden Glen, Archibald Ranch, and the Ranch area and that she would like these areas to be kept together as much as possible. She expressed concern over the historic districts being separated and noted the north-side residents between Grove Avenue, Vinyard Avenue, and Baker Avenue above 5th Street feel left out.

Mayor Leon called upon the first speaker.

Ana Gonzalez, spoke in favor of map 10 and in opposition of maps 1,12 ,13, 14.

Chris Robles, read a letter from his attorney Scott Rafferty, noting a number of issues the Plaintiff had with the districting process.

Mayor pro Tem Wapner requested a point of order and asked the City Attorney if the correspondence read by Mr. Robles had been submitted to counsel.

City Attorney Duran indicated he had not.

Mayor pro Tem Wapner expressed his concerns regarding a litigation threat.

City Attorney expressed his concerns regarding offering legal advice during an open meeting, noted the purpose of the meeting was to receive public comment regarding maps and no action was required at the moment. City Attorney Duran advised the City Council that the discussion may be better suited for Closed Session.

Mayor pro Tem Wapner further expressed concerns over potential litigation.

Hearing no one wishing to speak, Mayor Leon closed the public hearing and opened the item for Council discussion.

City Attorney Duran suggested a recess so that he could answer Mayor pro Tem Wapner's legal questions in private. He noted he would be speaking only with Mayor pro Tem Wapner, and there were no Brown Act concerns.

Mayor Leon recessed the meetings at 7:49 p.m. and reconvened at 7:55 p.m.

City Attorney Duran addressed Mayor pro Tem Wapner's questions. Given the litigation threat, he recommended that Council take any additional public comments and close the public hearing before proceeding further.

Mayor Leon closed the public hearing, received and filed the item, and there was no further discussion from the City Council.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

18. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE RELATING TO NON-WASTE REPORTING REQUIREMENTS

The City Council introduced and waived further reading of an Ordinance amending Chapter 3 of Title 6 of the Ontario Municipal Code related to Non-Waste Reporting Requirements and finding the action exempt from CEQA.

ORDINANCE NO. 3216 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 3 (INTEGRATED SOLID WASTE MANAGEMENT) OF TITLE 6 (SANITATION AND HEALTH) OF THE ONTARIO MUNICIPAL CODE RELATING TO NON-WASTE REPORTING REQUIREMENTS.

STAFF MATTERS

City Manager Ochoa made no comments.

COUNCIL MATTERS

Council Member Bowman thanked City Staff for their hard work on the 4th of July parade.

Council Member Dorst-Porada made no comments.

Council Member Valencia thanked Staff for the 4th of July program and acknowledged Congresswoman Veronica Rochin from Ontario's Sister City in Sinaloa.

Mayor Leon spoke of the successful California Sports Hall of Fame event he recently attended. He also spoke on the restoration of a local church.

Mayor pro Tem Wapner made no comments.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 8:15 p.m. and announced the next regular meeting to be held on Tuesday, July 19, 2022.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
SPECIAL MEETING MINUTES
July 8, 2022
(Not Official Until Approved)

JOINT MEETINGS

The special meetings of the Ontario City Council and Housing Authority were held on Friday, July 8, 2022 at Ontario City Hall, 303 E. B Street Ontario, California and a teleconferencing location at 3799 S. Las Vegas Blvd. Las Vegas, NV 89109.

CALL TO ORDER

Mayor Leon called the Joint City Council and Ontario Housing Authority meetings to order at 9:49 a.m.

ROLL CALL

PRESENT:	Mayor/Chairman	Paul S. Leon
	Mayor pro Tem/Vice Chair:	Alan D. Wapner
	Council/Authority Members:	Jim W. Bowman, Debra Dorst-Porada and Ruben Valencia (Teleconferenced)
ABSENT:	Council/Authority Members:	None.

Also present were City Manager / Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran, and City Clerk/Secretary Sheila Mautz.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Leon.

CLOSED SESSION PUBLIC COMMENT

Mayor Leon inquired whether persons were present who wished to speak to the Closed Sessions item. Hearing no one, City Attorney Duran announced the matters for discussion as listed on the agenda.

There was one written communication submitted by Mr. Rafferty.

- GC 54656.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION Robles, et al. v. City of Ontario et al., Case No. CIVDS 2007038

The City Council recessed to Closed Session at 9:51 a.m. for discussion of the following:

CLOSED SESSION

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: Jay Spicer v. City of Ontario, et al., Superior Court of California, County of San Bernardino, Case No. CIVDS1711812

CALL TO ORDER – OPEN SESSION

Mayor Leon called the meetings to order at 10:37 a.m.

CLOSED SESSION REPORT

City Attorney Duran announced there was no reportable action.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 10:38 a.m.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **August 2, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Rudy Zeledon Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **ORDINANCES APPROVING A DEVELOPMENT AGREEMENTS (FILE NOS. PDA22-003-A, B, C, AND D) BETWEEN THE CITY OF ONTARIO AND OTC LOT OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV22-014)**

RECOMMENDATION: That the City Council consider and adopt Ordinances approving a Development Agreements (File No.'s PDA22-003-A, B, C, and D) to establish the terms and conditions associated with a Development Plan (File No. PDEV22-014) to construct up to 694 residential units and 71,500 square feet of commercial/office/retail uses on 10.49 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corners of Via Piemonte and Via Villagio, within the Mixed-Use land use district (Subareas 8, 11, 16, and 17) of the Piemonte Overlay of the Ontario Center Specific Plan.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Development Agreements and related Development Plan (File No. PDEV22-014) conditions of approval require the developer to construct all public infrastructure and pay all Development Impact Fees, compliance processing, licensing, and permitting fees. There is no direct fiscal impact to the General Fund associated with this action.

BACKGROUND & ANALYSIS: On July 19, 2022, the City Council introduced and waived further reading of Ordinances approving the Development Agreement. In April 2022, the City Council approved an amendment to the Piemonte Overlay document (File No. PSPA21-001) that expanded the overlay boundary, adding the Mixed-Use land use designation and establishing design guidelines for mixed-use projects. The amendment established the framework to create a vibrant, pedestrian-friendly, regional mixed-use entertainment development within the Arena district.

The financial commitments required to develop an active regional mixed-use entertainment Arena district are substantial. Therefore, in order to adequately forecast these costs and gain assurance

that the project may proceed under the existing policies, rules and regulations, OTC Lot Owner LLC ("Owner") has requested that the City enter into negotiations to create a Development Agreement ("Agreement"). In accordance with California Government Code Section 65865, which in part states that "[a]ny city… may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property…" and California Government Code Section 65865.52, which in part states that "a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property… and may include conditions, terms, restrictions…," the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements.

The Development Agreement proposes to include 10.49 acres of land within the proposed Mixed-Use Subareas 8, 11, 16, and 17 of the Piemonte Overlay at the Ontario Center Specific Plan, as shown on the attached Exhibits A, B, and C. The Agreement grants the Owner a vested right to develop a future mixed-use project consisting of 694 residential units and up to 71,500 square feet of retail uses, provided the Owner complies with the terms and conditions of the Agreement, and the Piemonte Overlay at Ontario Center Specific Plan and EIR. To provide flexibility in obtaining financing for the project, the Development Agreement has been separated into four separate Agreements, File Nos. PDEV22-03-A, B, C, and D. Each Agreement will correspond to proposed development density and intensity for each phase of the 10.49-acre project site as outlined in Table 1 and shown on attached Exhibit D.

The term of the Agreements are for 10 years, with a 5-year extension option available. The main points of each Agreement address the funding for all new City expenses created by the project, which includes: (1) development of the project in accordance with the agreed upon residential density and commercial intensity as specified in the Development Plan entitlement (Table 1: Maximum Development Density and Intensity); (2) timing of the phased development; (3) payment timing and deferral of all Development Impact Fees ("DIF"); (4) construction of all required public infrastructure improvements; (5) vested right to develop the Project in accordance with existing land use regulations of the Piemonte Overlay and subject to the conditions established with the Development Plan entitlement approval; and (6) that the City agrees, to the extent permitted by applicable law, not to apply any rent control or other moratoria or interim control ordinance against the Property or the Project due the terms of the Ground Lease.

In considering the Agreement(s) at their meeting on June 28, 2022, the Planning Commission found that the Agreement(s) were consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result the Planning Commission adopted Resolution Nos. PC22-027, PC22-028, PC22-029, and PC22-030, with a 6-0 vote, recommending the City Council approve the Agreements.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site contains four properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 DU/AC) specified in the Available Land Inventory.

AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land use Compatibility Plan.

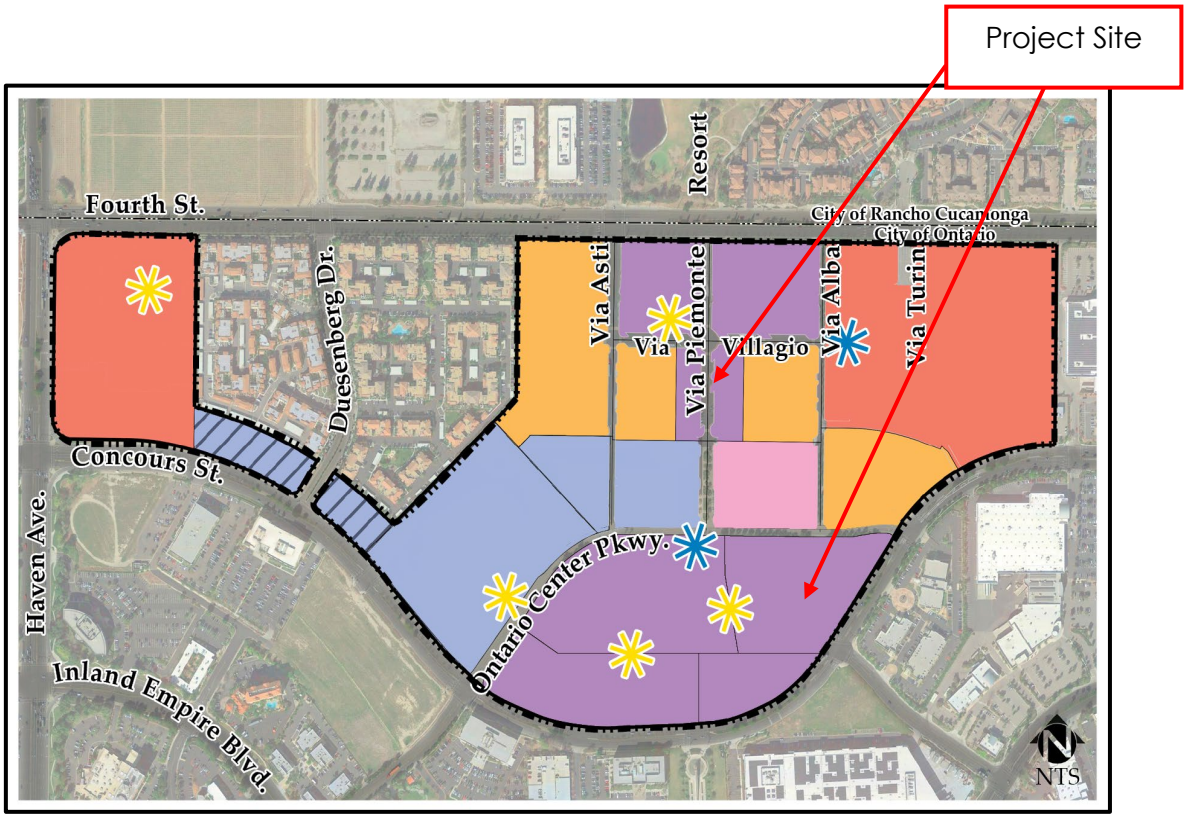
ENVIRONMENTAL REVIEW: In 1980, the City Council certified The Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 80062538) in relation to the adoption of The Ontario Center Specific Plan (File No. 2254-SP) ("OCSP"), which was adopted in 1981. Over the years, several amendments to the OCSP have been approved along with appropriate environmental review. On March 19, 1991, a subsequent EIR (State Clearing House No. 89041009) ("Certified EIR") was certified in association with an amendment to the OCSP (File No. 4059-SPA). In 2016, the City approved a Mitigated Negative Declaration ("MND") in association with an amendment to the Piemonte Overlay (File No. PSPA16-003).

In association with the proposed Overlay Amendment, staff collaborated with consultant Kimley-Horn to prepare an Addendum to the Certified EIR, as amended, and found that all potential adverse direct, indirect, and cumulative environmental impacts were thoroughly analyzed and discussed in the Certified EIR, as amended, including, but not limited to potential aesthetic, air quality, greenhouse gas emissions, noise, transportation, and tribal cultural resources impacts, and all feasible mitigation has been identified and will be incorporated into the proposed Project. This Project does not contemplate any actions that would require the preparation of a subsequent or supplemental environmental document under State CEQA Guidelines Section 15162 or 15163, as it is consistent with the development scenario identified within the Certified EIR. Furthermore, this Project introduces no new significant environmental impacts and no further environmental review is required.

EXHIBIT A—Location Map



EXHIBIT B— PIEMONTE OVERLAY LAND USE MAP



Legend

- Piemonte Overlay area
- Commercial
- Entertainment/Retail
- Office
- Special Use
- Residential
- Residential Development Allowed
- Constructed Plaza
- Proposed Plaza

Figure 2.3: Piemonte Overlay Land Use Plan

EXHIBIT C— PIEMONTE PROPOSED SUBAREAS

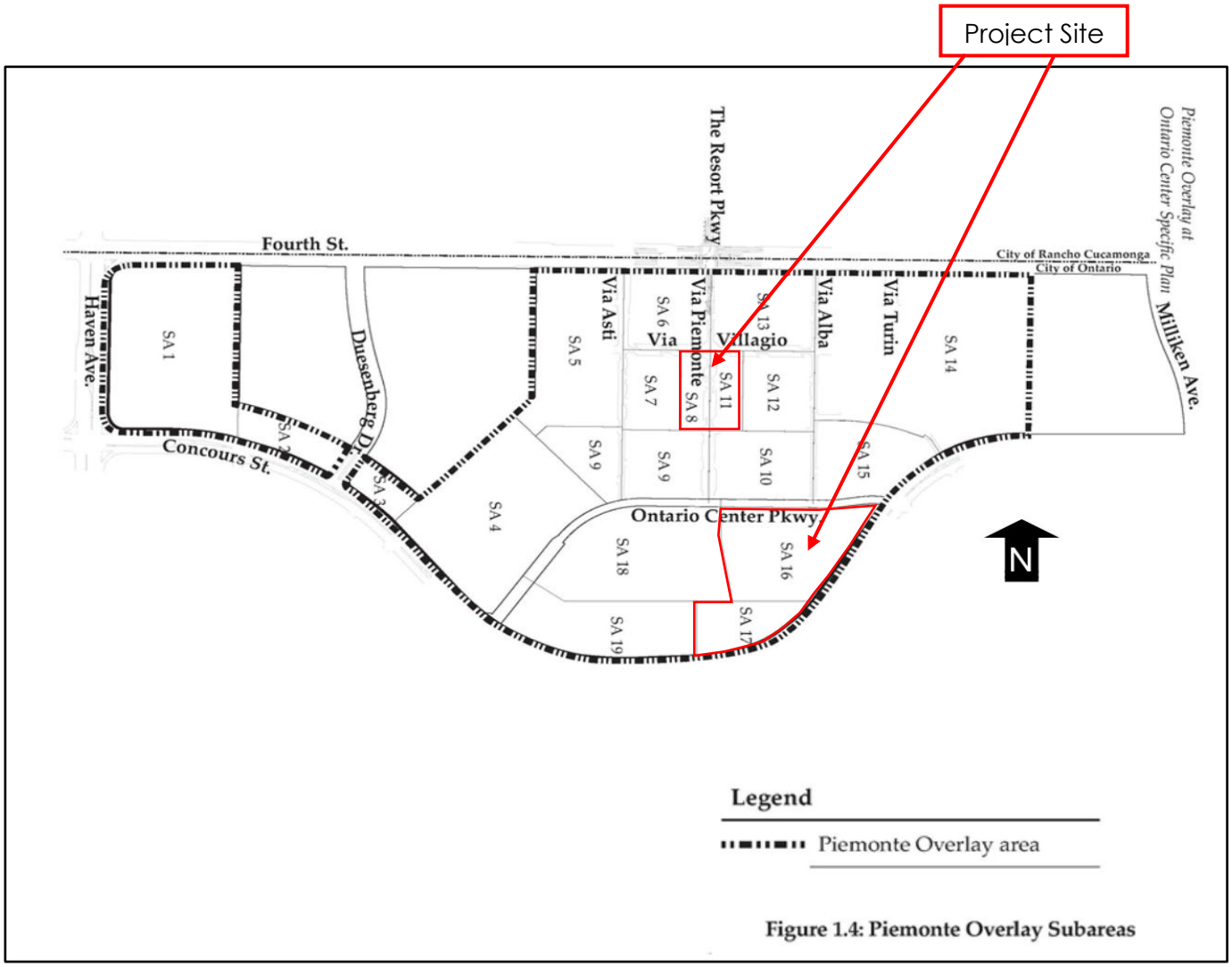


***EXHIBIT C— Table 1* Maximum Development Density (Units) and Intensity**

Table 1: Maximum Development Density (Units) and Intensity (Based on Piemonte Overlay at the Ontario Center Specific Plan)					
DA File No's.	**Approx. Acres**	**Lot**	**Subarea Area**	**Dwelling Units**	**Commercial (Square Feet)**
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

June 28, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO: PDA22-003 - A, B, C and D

SUBJECT: A public hearing to consider a Development Agreement (File No. PDA22-003-A,B,C and D) between the City of Ontario and OTC Owner, LLC (dba Adept Development), to establish the terms and conditions for a Development Plan (File No. PDEV22-014) to construct four mixed-use buildings totaling 71,200 commercial square feet and 694 dwelling units (540,373 residential square feet) on 10.49 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-use land use district of the Piemonte Overlay of the Ontario Center Specific Plan. **Submitted by OTC Owner, LLC. City Council action is required.**

PROPERTY OWNER: City of Ontario

RECOMMENDED ACTION: That the Planning Commission consider and recommend the City Council adopt an ordinance approving the Development Agreement (File No. PDA22-003- A,B C and D) between the City of Ontario and OTC Owner, LLC, pursuant to the facts and reasons contained in the staff report and attached resolutions.

PROJECT SETTING: The Project site is comprised of 10.49 acres of land, consisting of two vacant parcels located at the southwest corner of Via Villaggio and Via Piemonte and at the Southeast corner of Via Villaggio and Via Piemonte and one additional parcel, developed with the Toyota Arena parking lots, located at the southwest corner of Ontario Center Parkway and Concours Street. The project site within the proposed mixed-use Subareas 8, 11, 16 and 17 of the Piemonte Overlay of the Ontario Center Specific Plan, and is depicted in Figure 1: Project Location, below. The Project site is surrounded by residential, office, and commercial properties on land that is generally topographically flat. In addition to the existing surrounding developments, there are also vacant parcels along the Project boundary. The existing surrounding land uses, zoning, and general plan and specific plan land use designations are summarized in the "Surrounding Zoning & Land Uses" table located in the Technical Appendix of this report.

Case Planner:	Rudy Zeledon, Planning Director
Planning Director Approval:	
Submittal Date:	N/A

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	
PC	06/28/2022	APPROVAL	Recommend
CC			Final

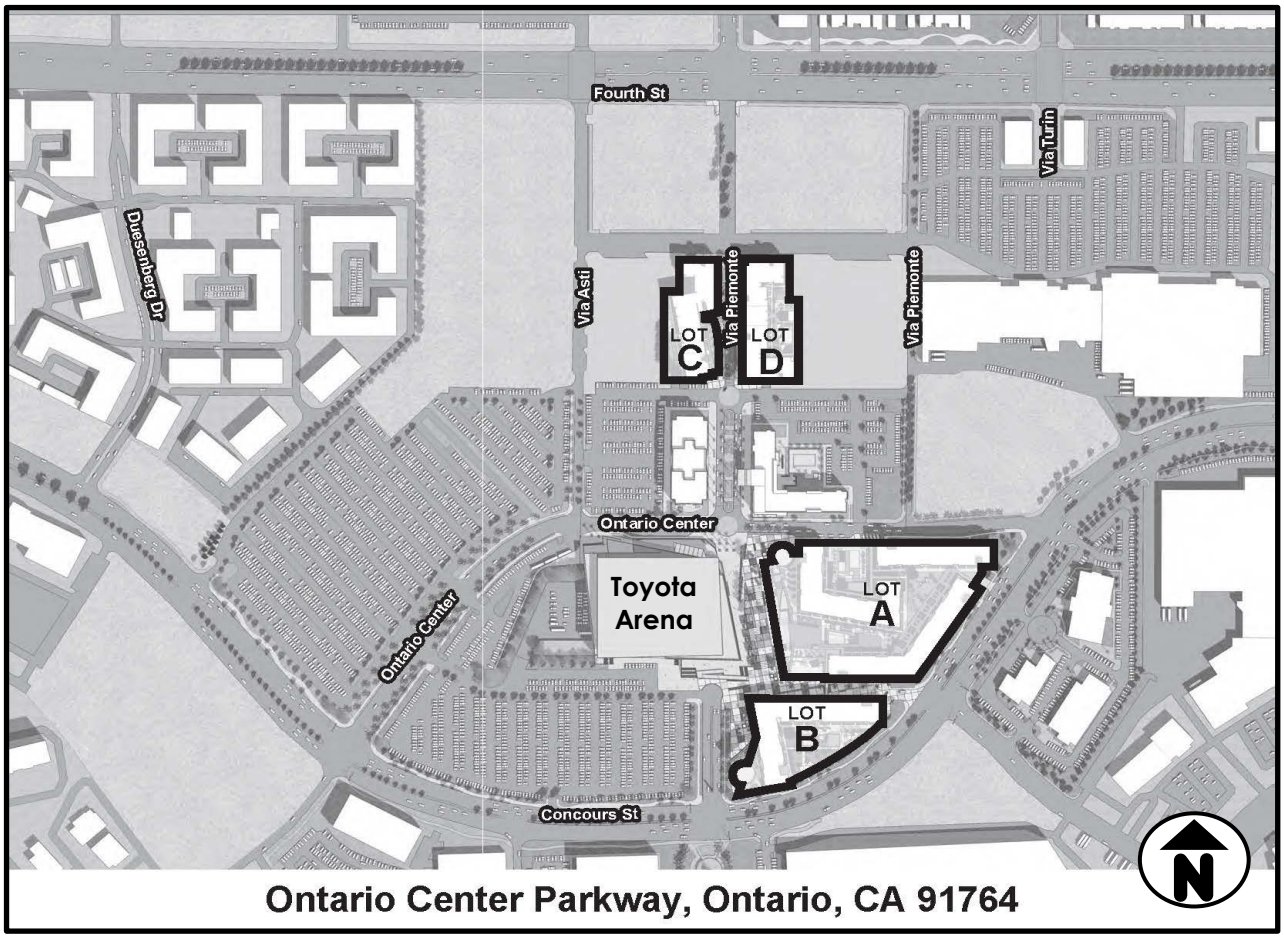


Figure 1: Project Location

PROJECT ANALYSIS:

(1) Background — In 2006, the City Council approved the creation of the Piemonte Overlay at The Ontario Center Specific Plan ("Piemonte Overlay") within the Urban Commercial land use district of The Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre Project site. The Piemonte Overlay was delineated into fifteen subareas, with land use designations of Commercial, Entertainment/Retail, Office, Special Use and Residential (See Exhibit B, Existing Boundary and Land Use Map, attached). The current Overlay area covers approximately 92 acres of land, with at least 48 acres being vacant land.

In 2017, the City Council approved an amendment to the Piemonte Overlay document (File No. PSPA16-003) to reduce the number of residential units, reduce the maximum number of hotel rooms, designate plaza areas to accommodate outdoor events, and

expand the design concept from the original Tuscan-influenced architecture to allow more contemporary architectural design concepts.

In 2020, the City Council approved an amendment to the Piemonte Overlay document (File No. PSPA19-009) to allow required residential parking spaces to be provided as tandem parking spaces.

In April of 2022, the City Council approved an amendment to the Piemonte Overlay document (File No. PSPA21-001) that expanded the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects. The City initiated amendment was brought forth by both the Planning and Economic Development departments to create an opportunity to bring a mixed-use entertainment development the Toyota Arena district and facilitate the development of underutilized vacant parcels and parking lots into a high intensity mixed-use center.

In accordance with California Government Code Section 65865, which in part states that "[a]ny city… may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property…" and California Government Code Section 65865.52, which in part states that "a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property… and may include conditions, terms, restrictions…," the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements.

Development Agreement — The Agreement proposes to include 10.49 acres of land within the proposed Mixed-Use Subareas 8, 11, 16 and 17 of the Piemonte Overlay at the Ontario Center Specific Plan, as shown on the attached Exhibit A. The Agreement grants the Owner a vested right to develop a future mixed-use project consisting of 694 residential units and up to 71,200 square feet retail uses (as shown on Table 1: Proposed Development Density and Intensity below), provided the Owner complies with the terms and conditions of the Agreement, and the Piemonte Overlay at the Ontario Center Specific Plan and EIR. To provide flexibility to finance for the project, the Development Agreement has been separated into four Agreements, File No's PDEV22-03-A, B, C, and D. Each Agreement will correspond to proposed development density and intensity of each phase for the 10.49-acre project site as outlined below in Table 1.

Table 1: Maximum Development Density (Units) and Intensity (Based on Piemonte Overlay at the Ontario Center Specific Plan)					
DA File No's.	**Approx. Acres**	**Lot**	**Subarea Area**	**Dwelling Units**	**Commercial (Square Feet)**
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

On March 28, 2022, the Applicant submitted a Development Plan (File No. PDEV22-014) to construct four mixed-use buildings totaling 71,200 commercial square feet and 694 dwelling units (540,373 residential square feet) on 10.49 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-use land use district of the Piemonte Overlay of the Ontario Center Specific Plan.

The term of the Agreement(s) is for 10 years, with a 5-year option to renew. The main points of the each Agreement address the funding for all new City expenses created by the project, which includes: Development of the project in accordance with the agreed residential density and commercial intensity of the Development Plan entitlement (Table 1: Maximum Development Density and Intensity); Timing of the phased development; Payment timing and deferral of all Development Impact Fees ("DIF"); Construction of all required public infrastructure improvements; Vested right to develop the Project in accordance with existing land use regulations of the Piemonte Overlay and subject to the conditions established with the Development Plan entitlement approval; and that the City agrees that, to the extent permitted by applicable law, not to apply any rent control or other moratoria or interim control ordinance against the Property or the Project due the term of the Ground Lease or for 55 years.

Staff finds that the Agreements are consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, staff is recommending approval of the application to the Planning Commission. If the Planning Commission finds the Agreements are acceptable, a recommendation of approval to the City Council would be appropriate.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

(1) City Council Goals.
- Invest in the Growth and Evolution of the City's Economy

- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

(2) Vision.

Distinctive Development:

- Commercial and Residential Development

➢ Development quality that is broadly recognized as distinctive and not exclusively tied to the general suburban character typical of much of Southern California.

(3) Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

➢ G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision

(4) Policy Plan (General Plan)

Land Use Element:

- Goal LU1: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

➢ LU1-1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.

➢ LU1-6 Complete Community: We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario. (Refer to Complete Community Section of Community Economics Element).

- Goal LU2: Compatibility between a wide range of uses.

➢ LU2-6: Infrastructure Compatibility: We require infrastructure to be aesthetically pleasing and in context with the community character.

- Goal LU3: Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the vision.

  - LU3-1: Development Standards: We maintain clear development standards which allow flexibility to achieve our Vision.

  - LU3-3: Land Use Flexibility: We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity.

Housing Element:

- Goal H2: Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.

  - H2-3 Ontario Airport Metro Center. We foster a vibrant, urban, intense and highly amenitized community in the Ontario Airport Metro Center Area through a mix of residential, entertainment, retail and office-oriented uses.

  - H2-5 Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices and other best practices.

  - H2-6 Infill Development. We support the revitalization of neighborhoods through the construction of higher-density residential developments on underutilized residential and commercial sites.

- Goal H3: A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.

  - H3-2 Flexible Standards. We allow flexibility in the application of residential and mixed-use development standards in order to gain benefits such as exceptional design quality, economic advantages, sustainability, or other benefits that would otherwise be unrealized.

- Goal H5: A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age or other status.

  - H5-2 Family Housing. We support the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of services, recreation and other amenities.

Community Economics Element:

- Goal CE1: A complete community that provides for all incomes and stages of life.

  - CE1-6 Diversity of Housing. We collaborate with residents, housing providers and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to support our workforce, attract business and foster a balanced community.

- Goal CE2: A City of distinctive neighborhoods, districts, and corridors, where people choose to be.

  - CE2-1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

  - CE2-2 Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional and sustainable places that will compete well with their competition within the region.

  - CE2-4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

  - CE2-5 Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Safety Element:

- Goal S1: Minimized risk of injury, loss of life, property damage and economic and social disruption caused by earthquake-induced and other geologic hazards.

  - S1-1 Implementation of Regulations and Standards. We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.

Community Design Element:

- Goal CD1: A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

- CD1-1 City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing the diverse character of our existing viable neighborhoods.

- CD1-2 Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.

- Goal CD2: A high level of design quality resulting in public spaces, streetscapes, and developments that are attractive, safe, functional and distinct.

- CD2-1 Quality Architecture. We encourage all development projects to convey visual interest and character through:

  - Building volume, massing, and height to provide appropriate scale and proportion;
  - A true architectural style which is carried out in plan, section and elevation through all aspects of the building and site design and appropriate for its setting; and
  - Exterior building materials that are visually interesting, high quality, durable, and appropriate for the architectural style.

- CD2-2 Neighborhood Design. We create distinct residential neighborhoods that are functional, have a sense of community, emphasize livability and social interaction, and are uniquely identifiable places through such elements as:

  - A pattern of smaller, walkable blocks that promote access, activity and safety;
  - Variable setbacks and parcel sizes to accommodate a diversity of housing types;
  - Traffic calming measures to slow traffic and promote walkability while maintaining acceptable fire protection and traffic flows;
  - Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and
  - Landscaped parkways, with sidewalks separated from the curb.

- CD2-4 Mixed Use, Urban Office and Transit Service Areas. We require mixed use, urban office and transit service areas to be designed and developed as pedestrian oriented "villages" that promote a vibrant, comfortable and functional environment.

- CD2-7 Sustainability. We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials and construction techniques.

- CD2-8 Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintenance of visibility and accessibility, and use of lighting.

- CD2-9 Landscape Design. We encourage durable landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.

- CD2-10 Surface Parking Areas. We require parking areas visible to or used by the public to be landscaped in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.

- CD2-11 Entry Statements. We encourage the inclusion of amenities, signage and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

- CD2-12 Site and Building Signage. We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.

- CD2-13 Entitlement Process. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

- Goal CD3: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

- CD3-1 Design. We require that pedestrian, vehicular, bicycle and equestrian circulation on both public and private property be coordinated and designed to maximize safety, comfort and aesthetics.

- CD3-2 Connectivity Between Streets, Sidewalks, Walkways and Plazas. We require landscaping and paving be used to optimize visual connectivity between streets, sidewalks, walkways and plazas for pedestrians.

- CD3-3 Building Entrances. We require all building entrances to be accessible and visible from adjacent streets, sidewalks or public open spaces.

- CD3-5 Paving. We require sidewalks and road surfaces to be of a type and quality that contributes to the appearance and utility of streets and public spaces.

- CD3-6 Landscaping. We utilize landscaping to enhance the aesthetics, functionality and sustainability of streetscapes, outdoor spaces and buildings.

- Goal CD5: A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.

- CD5-1 Maintenance of Buildings and Property. We require all public and privately-owned buildings and property (including trails and easements) to be properly and consistently maintained.

- CD5-2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site contains four properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 DU/AC) specified in the Available Land Inventory.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the ALUCP.

ENVIRONMENTAL REVIEW: In 1980, the City Council certified The Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 80062538), in relation to the adoption of The Ontario Center Specific Plan (File No. 2254-SP) ("OCSP"), which was adopted in 1981. Over the years, several amendments to the OCSP have been approved along with appropriate environmental review. On March 19, 1991, a subsequent EIR

(State Clearing House No. 89041009) ("Certified EIR") was certified in association with an amendment to the OCSP (File No. 4059-SPA). In 2016, the City approved a Mitigated Negative Declaration ("MND") in association with an amendment to the Piemonte Overlay (File No. PSPA16-003).

In association with the proposed Overlay Amendment, staff collaborated with consultant Kimley-Horn to prepare an Addendum to the Certified EIR, as amended, and found that all potential adverse direct, indirect, and cumulative environmental impacts were thoroughly analyzed and discussed in the Certified EIR, as amended, including, but not limited to potential aesthetic, air quality, greenhouse gas emissions, noise, transportation and tribal cultural resources impacts, and all feasible mitigation has been identified and will be incorporated into the proposed Project. This Project does not contemplate any actions that would require the preparation of a subsequent or supplemental environmental document under State CEQA Guidelines Section 15162 or 15163, as it is consistent with the development scenario identified within the Certified EIR. Furthermore, this Project introduces no new significant environmental impacts and no further environmental review is required.

TECHNICAL APPENDIX:

Surrounding Zoning and Land Use:

	Existing Land Use	*General Plan Designation*	*Zoning Designation*	*Specific Plan Land Use*
Site	Vacant/Existing Parking Lots	Mixed Use	Piemonte Overlay of the Ontario Center Specific Plan	Mixed-use, Office, Residential, Commercial, Special Use
North	Industrial, Office, Commercial, Residential, Vacant (City of Rancho Cucamonga)	Industrial Park, Mixed Use, Open Space (City of Rancho Cucamonga)	Industrial Park, Mixed-use Retail, IASP Sub-Area 18 Specific Plan (City of Rancho Cucamonga)	Mixed Use, Village Neighborhood
South	Office, Commercial, Vacant	Mixed Use	The Ontario Center Specific Plan	Urban Commercial, Garden Commercial, Open Space
East	Commercial	Mixed Use	The Ontario Center Specific Plan	Urban Commercial
West	Residential, Commercial	High Density Residential, Office Commercial	The Ontario Center Specific Plan	Urban Commercial

EXHIBIT A—PROPOSED PIEMONTE OVERLAY LAND USE MAP

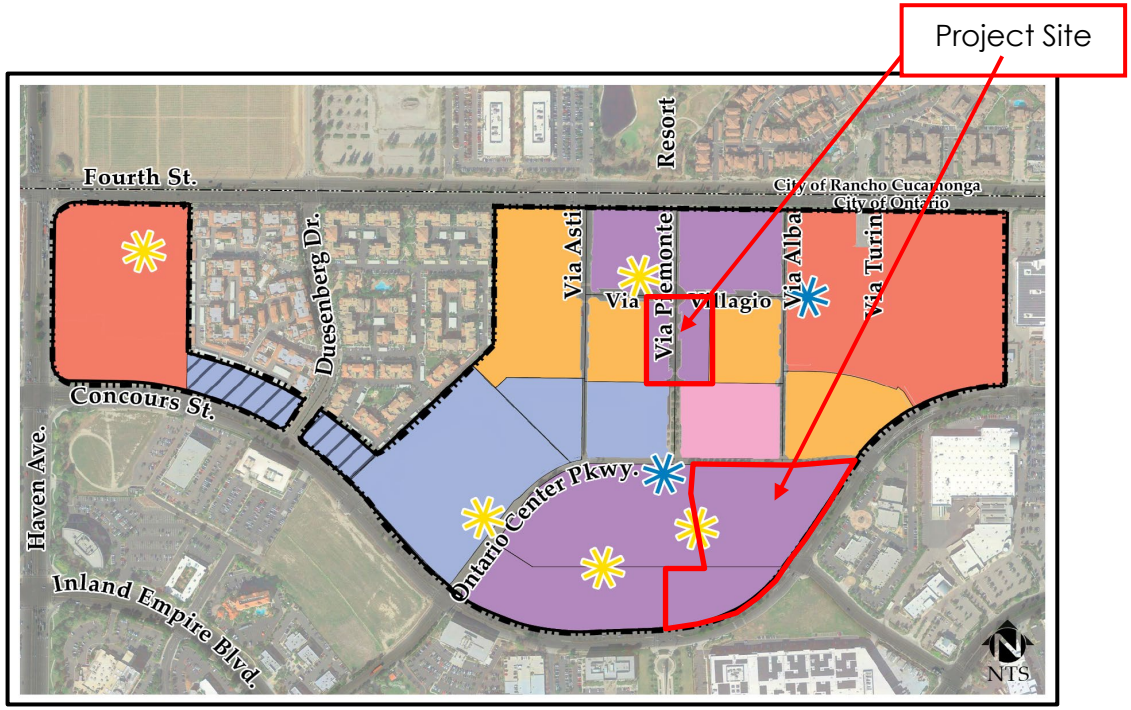


Figure 2.3: Piemonte Overlay Land Use Plan

EXHIBIT B—PIEMONTE PROPOSED SUBAREAS

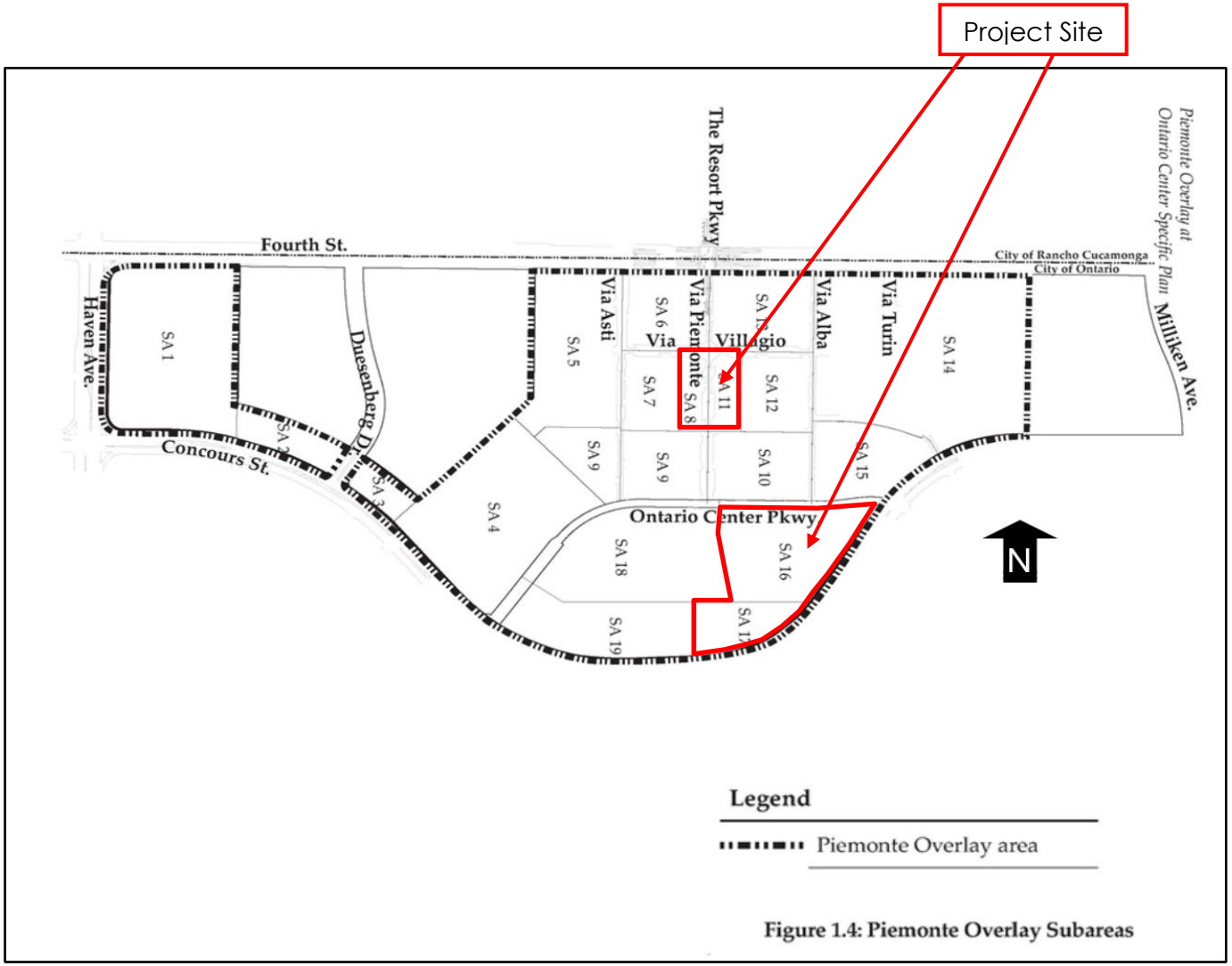


EXHIBIT C— PROPOSED SITE PLAN

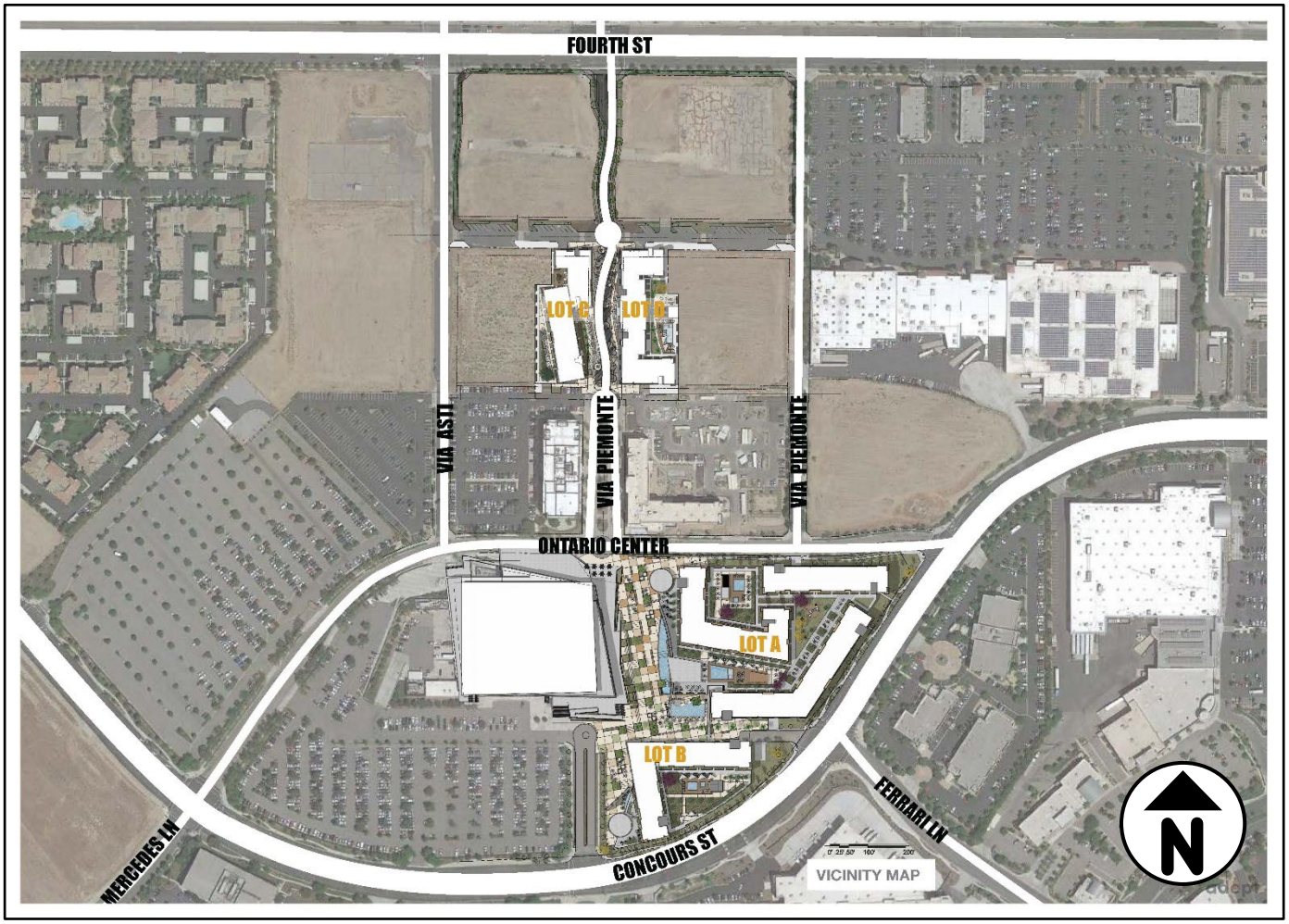


EXHIBIT C— PROPOSED SITE PLAN CONTINUED

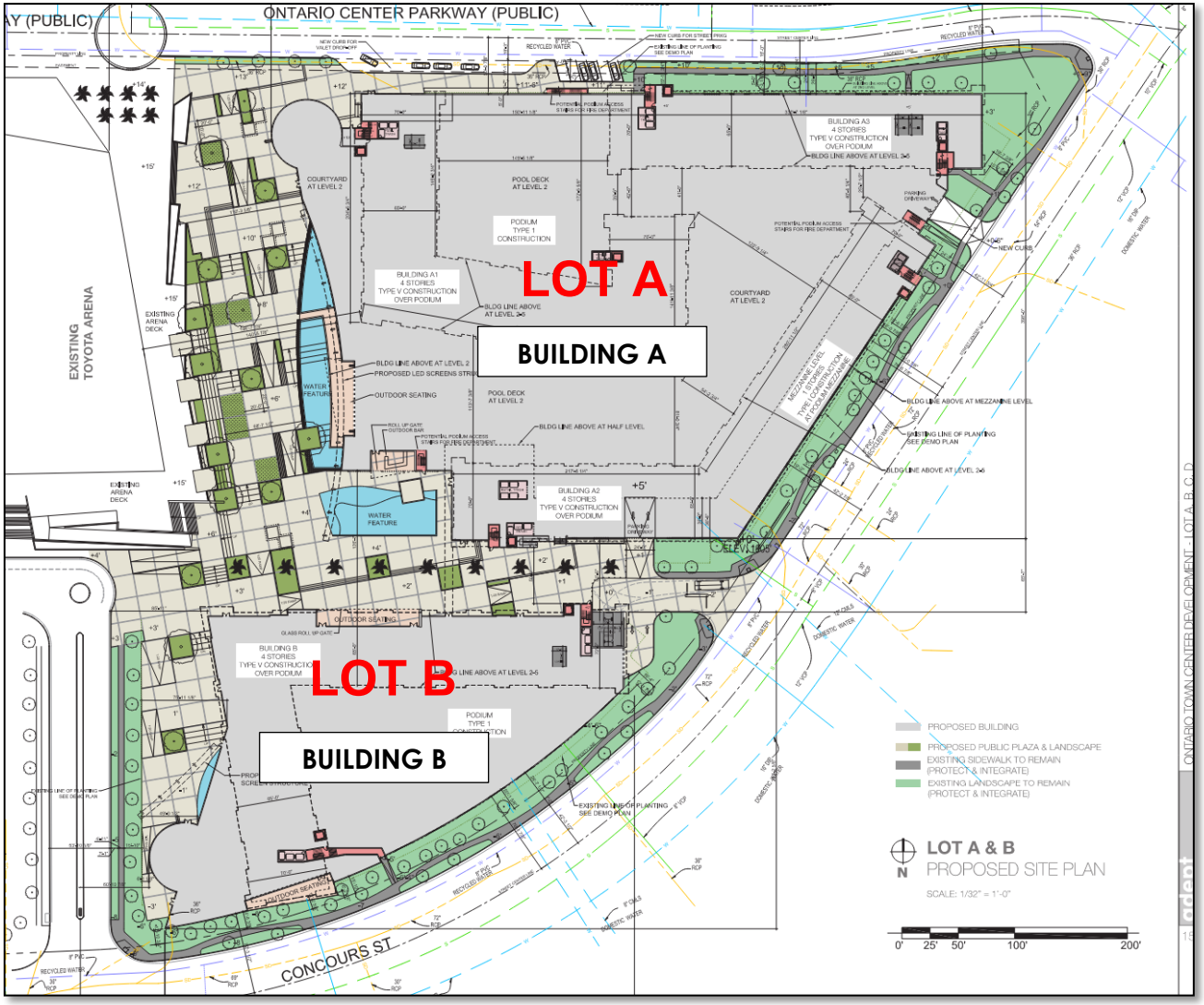
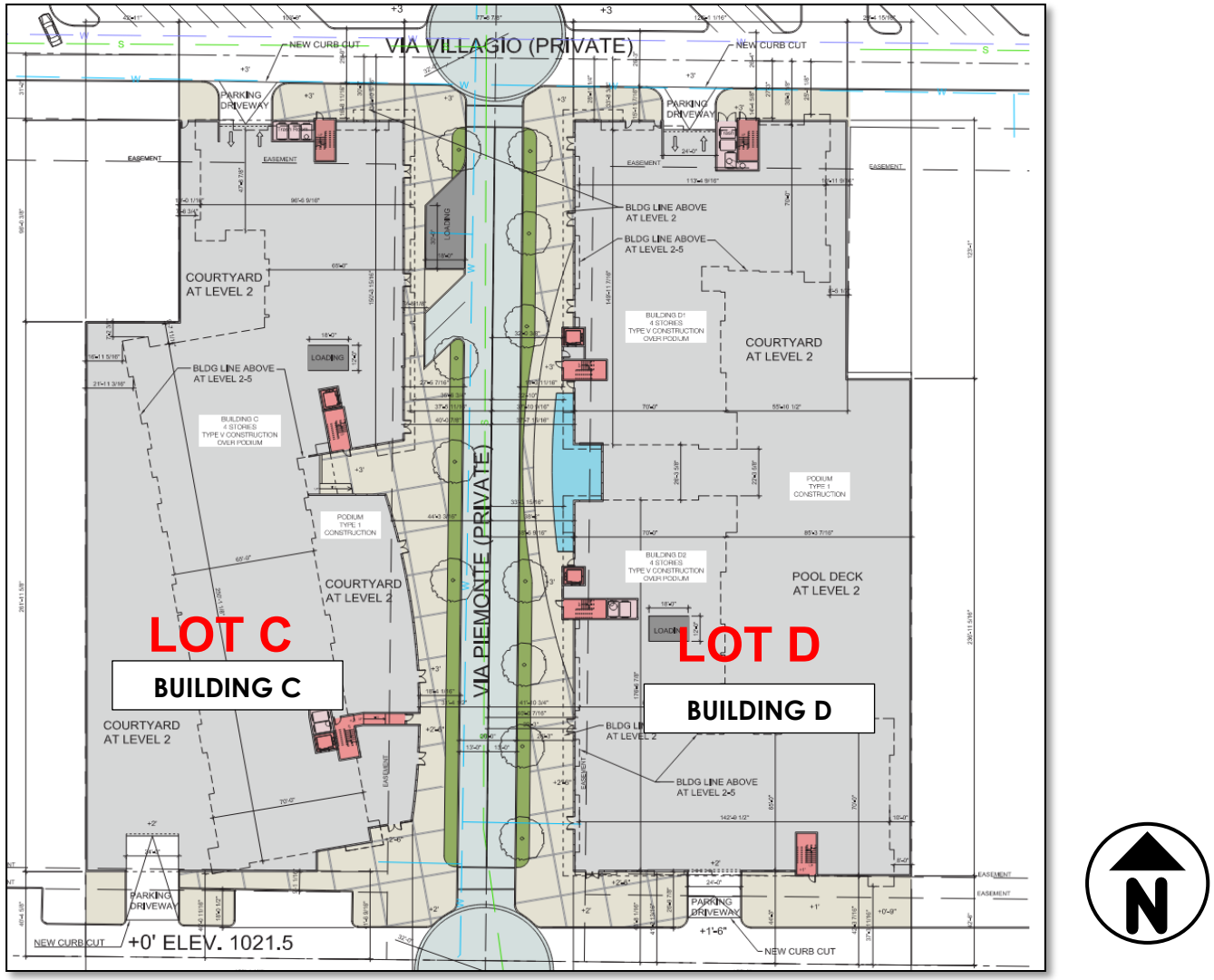


EXHIBIT C—PROPOSED SITE PLAN CONTINUED



RESOLUTION NO. PC22-027

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDA22-003-A, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 384 RESIDENTIAL UNITS AND UP TO 25,256 SQUARE FEET OF COMMERCIAL/OFFICE/ RETAIL USES, ON APPROXIMETLY 4.83 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ONTARIO CENTER PARKWAY AND CONCOURS STREET WITHIN THE MIXED-USE SUBAREAS 16 OF THE PIEMONTE OVERLAY AT THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: NORTHEAST PORTION OF 0210-205-01.

WHEREAS, OTC Owner, LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-A, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 4.83 acres of land, consisting of the northeast Toyota Arena Parking lot, located at the southwest corner of Ontario Center Parkway and Concours Street. The project site within the proposed mixed-use Subarea 16 of the Piemonte Overlay at the Ontario Center Specific Plan, and is presently vacant and improved with the Toyota Area parking lot; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration was subsequently adopted on May 16, 2017, (hereinafter referred to as “MND”), in which development and use of the Project

site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San

Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the Planning Commission, and the specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as

the recommending body for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

a. The Development Agreement applies to approximately 4.83 acres of land generally located southwest corner of Ontario Center Parkway and Concours Street; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot A, consisting of 384 residential units and up to 25,256 square feet retail uses, within the proposed Mixed-Use Subarea 16 of the

Piemonte Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA22-003-A) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located

at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of June 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Planning Commission Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-027, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on June 28, 2022, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Gage, Lampkin, Ricci, Willoughby

NOES: None

ABSENT: Dean

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA22-003-A

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Owner, LLC
Lot A

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Owner, LLC
Lot A

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-003-A

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot A, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-A; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots B, C, and D. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots B, C, and D as follows:

Lot B - Development Plan Entitlement – File No. PDEV22-014;

Lot C - Development Plan Entitlement – File No. PDEV22-014; and

Lot D - Development Plan Entitlement – File No. PDEV22-014.

Lots B, C, and D are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots B, C, and D in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots B, C, and D currently comprised of the following development as shown on Table 1 below:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot A) of up to 25,256 square feet of commercial/office/retail uses and 384 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.31 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement. The Property is referred to as Lot A on Exhibit B. The Property constitutes one parcel of the Phased Development. Lots B, C, and D comprise the remaining parcels of the planned Phased Development.

1.1.32 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.33 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.34 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.35 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.36 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.37 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.38 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot A Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the Final Non-Appealable Date.
2.	Commencement of Construction of the Project	On or before two (2) years following the Final Non-Appealable Date. In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21)

		days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent

(3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to

any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death

(Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County

Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner

Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of

the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement

shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot A Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

LEASE AREA DESCRIPTION (LOT A)

APN NO. 0210-205-01

THAT PORTION OF LAND IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, LYING WITHIN A PORTION OF PARCEL 1 OF PARCEL MAP NO. 17978 AS PER MAP FILED IN BOOK 216 PAGES 44 AND 45 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE ALONG THE EASTERLY BOUNDARY LINE OF SAID PARCEL 1, SAID COURSE HAVING A BEARING OF N 33°23' 13" E AS SHOWN ON SAID PARCEL MAP. THENCE, N 33° 23' 13" E 42.97' ALONG SAID EASTERLY LINE. THENCE, LEAVING SAID EASTERLY LINEN 56°36' 47" W 18.58' TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION. THENCE, ALONG THE FOLLOWING DESCRIBED COURSES:

N 33°23' 24" E 259.97'

S 56°36' 36" E 8.00'

N 33°23' 24" E 25.41'

N 56°36' 36" W 5.50'

N 33°23' 24" E 30.58'

N 56°36' 36" W 18.50'

N 33°23' 24" E 46.27'

N 0° 00' 00" E 19.25'

N 90° 00' 00" E 30.59'

N 0° 00' 00" E 67.50'

N 90° 00' 00" W 274.60'

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DESCRIPTION (LOT A)

N O' 00' 00" E 8.00'

N 90° 00' 00" W 25.41'

SO' 00' 00" W 8.00'

N 90° 00' 00" W 251.51'

SO' 00' 00" W 30.58'

N 90° 00' 00" W 16.82' TO THE BEGINNING OF A NON-TANGENT 31.67' RADIUS CURVE CONCAVE SOUTHEASTERLY AND TO WHICH A RADIAL LINE BEARS N 78°55' 48" E. THENCE, NORTHWESTERLY, WESTERLY, AND SOUTHEASTERLY 110.94' ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 200' 43' 26". THENCE, ALONG THE FOLLOWING DESCRIBED COURSES:

S 80' 09' 47" W 25.36'

S 09° 50' 13" E 343.01'

N 90° 00' 00" E 121.65

S 00° 00' 00" W 4.00'

S 90° 00' 00" E 32.63'

S 00° 00' 00" E 6.35'

N 90° 00' 00" E 25.41'

NO' 00' 00" E 10.11'

S 90° 00' 00" E 43.73'

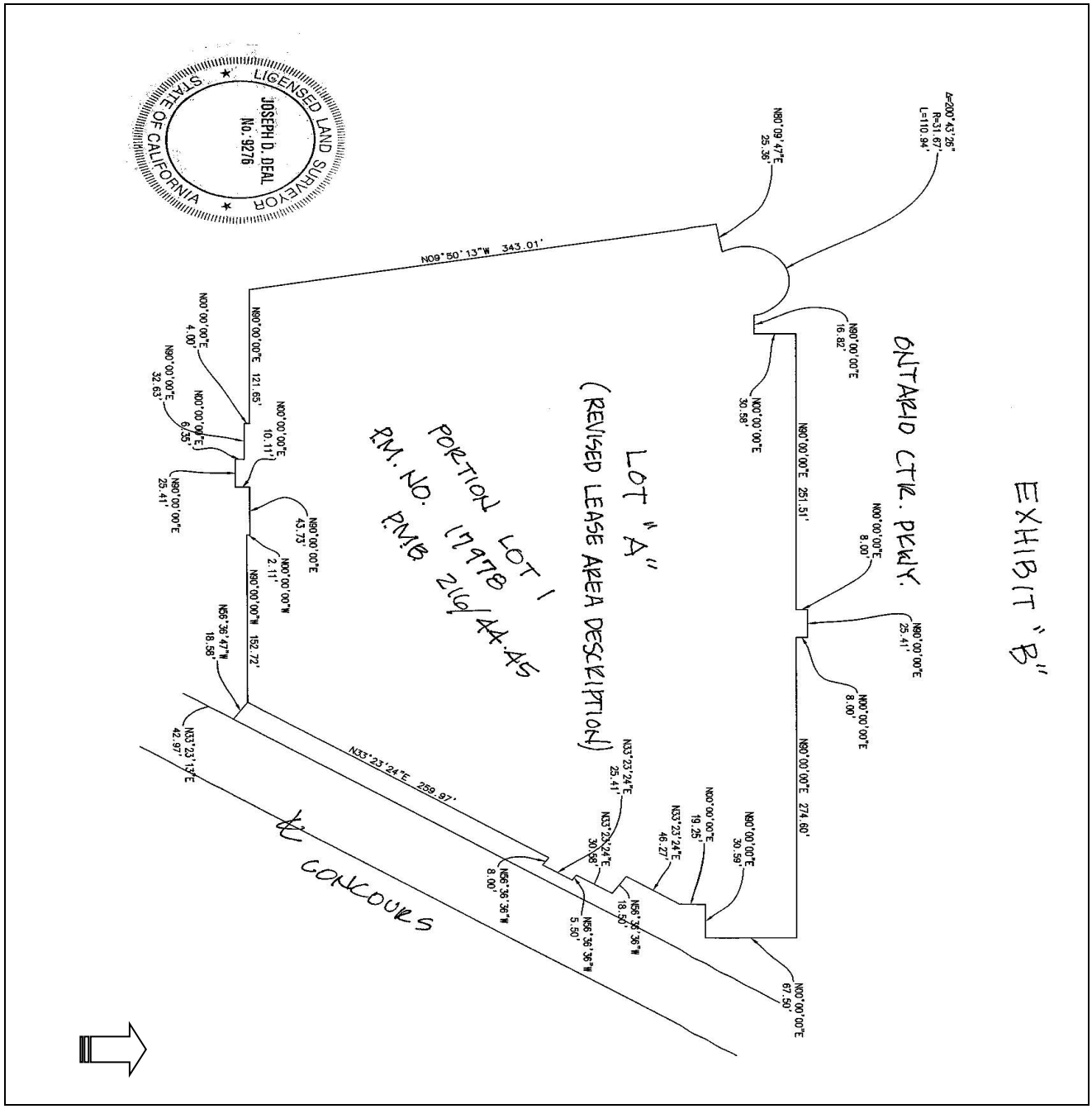
S 00° 00' 00" W 2.11'

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DESCRIPTION (LOT A)

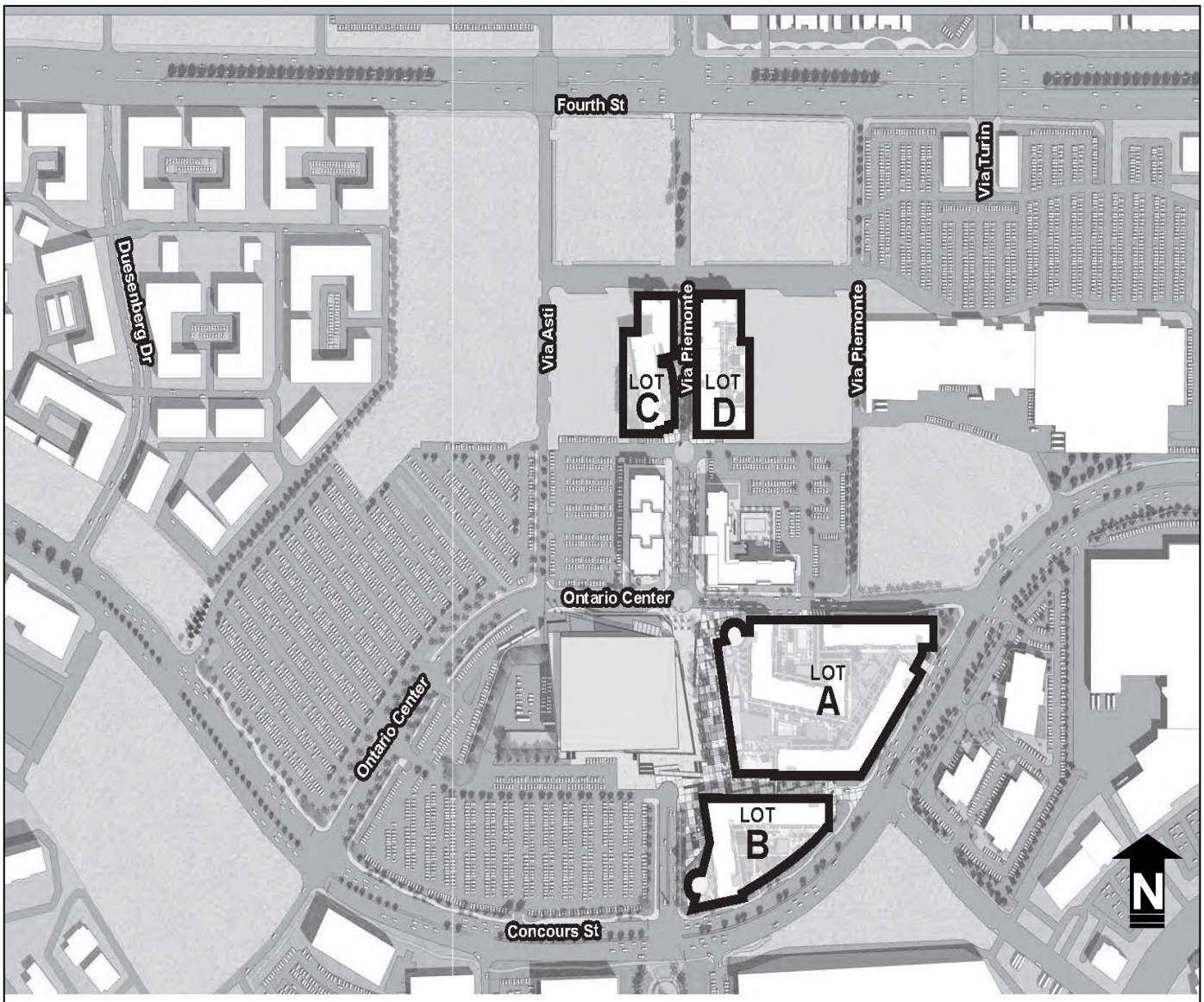
THENCE, S 90° 00' 00" E 152.72' TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE-DESCRIBED PARCEL OF LAND CONTAINS 210,250 SQUARE FEET, 4.83 ACRES MORE OR LESS.ALL AS SHOWN ON EXHIBIT "B" PLOT ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.



TO DEVELOPMENT AGREEMENT

Map showing Property and its location



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "B" CONTINUED
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

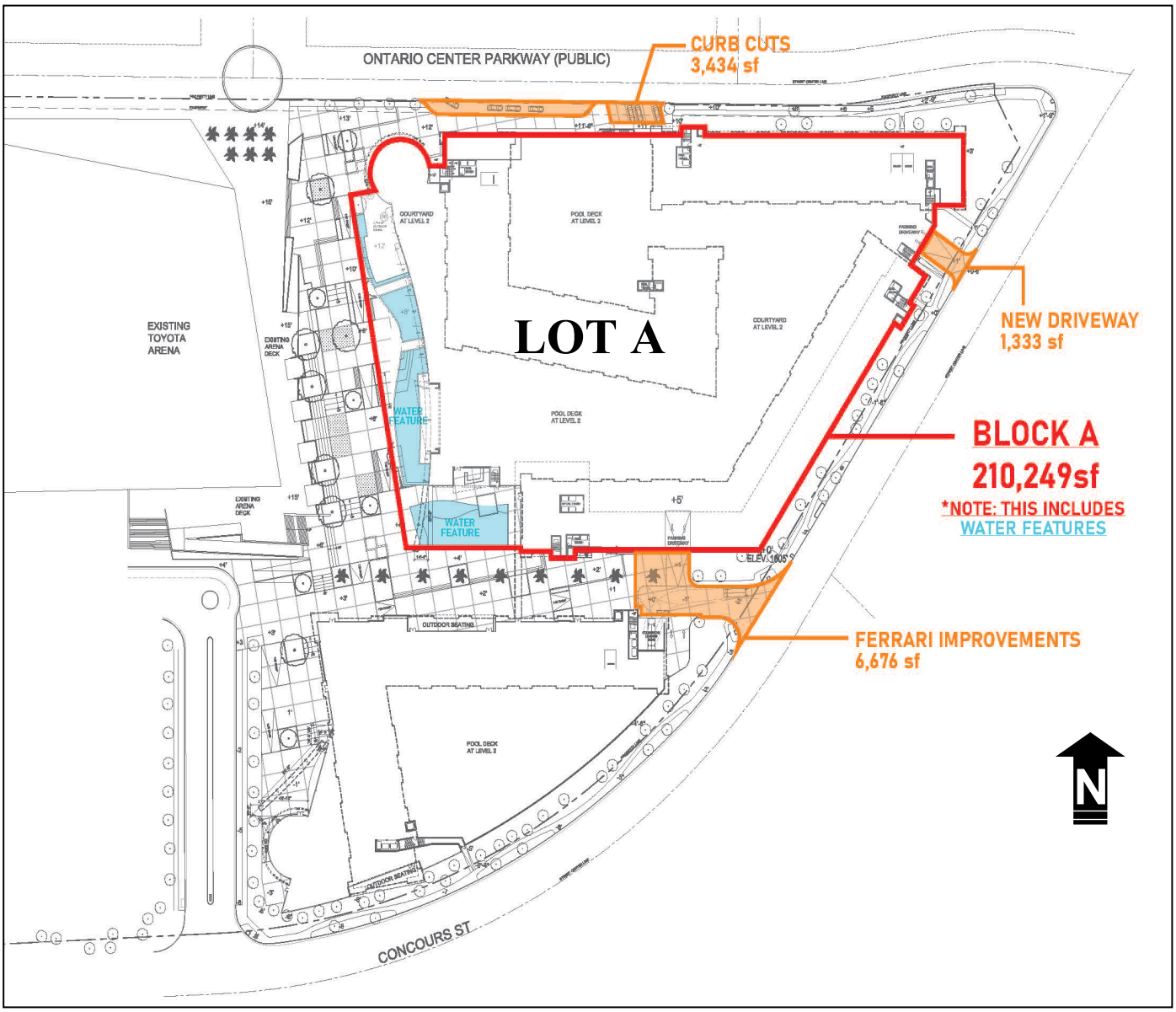


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Development Impact Fees as of the Approval Date

(Development Impact Fees to follow this page)

Exhibit C

FY 2021-22
Citywide Fee Schedule

(Fees, Fines & Charges)

Component of the FY 2021-22 Budget

Adopted June 21, 2021 (Resolution No. 2021-062)

Table of Contents

II. Community Life & Culture
Section 5. Housing Fees 3

III. Community Development
Section 1. Building Fees 4
Section 2. Engineering Fees 15
Section 3. Planning Fees 20

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

II. - Community Life & Culture
Section 5. Housing Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Housing Fees					
1	Base Affordable Housing Monitoring Fee*	Base	$ 747.68	$ 747.00	7/1/2021
2	Per Unit Affordable Housing Monitoring Fee*	Per unit	$ 107.94	$ 107.00	7/1/2021
3	Loan Payoff Process Fee - without equity share	Each	$ 251.11	$ 251.00	7/1/2021
4	Loan Payoff Process Fee - with equity share	Each	$ 400.39	$ 400.00	7/1/2021
5	Preparation of Full Reconveyance	Each	$ 248.13	$ 248.00	7/1/2021

** Affordable Housing Monitoring Fee does not apply to bond-funded projects.*

Note: Loan Payoff and Reconveyance fees may be waived if individuals are under financial hardship.

Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Plan Check Fees					
1	Building Plan Check Fee	% of Permit	N/A	80.00%	7/1/2021
2	Building Plan Check for track housing or duplicate building	% of Permit	N/A	40.00%	7/1/2021
3	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Less than $1 million	N/A	50.00%	7/1/2021
4	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $1 and $5 million	N/A	40.00%	7/1/2021
5	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $5 and $10 million	N/A	30.00%	7/1/2021
6	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $10 and $20 million	N/A	20.00%	7/1/2021
7	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Greater than $20 million	N/A	10.00%	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Permit Fees					
8	Building Permit - Base Fee ($1-$500)	Valuation: $1 to $500	N/A	$ 23.50	7/1/2021
9	Building Permit - Base Fee ($501-$2000)	Valuation: $501 to $2,000	N/A	$ 23.50	7/1/2021
10	Building Permit Fee (Each additional $100, or fraction thereof, up to and including $2000)	Each additional $100, or fraction thereof, up to and including $2,000	N/A	$ 3.05	7/1/2021
11	Building Permit - Base Fee ($2001-$25,000)	Valuation: $2,001 to $25,000	N/A	$ 69.25	7/1/2021
12	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $25,000)	Each additional $1,000, or fraction thereof, up to and including $25,000	N/A	$ 14.00	7/1/2021
13	Building Permit - Base Fee ($25,001-$50,000)	Valuation: $25,001 to $50,000	N/A	$ 391.25	7/1/2021
14	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $50,000)	Each additional $1,000, or fraction thereof, up to and including $50,000	N/A	$ 10.10	7/1/2021
15	Building Permit - Base Fee ($50,001-$100,000)	Valuation: $50,001 to $100,000	N/A	$ 643.75	7/1/2021
16	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $100,000)	Each additional $1,000, or fraction thereof, up to and including $100,000	N/A	$ 7.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
17	Building Permit - Base Fee ($100,001-$500,000)	Valuation: $100,001 to $500,000	N/A	$ 993.75	7/1/2021
18	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $500,000)	Each additional $1,000, or fraction thereof, up to and including $500,000	N/A	$ 5.60	7/1/2021
19	Building Permit - Base Fee ($500,001-$1,000,000)	Valuation: $500,001 to $1,000,000	N/A	$ 3,233.75	7/1/2021
20	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $1,000,000)	Each additional $1,000, or fraction thereof, up to and including $1,000,000	N/A	$ 4.75	7/1/2021
21	Building Permit - Base Fee (Greater than $1,000,001)	Valuation: $1,000,001 and up	N/A	$ 5,608.75	7/1/2021
22	Building Permit Fee (Each additional $1,000 or fraction thereof, greater than $1,000,001)	Each additional $1,000, or fraction thereof	N/A	$ 3.65	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Misc. Standard Building Permits					
23	Kitchen Remodel (non-structural)	Each	$ 258.99	$ 258.00	7/1/2021
24	Bathroom Remodel	Each	$ 129.50	$ 129.00	7/1/2021
25	Demolition - Entire Structure	Valuation	N/A	Varies	7/1/2021
26	Patio Covers - Solid	Valuation	N/A	Varies	7/1/2021
27	Patio Covers - Lattice	Valuation	N/A	Varies	7/1/2021
28	Patio Covers - Enclosures	Valuation	N/A	Varies	7/1/2021
29	Pole Bases	Valuation	N/A	Varies	7/1/2021
30	Roofing	Valuation	N/A	Varies	7/1/2021
31	Storage Sheds	Valuation	N/A	Varies	7/1/2021
32	Stucco	Valuation	N/A	Varies	7/1/2021
33	Swimming Pools/Spas	Valuation	N/A	Varies	7/1/2021
34	Tenant Improvements - With Ceiling	Valuation	N/A	Varies	7/1/2021
35	Tenant Improvements - Without Ceiling	Valuation	N/A	Varies	7/1/2021
36	Trash Enclosures - Single	Valuation	N/A	Varies	7/1/2021
37	Trash Enclosures - Double	Valuation	N/A	Varies	7/1/2021
38	Walls - Retaining	Valuation	N/A	Varies	7/1/2021
39	Walls - Screen Garden	Valuation	N/A	Varies	7/1/2021
40	Walls - Tilt-Up Screen Walls	Valuation	N/A	Varies	7/1/2021
41	Window Changeout	Valuation	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Electrical Permit Fees					
42	Electrical Permit Issuance Fee	Each	$ 41.63	$ 41.00	7/1/2021
43	Electrical Permit - Temporary Power Service Pedestal	Each	$ 86.33	$ 86.00	7/1/2021
44	Electrical Permit - Temporary Power Service Distribution system	Each	$ 43.17	$ 43.00	7/1/2021
45	Electrical Permit - outlet/switch/fixture	First 20 fixtures	$ 129.50	$ 129.00	7/1/2021
46	Electrical Permit - Additional Fixtures	Each	$ 2.94	$ 2.90	7/1/2021
47	Electrical Permit - Power Apparatus -up to and including 1	each HP, kW, kVA or kVAR	$ 143.83	$ 143.00	7/1/2021
48	Electrical Permit - Power Apparatus - over 1 to 10	each HP, kW, kVA or kVAR	$ 158.33	$ 158.00	7/1/2021
49	Electrical Permit - Power Apparatus - over 10 to 50	each HP, kW, kVA or kVAR	$ 172.66	$ 172.00	7/1/2021
50	Electrical Permit - Power Apparatus - over 50 to 100	each HP, kW, kVA or kVAR	$ 258.99	$ 258.00	7/1/2021
51	Electrical Permit - Power Apparatus - over 100	each HP, kW, kVA or kVAR	$ 345.32	$ 345.00	7/1/2021
52	Electrical Permit - Services -for services of 600 volts or less and not over 200 amperes in rating	Each	$ 172.66	$ 172.00	7/1/2021
53	Electrical Permit Fee - Services -for services of 600 volts or less and over 200 amperes to 1,000 amperes in rating	Each	$ 258.99	$ 258.00	7/1/2021
54	Electrical Permit Fee - Services -for services over 600 volts or over 1,000 amperes in rating	Each	$ 431.65	$ 431.00	7/1/2021
55	Electrical Permit Fee - Miscellaneous Apparatus, Conduits and Conductors	Each	$ 143.83	$ 143.00	7/1/2021
56	Electrical Permit Fee- Subpanel	Each	N/A	$ 172.00	7/1/2021
57	Electrical Permit Fee - Signs	Each	N/A	$ 86.00	7/1/2021
58	Electrical Permit Fee - Private Swimming Pools	Each Pool or Spa	N/A	$ 129.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
59	Electrical Permit Fee - Other Inspections and Fees, inspections outside of normal business hours: minimum charge 3 hrs.	Per Hour	$ 113.00	$ 113.00	7/1/2021
60	Electrical Permit Fee - Inspections	Per Hour	$ 113.00	$ 113.00	7/1/2021
61	Electrical Permit Fee - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
62	Electrical Permit Fee - Additional plan review	Per Hour	$ 113.00	$ 113.00	7/1/2021
63	New Construction Trades - Electrical : Residential	Per Square Foot	$ 0.10791	$ 0.1079	7/1/2021
64	New Construction Trades - Electrical : Commercial	Per Square Foot	$ 5.22301	$ 0.1200	7/1/2021
65	New Construction Trades - Electrical: Industrial / warehouse (0-50,000 sf)	Per Square Foot	$ 0.01209	$ 0.0120	7/1/2021
66	New Construction Trades - Electrical : Industrial / warehouse (>50,000 sf)	Per Square Foot	$ 0.00388	$ 0.0038	7/1/2021
Mechanical Permit Fees					
67	Mechanical Permit Issuance Fee	Each	$ 41.75	$ 41.00	7/1/2021
68	Mechanical Permit Fee (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -under 3 HP (10.6kW) or to and including 100,000 Btu/h (29.3kW)	Each	$ 172.66	$ 172.00	7/1/2021
69	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems-over 3 HP (10.6kW) to and including 15 HP (52.7kW), or over 100,000 Btu (29.3kW) to and including 500,000 Btu/h (146.6kW)	Each	$ 215.83	$ 215.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
70	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -over 15 HP (52.7 kW) to and including 30 HP (105.5 kW), over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW)	Each	$ 258.99	$ 258.00	7/1/2021
71	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 30 HP (105.5 kW) to and including 50 HP (176 kW), or over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW)	Each	$ 345.32	$ 345.00	7/1/2021
72	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 50 HP (176 kW) or over 1,7500,000 Btu/h (512.9kW)	Each	$ 517.98	$ 517.00	7/1/2021
73	Mechanical Permit Fees (includes issuance fee)- Evaporative Coolers	Each	$ 172.66	$ 172.00	7/1/2021
74	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each fan connected to single duct	Each	$ 172.66	$ 172.00	7/1/2021
75	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust-each which is not a portion of any heating or a/c system authorized by a permit	Each	$ 172.66	$ 172.00	7/1/2021
76	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each hood served by mechanical exhaust	Each	$ 345.32	$ 345.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
77	Mechanical Permit Fee - Process Piping	Valuation	N/A	Varies	7/1/2021
78	Mechanical Permit Fee - Wall Heater	Each	N/A	$ 43.00	7/1/2021
79	Mechanical Permit Fees - Miscellaneous (one inspection)	Each	$ 86.33	$ 86.00	7/1/2021
80	Mechanical Permit Fees - Inspection outside of normal business hours	Per Hour	$ 113.00	$ 113.00	7/1/2021
81	Mechanical Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
82	Mechanical Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
83	Mechanical Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
84	New Construction Trades - Mechanical: Residential	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
85	New Construction Trades - Mechanical : Commercial	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
Plumbing Permit Fees					
86	Permit issuance fee	Each	$ 41.75	$ 41.00	7/1/2021
87	Plumbing Permit Fees - First 15 Fixtures and Vents (new & alterations)	First 15 Fixtures/Vents	$ 172.66	$ 172.50	7/1/2021
88	Plumbing Permit Fees - Each Additional	Each	$ 172.66	$ 10.78	7/1/2021
89	Plumbing Permit Fees - Sewers	Each	$ 172.66	$ 172.50	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
90	Plumbing Permit Fees - Sewage disposal system	Each	$ 431.65	$ 431.50	7/1/2021
91	Plumbing Permit Fees -Industrial waste pretreatment interceptor	Each	$ 172.66	$ 172.50	7/1/2021
92	Plumbing Permit Fees - Water Piping First 20 outlets	First 20 Outlets	$ 129.50	$ 129.00	7/1/2021
93	Plumbing Permit Fees - Water Piping Each Additional Outlet	Each Outlet	$ 129.50	$ 5.23	7/1/2021
94	Plumbing Permit Fees - Water heater including vent	Each	$ 172.66	$ 12.92	7/1/2021
95	Plumbing Permit Fees - Gas Piping Systems First 5 Outlets	First 5 Outlets	$ 647.50	$ 129.50	7/1/2021
96	Plumbing Permit Fees - Gas Piping Systems Each Additional	Each Addt'l Outlet	$ 129.50	$ 6.77	7/1/2021
97	Plumbing Permit Fees - Lawn Sprinklers	Each lawn sprinkler system on any one meter	$ 172.66	$ 172.50	7/1/2021
98	Plumbing Permit Fees - Backflow Protection Devices	Each Device	$ 172.66	$ 172.50	7/1/2021
99	Plumbing Permit Fees - Miscellaneous	Each appliance or equipment regulated by the Plumbing Code but not classed in other appliance categories, or for which no fee is listed in this code	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
100	Plumbing Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
101	Plumbing Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
102	Plumbing Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
103	New Construction Trades - Plumbing : Residential	Per SF	$ 0.10791	$ 0.1070	7/1/2021
	Grading Plan Review Fees (up to three submittals of plans)				
104	Grading plan check, rough (0-10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
105	Grading plan check, rough (>10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
106	Grading plan check, rough (each additional 5 acres)	Each	$ 345.32	$ 345.00	7/1/2021
107	Grading plan check, precise (0-10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
108	Grading plan check, precise (>10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
109	Grading plan check, precise (each additional 5 acres)	Each	$ 517.98	$ 517.50	7/1/2021
	Grading Permit Fees				
110	Grading permit, rough (0-50 acres)	Each	$ 345.32	$ 345.00	7/1/2021
111	Grading permit, rough (each additional 10 acres)	Each	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
112	Grading permit, precise (0-50 acres)	Each	$ 431.65	$ 431.50	7/1/2021
113	Grading permit, precise (each additional 10 acres)	Each	$ 129.50	$ 129.50	7/1/2021
114	Soil Disturbance Permit - Dust Control	Each	N/A	$ 250.00	7/1/2021
Miscellaneous Fees					
115	Building plan retention fee	Per Plan Page	N/A	$ 1.50	7/1/2021
116	Permits, Calcs and Misc. doc	8.5x11 / per page	N/A	$ 0.35	7/1/2021
Sewer, Water, Storm Drain Permit & Plan Check Fees					
117	Sewer Main Inspection Permit	Per Lineal Foot	$ 3.17	$ 3.17	7/1/2021
118	Water Main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
119	Storm Drain - main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
120	Storm Drain - yard Inspection Permit	Per Lineal Foot	$ 0.29	$ 0.29	7/1/2021
121	Sewer, Water, Storm Drain Plan check fee = % of permit valuation	% of Permit Valuation	2.00%	2.00%	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Inspection / Permit - Base Fee	Base	$ 164.09	$ 164.00	7/1/2021
2	Inspection / Permit Fees $1 - $50,000	Construction cost estimate	5.97%	5.97%	7/1/2021
3	Inspection / Permit Fees $50,001 - $500,000	Construction cost estimate	5.45%	5.45%	7/1/2021
4	Inspection / Permit Fees >$500,000	Construction cost estimate	4.24%	4.24%	7/1/2021
5	Plan Check - Base Fee (includes grading, NPDES etc.)	Base	$ 1,371.16	$ 1,371.00	7/1/2021
6	Plan Check Fees $1 - $50,000	Construction cost estimate	6.00%	6.00%	7/1/2021
7	Plan Check Fees $50,001 - $500,000	Construction cost estimate	4.65%	4.65%	7/1/2021
8	Plan Check Fees >$500,000	Construction cost estimate	3.62%	3.62%	7/1/2021
9	Encroachment Permit Fee	Each	$ 162.91	$ 112.80	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
10	Inspection for minor improvements (driveways, pole replacement, etc.)	Inspection for single item (2 inspections, before and after)	$ 167.02	$ 108.15	8/21/2021
11	Traffic Control Permit	Each	$ 103.49	$ 103.00	7/1/2021
12	Overload Permit (single trip) - One time	Each	N/A	$ 19.20	8/21/2021
13	Overload Permit (round trip) - Annual	Each	N/A	$ 108.00	8/21/2021
14	Permit Penalty Fee	Percent of Permit Value	N/A	50.00%	7/1/2021
15	Map Review (Parcel/Tract) - Base Fee	Each	$ 7,666.96	$ 2,588.40	8/21/2021
16	Map Review - Addt'l per parcel	Per Parcel	$ 70.48	$ 70.00	8/21/2021
17	Certificate of Compliance	Each	$ 790.69	$ 745.20	8/21/2021
18	Lot Line Adjustment - Base Fee	Each	$ 1,286.16	$ 1,159.20	8/21/2021
19	Lot Line Adjustment - Addt'l per parcel	Per parcel	$ 59.43	$ 59.00	7/1/2021
20	General Vacation	Each	$ 3,805.94	$ 1,902.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
21	Quit Claim / Summary Vacation	Each	$ 2,049.22	$ 1,087.20	8/21/2021
22	Certificate of Correction	Each	$ 823.10	$ 480.00	8/21/2021
23	Easement review	Each	$ 1,691.08	$ 1,691.00	7/1/2021
24	NPDES business inspection fee - low priority	One inspection every 5 years	$ 59.43	$ 59.00	7/1/2021
25	NPDES business inspection fee - medium priority	One inspection every 2 years	$ 118.85	$ 118.00	7/1/2021
26	NPDES business inspection fee - high priority	Inspection each year	$ 237.70	$ 237.50	7/1/2021
27	NPDES/WQMP Plan Review	Each	$ 2,160.65	$ 1,112.40	8/21/2021
28	NPDES Construction Inspection Fee (< 10 acres)	Each	$ 505.66	$ 505.50	7/1/2021
29	NPDES Construction Inspection Fee (10-25 acres)	Each	$ 905.50	$ 905.50	7/1/2021
30	NPDES Construction Inspection Fee (> 25 acres)	Each	$ 2,074.37	$ 2,074.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
31	Overtime Pay for Inspection (Weekends & Holidays)	Per Hour	N/A	Hourly Rate	7/1/2021
32	Misc. / Special Technical Report Review Fee	Actual Cost (Plus 25% Admin for consultant review, if applicable)	N/A	Varies	7/1/2021
33	Water Meter - OMUC Fee	Based on meter size - OMUC Fee	N/A	Varies	7/1/2021
34	Storm Water Pollution Abatement	Monthly BAU fee based on land use type & site acreage (applied to utility bill)	N/A	Varies	7/1/2021
35	Legal review	Per Hour	N/A	Hourly Rate	7/1/2021
PLANNING APPLICATIONS REVIEWED BY LAND DEVELOPMENT ENGINEERING					
36	Development Agreement	Deposit	N/A	Varies	7/1/2021
37	Development Agreement Amendment	Deposit	N/A	Varies	7/1/2021
38	Development Code Amendment	Deposit	N/A	Varies	7/1/2021
39	Environmental Impact Report	Deposit	N/A	Varies	7/1/2021
40	General Plan Amendment	Deposit	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
41	Planned Unit Development	Deposit	N/A	Varies	7/1/2021
42	Planned Unit Development Amendment	Deposit	N/A	Varies	7/1/2021
43	Specific Plan	Deposit	N/A	Varies	7/1/2021
44	Specific Plan Amendment	Deposit	N/A	Varies	7/1/2021
45	Specific Plan Minor Amendment	Deposit	N/A	Varies	7/1/2021
46	Zone Change - 5 acres or more	Deposit	N/A	Varies	7/1/2021
47	Zone Change - Less than 5 acres	Deposit	N/A	Varies	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Land Conservation Contract Non-renewal	Each	$ 3,817.21	$ 1,401.85	8/21/2021
2	Land Conservation Contract Cancellation	Each	$ 16,679.06	$ 6,431.53	8/21/2021
3	Appeal-Homeowner	Each	N/A	$ 130.00	7/1/2021
4	Appeal-Other	Each	N/A	$ 902.00	7/1/2021
5	Covenants Conditions and Restrictions Review	Each	$ 4,940.68	$ 3,067.50	8/21/2021
6	Conditional Use Permit-Homeowner	Each	$ 4,894.70	$ 1,784.26	8/21/2021
7	Conditional Use Permit-Nonprofit	Each	$ 3,520.01	$ 2,691.60	8/21/2021
8	Conditional Use Permit-Other	Each	$ 5,901.35	$ 5,900.00	7/1/2021
9	Conditional Use Permit-Modification	Each	$ 5,901.35	$ 3,693.27	8/21/2021
10	Conditional Use Permit-w/ Development Plan	Each	$ 4,724.75	$ 1,567.20	8/21/2021
11	Conditional Use Permit Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
12	Determination of Use	Each	$ 3,316.06	$ 3,316.00	7/1/2021
13	Development Agreement	Deposit	N/A	$ 10,000.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
14	Development Agreement Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
15	Development Code Amendment	Deposit	N/A	$ 2,000.00	7/1/2021
16	Development Plan Review - 5 acres or more	Each	$ 24,846.74	$ 17,914.80	8/21/2021
17	Development Plan Review - less than 5 acres	Each	$ 21,465.84	$ 11,913.15	8/21/2021
18	Development Plan Revision	Each	$ 16,735.49	$ 4,582.85	8/21/2021
19	Development Plan Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
20	Environmental Assessment/Negative Declaration	Each	$ 3,155.59	$ 3,155.00	7/1/2021
21	Environmental Impact Report	Deposit	N/A	$ 10,000.00	7/1/2021
22	General Plan Amendment - Text	Deposit	N/A	$ 5,000.00	7/1/2021
23	General Plan Amendment - Map	Deposit	N/A	$ 7,500.00	7/1/2021
24	Historic Preservation - COA-Nonresidential	Each	$ 4,677.04	$ 1,533.75	8/21/2021
25	Historic Preservation - COA-Residential	Each	$ 4,677.04	$ 214.73	8/21/2021
26	Historic Preservation - COEH-Nonresidential	Each	$ 6,846.51	$ 2,045.00	8/21/2021
27	Historic Preservation - COEH-Residential	Each	$ 6,846.51	$ 268.92	8/21/2021
28	Historic Preservation - Removal from Eligibility List (No Charge)	Each	$ 6,366.15	No Charge	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
29	Historic Preservation - Waiver	Each	$ 42.96	$ 42.50	7/1/2021
30	Historic Preservation - Landmark Designation (No Charge)	Each	$ 12,025.51	No Charge	7/1/2021
31	Historic Preservation - Plaque	Actual Cost	Varies	Varies	7/1/2021
32	Inspection - Construction (3 inspections)	Each	$ 5,342.05	$ 613.50	8/21/2021
33	Inspection - Field (includes construction inspections in excess of 3)	Each	$ 1,335.51	$ 255.63	8/21/2021
34	Residential Mills Act[A]	Each	$ 10,939.36	$ 214.73	8/21/2021
35	Nonresidential Mills Act[A]	Each	$ 10,939.36	$ 669.74	8/21/2021
36	Large Family Daycare	Each	$ 2,127.81	$ 1,116.57	8/21/2021
37	Lodging House Permit	Each	$ 2,127.81	$ 2,127.00	7/1/2021
38	Massage Permits	Each	$ 2,127.81	$ 2,127.00	7/1/2021
39	Plan Check - 5 or more acres	Each	$ 9,196.43	$ 3,070.10	8/21/2021
40	Plan Check - less than 5 acres	Each	$ 5,685.72	$ 1,717.10	8/21/2021
41	Planned Unit Development	Deposit	$ 20,926.28	$ 10,225.00	8/21/2021
42	Planned Unit Development Amendment	Deposit	$ 13,947.59	$ 7,668.75	8/21/2021
43	Planning Area Plan	Deposit	N/A	$ 7,500.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
44	Planning Director Review	Each	$ 1,057.33	$ 706.55	8/21/2021
45	Preliminary Plan Review	Each	$ 4,207.14	$ 4,203.00	7/1/2021
46	Public Hearing - City Council	Each	$ 769.75	$ 604.30	8/21/2021
47	Public Hearing - Development Advisory Board	Each	$ 497.12	$ 325.16	8/21/2021
48	Public Hearing - Planning Commission	Each	$ 1,325.44	$ 604.30	8/21/2021
49	Public Hearing - Zoning Administrator-Homeowner	Each	$ 1,764.14	$ 74.64	8/21/2021
50	Public Hearing - Zoning Administrator-Other	Each	$ 1,764.14	$ 584.87	8/21/2021
51	Sign Plan	Each	$ 519.34	$ 246.42	8/21/2021
52	Sign Program - administrative approval	Each	$ 2,825.58	$ 862.99	8/21/2021
53	Sign Program - planning commission approval	Each	$ 3,059.86	$ 2,934.58	8/21/2021
54	Specific Plan	Deposit	N/A	$ 20,000.00	7/1/2021
55	Specific Plan Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
56	Specific Plan Minor Amendment	Deposit	N/A	$ 620.00	7/1/2021
57	Temporary Sign Permit	Each	$ 124.89	$ 58.28	8/21/2021
58	Temporary Use Permit - interim uses	Each	$ 2,757.54	$ 838.45	8/21/2021
59	Temporary Use Permit - special event	Each	$ 1,064.72	$ 492.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
60	Tentative Parcel Map	Each	$ 15,986.07	$ 6,641.14	8/21/2021
61	Tentative Parcel Map Modification	Each	$ 11,706.32	$ 4,262.80	8/21/2021
62	Tentative Tract Map (Base)	Flat	$ 18,403.54	$ 9,805.78	8/21/2021
63	Tentative Tract Map (per lot)	Each	$ 65.00	$ 65.00	7/1/2021
64	Tentative Tract Map Modification	Each	$ 12,681.18	$ 3,125.78	8/21/2021
65	Tentative Tract/Parcel Map Time Extension	Each	$ 7,378.97	$ 1,227.00	8/21/2021
66	Variance - Administrative Exception or Minor	Each	$ 3,978.78	$ 2,451.96	8/21/2021
67	Variance - Homeowner	Each	$ 3,978.78	$ 309.82	8/21/2021
68	Variance - Other	Each	$ 5,266.37	$ 3,508.20	8/21/2021
69	Wireless Permit: Facilities in Public Rights-of-Way	Each	$ 3,978.78	$ 3,978.00	7/1/2021
70	Zone Change - 5 acres or more	Each	$ 10,575.56	$ 7,666.71	8/21/2021
71	Zone Change - Less than 5 acres	Each	$ 9,194.99	$ 7,497.99	8/21/2021
72	Zoning Administrator Review - Homeowner	Each	$ 3,978.78	$ 200.41	8/21/2021
73	Zoning Administrator Review - Other	Each	$ 3,978.78	$ 1,160.54	8/21/2021
74	Zoning/Land Use Verification Letter	Each	$ 499.56	$ 195.30	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
75	Notice of Exemption Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
76	Notice of Determination Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
77	Filing of a Negative/Mitigated Declaration	County Fee	N/A	$ 2,404.75	7/1/2021
78	Filing of an Environmental Impact Report	County Fee	N/A	$ 3,321.00	7/1/2021
79	Outside consultant or legal expenses	Actual Cost Plus 25% Admin. Fee	N/A	Varies	7/1/2021
80	Advanced Long Range Planning	Percent of all Building Permits & Planning Applications	$ 914,960.12	5.00%	7/1/2021

Resolution No. 2004-065 (Entitlement Processing Fees excl. Mills Act)
[A] Resolution No. 2005-115 (Mills Act Fees)
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062
CPI Adjustment of 2.25% applied to select fees based on year-over-year change from Jan. 2020 to Jan. 2021 as measured by "Riverside-San Bernardino-Ontario Consumer Price Index"

RESOLUTION NO. PC22-028

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDA22-003-B, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 112 RESIDENTIAL UNITS AND UP TO 20,802 SQUARE FEET OF COMMERCIAL/OFFICE/ RETAIL USES, ON APPROXIMETLY 1.69 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ONTARIO CENTER PARKWAY AND FERRARI LANE WITHIN THE MIXED-USE SUBAREAS 17 OF THE PIEMONTE OVERLAY AT THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: SOUTHEAST PORTION OF 0210-205-01.

WHEREAS, OTC Owner, LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-B, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 1.69 acres of land, consisting of the southeast parking Toyota Arena Parking lot, located at the southwest corner of Ontario Center Parkway and Ferrari Lane. The project site is within the proposed mixed-use Subarea 17 of the Piemonte Overlay of the Ontario Center Specific Plan, and is presently vacant and improved with the Toyota Area parking lot; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration was subsequently adopted on May 16, 2017, (hereinafter referred to as “MND”), in which development and use of the Project

site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San

Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the Planning Commission, and the specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as

the recommending body for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

a. The Development Agreement applies to approximately 1.69 acres of land generally located southwest corner of Ontario Center Parkway and Ferrari Lane; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot B, consisting of 112 residential units and up to 20,802 square feet retail uses, within the proposed Mixed-Use Subarea 17 of the

Piemonte Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA22-003-B) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located

at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of June 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Planning Commission Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-028, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on June 28, 2022, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Gage, Lampkin, Ricci, Willoughby

NOES: None

ABSENT: Dean

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA22-003-B

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Owner, LLC
Lot B

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Owner, LLC
Lot B

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-003-B

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot B, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-B; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots A, C, and D. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots A, C, and D as follows:

Lot A - Development Plan Entitlement – File No. PDEV22-014;

Lot C - Development Plan Entitlement – File No. PDEV22-014; and

Lot D - Development Plan Entitlement – File No. PDEV22-014.

Lots A, C, and D are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots A, C, and D in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots A, C, and D currently comprised of the following development:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot B) of up to 20,802 square feet of commercial/office/retail uses and 112 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.1 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement. The Property is referred to as Lot B on Exhibit B. The Property constitutes one parcel of the Phased Development. Lots A, C, and D comprise the remaining parcels of the planned Phased Development.

1.1.2 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.3 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.4 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.5 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.6 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.7 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.8 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot B Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.
2.	Commencement of Construction of the Project	On or before two (2) years following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.

		In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21) days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use

Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent (3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for

purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not

acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the

terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related

Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time

thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death (Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a

California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing

with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall

continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or

threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this

Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot B Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

City OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

APN NO. 0210-205-01

That portion of land in the City of Ontario, County of San Bernardino, State of California, lying within a portion of Parcel 1 of Parcel Map No. 17978 as per map filed in Book 216 pages 44 and 45 of Parcel Maps in the office of the County Recorder of said County; described as follows:

Beginning at the southwesterly terminus of that certain course along the easterly boundary line of said Parcel 1, said course having a bearing of N 33°23' 13" E as shown on said Parcel Map, said point also being the beginning of a 717.00' radius curve, concave northwesterly. Thence, southwesterly 128.35' along said curve through a central angle of 10°15' 22". Thence, leaving said easterly boundary line, N 46°21' 25" W 18.33' to the true point of beginning of this description. Thence, along the following described courses:

N 00°00'00" E 63.07'

N 90°00'00" W 28.23'

N 00°00'00" E 12.67'

N 90°00'00" W 25.77'

S 00°00'00" W 11.00'

N 90°00'00" W 46.21'

N 00°00'00" E 0.67'

N 90°00'00" W 13.71'

S 00°00'00" W 0.67'

N 90°00'00" W 65.95'

N 00°00'00" E 6.00'

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

Legal Description of Property

N 90°00'00" W 119.26'

S 00°00'00" W 5.00'

N 90°00'00" W 15.98'

S 00°00'00" W 1.00'

N 90°00'00" W 54.75'

S 09°56'06" E 19.72'

S 80°03'54" W 1.00'

S 09°56'06" E 38.55'

N 80°03'54" E 1.00'

S 09°56'06" E 42.96'

S 17°02'26" W 90.75' to the beginning of a non-tangent 31.67' radius curve concave southeasterly and to which point a radial line bears N 20°28'42" E. Thence, westerly, southerly, and southeasterly 103.28' along said curve through a central angle of 186°52'31". Thence, S 17°02'26" W 34.39' to the beginning of a non-tangent 751.75' radius curve concave northerly, and to which point a radial line bears S 09°26'45" E. Thence, northeasterly 74.89' along said curve through a central angle of 5°42'27". Thence, N 15°12'11" W 8.83'. Thence, N 71°45'08" E
78.87'. Thence, S 21°24'33" E 8.83' to the beginning of a non-tangent 750.49' radius curve concave northwesterly and to which point a radial line bears
S 21°17'23" E. Thence, northeasterly 46.48' along said curve through a central angle of 3°32'55". Thence, N 24°54'42" W 4.01' to the beginning of a non-tangent 747.42' radius curve concave northwesterly to which point a radial line bears
S 24°49'36" E. Thence, northeasterly 266.34' along said curve through a central angle of 20°25'03" to the true point of beginning of this description.

The above-described parcel of land contains 73,640 Square Feet, 1.69 Acres more or less.

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

Legal Description of Property

All as shown on exhibit "B" plot attached hereto and by this reference made a part hereof.

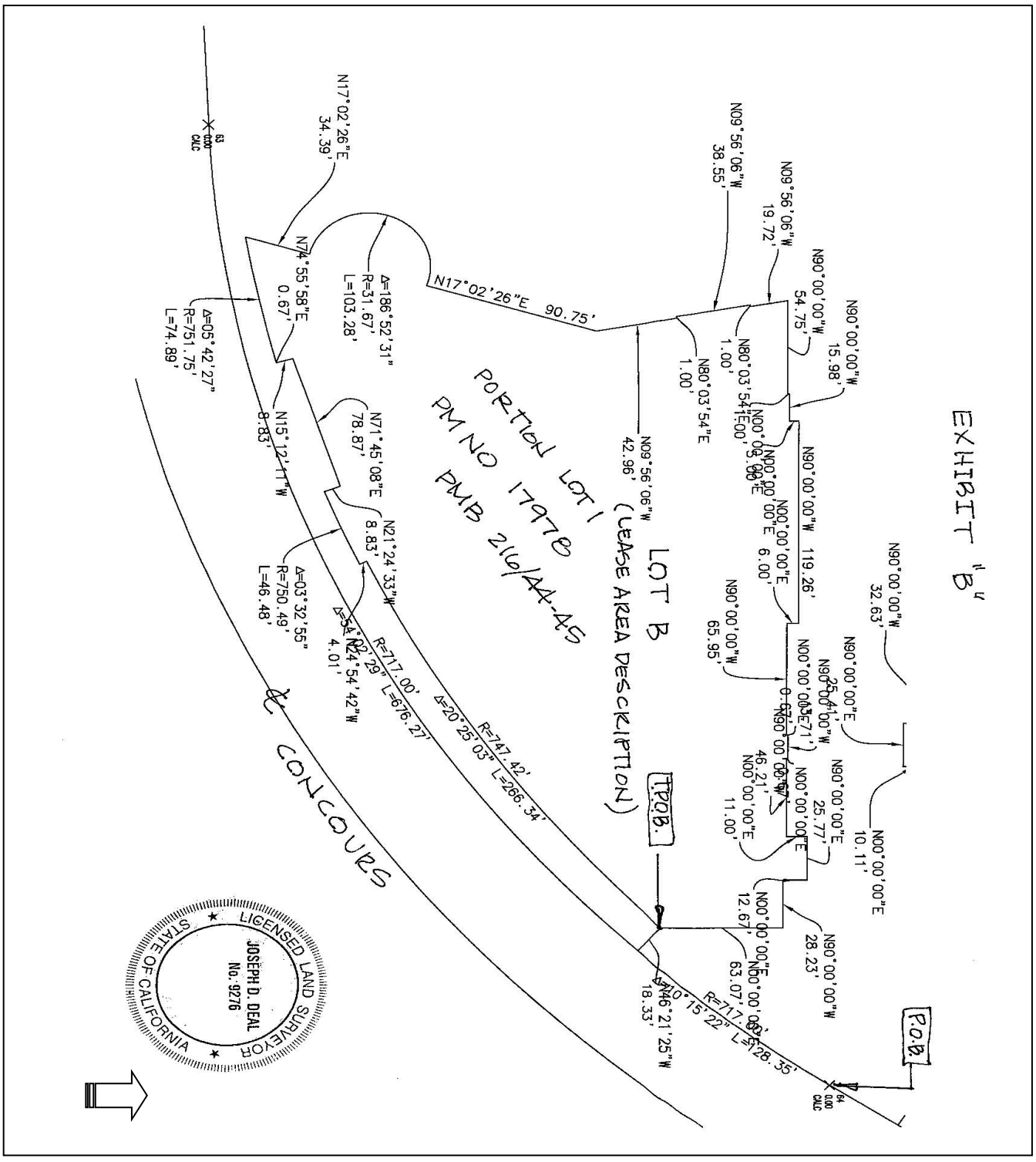
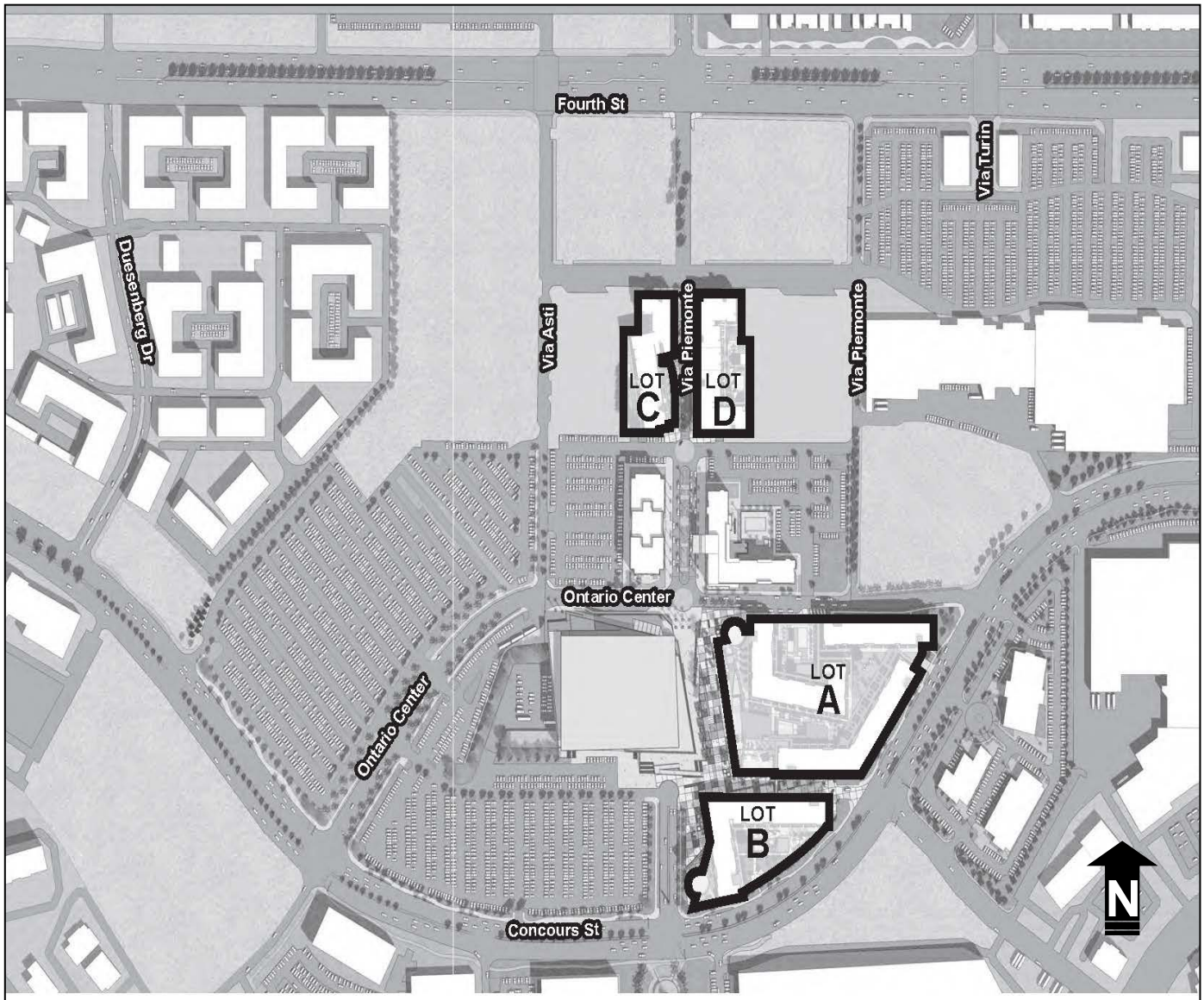


EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "B" CONTINUED
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

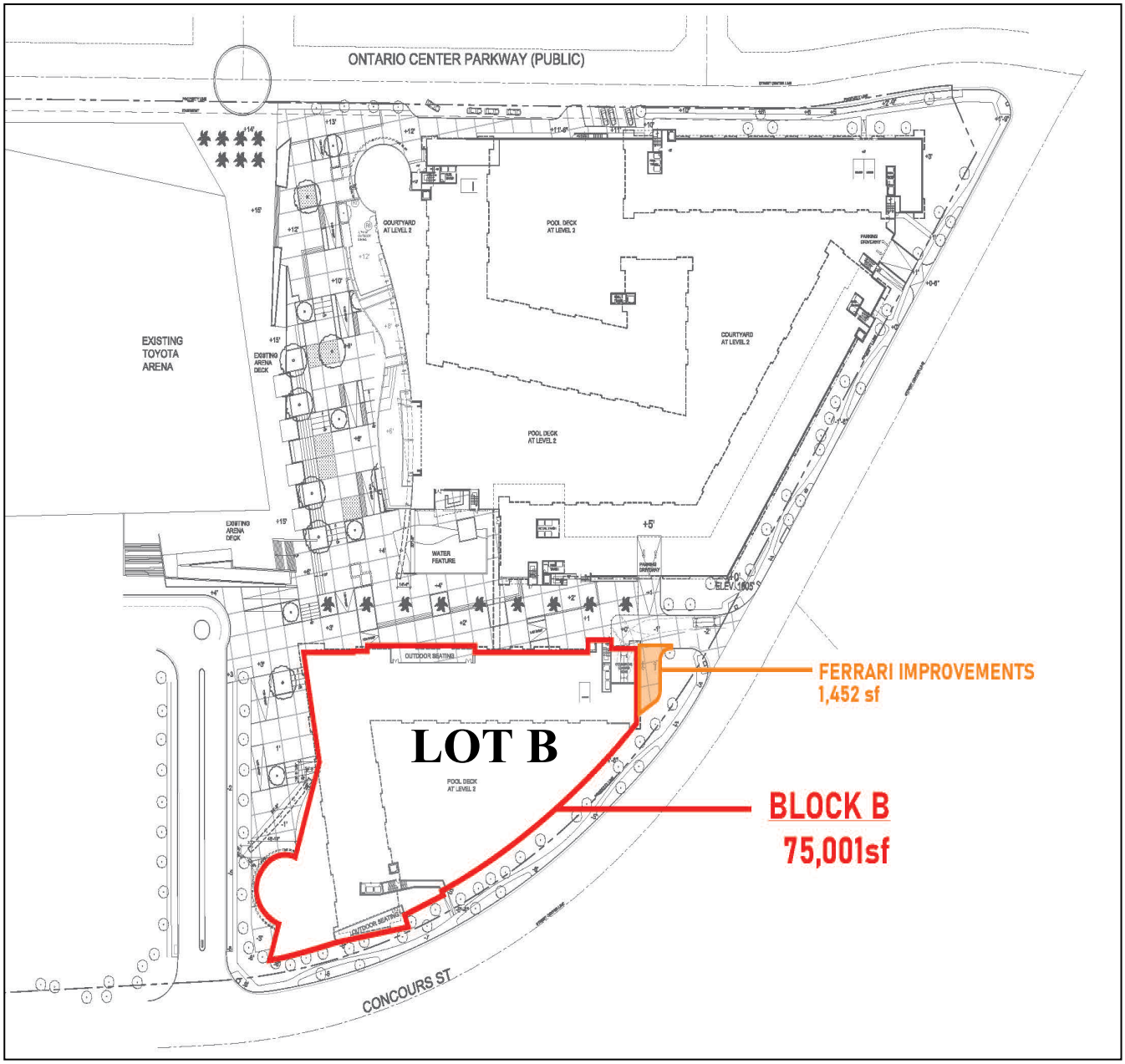


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Development Impact Fees as of the Approval Date

(Development Impact Fees to follow this page)

Exhibit C

FY 2021-22
Citywide Fee Schedule

(Fees, Fines & Charges)

Component of the FY 2021-22 Budget

Adopted June 21, 2021 (Resolution No. 2021-062)

Table of Contents

II. Community Life & Culture
Section 5. Housing Fees 3

III. Community Development
Section 1. Building Fees 4
Section 2. Engineering Fees 15
Section 3. Planning Fees 20

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

II. - Community Life & Culture
Section 5. Housing Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Housing Fees					
1	Base Affordable Housing Monitoring Fee*	Base	$ 747.68	$ 747.00	7/1/2021
2	Per Unit Affordable Housing Monitoring Fee*	Per unit	$ 107.94	$ 107.00	7/1/2021
3	Loan Payoff Process Fee - without equity share	Each	$ 251.11	$ 251.00	7/1/2021
4	Loan Payoff Process Fee - with equity share	Each	$ 400.39	$ 400.00	7/1/2021
5	Preparation of Full Reconveyance	Each	$ 248.13	$ 248.00	7/1/2021

** Affordable Housing Monitoring Fee does not apply to bond-funded projects.*

Note: Loan Payoff and Reconveyance fees may be waived if individuals are under financial hardship.

Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Plan Check Fees					
1	Building Plan Check Fee	% of Permit	N/A	80.00%	7/1/2021
2	Building Plan Check for track housing or duplicate building	% of Permit	N/A	40.00%	7/1/2021
3	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Less than $1 million	N/A	50.00%	7/1/2021
4	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $1 and $5 million	N/A	40.00%	7/1/2021
5	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $5 and $10 million	N/A	30.00%	7/1/2021
6	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $10 and $20 million	N/A	20.00%	7/1/2021
7	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Greater than $20 million	N/A	10.00%	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Permit Fees					
8	Building Permit - Base Fee ($1-$500)	Valuation: $1 to $500	N/A	$ 23.50	7/1/2021
9	Building Permit - Base Fee ($501-$2000)	Valuation: $501 to $2,000	N/A	$ 23.50	7/1/2021
10	Building Permit Fee (Each additional $100, or fraction thereof, up to and including $2000)	Each additional $100, or fraction thereof, up to and including $2,000	N/A	$ 3.05	7/1/2021
11	Building Permit - Base Fee ($2001-$25,000)	Valuation: $2,001 to $25,000	N/A	$ 69.25	7/1/2021
12	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $25,000)	Each additional $1,000, or fraction thereof, up to and including $25,000	N/A	$ 14.00	7/1/2021
13	Building Permit - Base Fee ($25,001-$50,000)	Valuation: $25,001 to $50,000	N/A	$ 391.25	7/1/2021
14	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $50,000)	Each additional $1,000, or fraction thereof, up to and including $50,000	N/A	$ 10.10	7/1/2021
15	Building Permit - Base Fee ($50,001-$100,000)	Valuation: $50,001 to $100,000	N/A	$ 643.75	7/1/2021
16	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $100,000)	Each additional $1,000, or fraction thereof, up to and including $100,000	N/A	$ 7.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
17	Building Permit - Base Fee ($100,001-$500,000)	Valuation: $100,001 to $500,000	N/A	$ 993.75	7/1/2021
18	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $500,000)	Each additional $1,000, or fraction thereof, up to and including $500,000	N/A	$ 5.60	7/1/2021
19	Building Permit - Base Fee ($500,001-$1,000,000)	Valuation: $500,001 to $1,000,000	N/A	$ 3,233.75	7/1/2021
20	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $1,000,000)	Each additional $1,000, or fraction thereof, up to and including $1,000,000	N/A	$ 4.75	7/1/2021
21	Building Permit - Base Fee (Greater than $1,000,001)	Valuation: $1,000,001 and up	N/A	$ 5,608.75	7/1/2021
22	Building Permit Fee (Each additional $1,000 or fraction thereof, greater than $1,000,001)	Each additional $1,000, or fraction thereof	N/A	$ 3.65	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Misc. Standard Building Permits					
23	Kitchen Remodel (non-structural)	Each	$ 258.99	$ 258.00	7/1/2021
24	Bathroom Remodel	Each	$ 129.50	$ 129.00	7/1/2021
25	Demolition - Entire Structure	Valuation	N/A	Varies	7/1/2021
26	Patio Covers - Solid	Valuation	N/A	Varies	7/1/2021
27	Patio Covers - Lattice	Valuation	N/A	Varies	7/1/2021
28	Patio Covers - Enclosures	Valuation	N/A	Varies	7/1/2021
29	Pole Bases	Valuation	N/A	Varies	7/1/2021
30	Roofing	Valuation	N/A	Varies	7/1/2021
31	Storage Sheds	Valuation	N/A	Varies	7/1/2021
32	Stucco	Valuation	N/A	Varies	7/1/2021
33	Swimming Pools/Spas	Valuation	N/A	Varies	7/1/2021
34	Tenant Improvements - With Ceiling	Valuation	N/A	Varies	7/1/2021
35	Tenant Improvements - Without Ceiling	Valuation	N/A	Varies	7/1/2021
36	Trash Enclosures - Single	Valuation	N/A	Varies	7/1/2021
37	Trash Enclosures - Double	Valuation	N/A	Varies	7/1/2021
38	Walls - Retaining	Valuation	N/A	Varies	7/1/2021
39	Walls - Screen Garden	Valuation	N/A	Varies	7/1/2021
40	Walls - Tilt-Up Screen Walls	Valuation	N/A	Varies	7/1/2021
41	Window Changeout	Valuation	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Electrical Permit Fees					
42	Electrical Permit Issuance Fee	Each	$ 41.63	$ 41.00	7/1/2021
43	Electrical Permit - Temporary Power Service Pedestal	Each	$ 86.33	$ 86.00	7/1/2021
44	Electrical Permit - Temporary Power Service Distribution system	Each	$ 43.17	$ 43.00	7/1/2021
45	Electrical Permit - outlet/switch/fixture	First 20 fixtures	$ 129.50	$ 129.00	7/1/2021
46	Electrical Permit - Additional Fixtures	Each	$ 2.94	$ 2.90	7/1/2021
47	Electrical Permit - Power Apparatus -up to and including 1	each HP, kW, kVA or kVAR	$ 143.83	$ 143.00	7/1/2021
48	Electrical Permit - Power Apparatus - over 1 to 10	each HP, kW, kVA or kVAR	$ 158.33	$ 158.00	7/1/2021
49	Electrical Permit - Power Apparatus - over 10 to 50	each HP, kW, kVA or kVAR	$ 172.66	$ 172.00	7/1/2021
50	Electrical Permit - Power Apparatus - over 50 to 100	each HP, kW, kVA or kVAR	$ 258.99	$ 258.00	7/1/2021
51	Electrical Permit - Power Apparatus - over 100	each HP, kW, kVA or kVAR	$ 345.32	$ 345.00	7/1/2021
52	Electrical Permit - Services -for services of 600 volts or less and not over 200 amperes in rating	Each	$ 172.66	$ 172.00	7/1/2021
53	Electrical Permit Fee - Services -for services of 600 volts or less and over 200 amperes to 1,000 amperes in rating	Each	$ 258.99	$ 258.00	7/1/2021
54	Electrical Permit Fee - Services -for services over 600 volts or over 1,000 amperes in rating	Each	$ 431.65	$ 431.00	7/1/2021
55	Electrical Permit Fee - Miscellaneous Apparatus, Conduits and Conductors	Each	$ 143.83	$ 143.00	7/1/2021
56	Electrical Permit Fee- Subpanel	Each	N/A	$ 172.00	7/1/2021
57	Electrical Permit Fee - Signs	Each	N/A	$ 86.00	7/1/2021
58	Electrical Permit Fee - Private Swimming Pools	Each Pool or Spa	N/A	$ 129.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
59	Electrical Permit Fee - Other Inspections and Fees, inspections outside of normal business hours: minimum charge 3 hrs.	Per Hour	$ 113.00	$ 113.00	7/1/2021
60	Electrical Permit Fee - Inspections	Per Hour	$ 113.00	$ 113.00	7/1/2021
61	Electrical Permit Fee - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
62	Electrical Permit Fee - Additional plan review	Per Hour	$ 113.00	$ 113.00	7/1/2021
63	New Construction Trades - Electrical : Residential	Per Square Foot	$ 0.10791	$ 0.1079	7/1/2021
64	New Construction Trades - Electrical : Commercial	Per Square Foot	$ 5.22301	$ 0.1200	7/1/2021
65	New Construction Trades - Electrical: Industrial / warehouse (0-50,000 sf)	Per Square Foot	$ 0.01209	$ 0.0120	7/1/2021
66	New Construction Trades - Electrical : Industrial / warehouse (>50,000 sf)	Per Square Foot	$ 0.00388	$ 0.0038	7/1/2021
Mechanical Permit Fees					
67	Mechanical Permit Issuance Fee	Each	$ 41.75	$ 41.00	7/1/2021
68	Mechanical Permit Fee (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -under 3 HP (10.6kW) or to and including 100,000 Btu/h (29.3kW)	Each	$ 172.66	$ 172.00	7/1/2021
69	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems-over 3 HP (10.6kW) to and including 15 HP (52.7kW), or over 100,000 Btu (29.3kW) to and including 500,000 Btu/h (146.6kW)	Each	$ 215.83	$ 215.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
70	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -over 15 HP (52.7 kW) to and including 30 HP (105.5 kW), over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW)	Each	$ 258.99	$ 258.00	7/1/2021
71	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 30 HP (105.5 kW) to and including 50 HP (176 kW), or over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW)	Each	$ 345.32	$ 345.00	7/1/2021
72	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 50 HP (176 kW) or over 1,7500,000 Btu/h (512.9kW)	Each	$ 517.98	$ 517.00	7/1/2021
73	Mechanical Permit Fees (includes issuance fee)- Evaporative Coolers	Each	$ 172.66	$ 172.00	7/1/2021
74	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each fan connected to single duct	Each	$ 172.66	$ 172.00	7/1/2021
75	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust-each which is not a portion of any heating or a/c system authorized by a permit	Each	$ 172.66	$ 172.00	7/1/2021
76	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each hood served by mechanical exhaust	Each	$ 345.32	$ 345.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
77	Mechanical Permit Fee - Process Piping	Valuation	N/A	Varies	7/1/2021
78	Mechanical Permit Fee - Wall Heater	Each	N/A	$ 43.00	7/1/2021
79	Mechanical Permit Fees - Miscellaneous (one inspection)	Each	$ 86.33	$ 86.00	7/1/2021
80	Mechanical Permit Fees - Inspection outside of normal business hours	Per Hour	$ 113.00	$ 113.00	7/1/2021
81	Mechanical Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
82	Mechanical Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
83	Mechanical Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
84	New Construction Trades - Mechanical: Residential	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
85	New Construction Trades - Mechanical : Commercial	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
Plumbing Permit Fees					
86	Permit issuance fee	Each	$ 41.75	$ 41.00	7/1/2021
87	Plumbing Permit Fees - First 15 Fixtures and Vents (new & alterations)	First 15 Fixtures/Vents	$ 172.66	$ 172.50	7/1/2021
88	Plumbing Permit Fees - Each Additional	Each	$ 172.66	$ 10.78	7/1/2021
89	Plumbing Permit Fees - Sewers	Each	$ 172.66	$ 172.50	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
90	Plumbing Permit Fees - Sewage disposal system	Each	$ 431.65	$ 431.50	7/1/2021
91	Plumbing Permit Fees -Industrial waste pretreatment interceptor	Each	$ 172.66	$ 172.50	7/1/2021
92	Plumbing Permit Fees - Water Piping First 20 outlets	First 20 Outlets	$ 129.50	$ 129.00	7/1/2021
93	Plumbing Permit Fees - Water Piping Each Additional Outlet	Each Outlet	$ 129.50	$ 5.23	7/1/2021
94	Plumbing Permit Fees - Water heater including vent	Each	$ 172.66	$ 12.92	7/1/2021
95	Plumbing Permit Fees - Gas Piping Systems First 5 Outlets	First 5 Outlets	$ 647.50	$ 129.50	7/1/2021
96	Plumbing Permit Fees - Gas Piping Systems Each Additional	Each Addt'l Outlet	$ 129.50	$ 6.77	7/1/2021
97	Plumbing Permit Fees - Lawn Sprinklers	Each lawn sprinkler system on any one meter	$ 172.66	$ 172.50	7/1/2021
98	Plumbing Permit Fees - Backflow Protection Devices	Each Device	$ 172.66	$ 172.50	7/1/2021
99	Plumbing Permit Fees - Miscellaneous	Each appliance or equipment regulated by the Plumbing Code but not classed in other appliance categories, or for which no fee is listed in this code	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
100	Plumbing Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
101	Plumbing Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
102	Plumbing Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
103	New Construction Trades - Plumbing : Residential	Per SF	$ 0.10791	$ 0.1070	7/1/2021
	Grading Plan Review Fees (up to three submittals of plans)				
104	Grading plan check, rough (0-10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
105	Grading plan check, rough (>10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
106	Grading plan check, rough (each additional 5 acres)	Each	$ 345.32	$ 345.00	7/1/2021
107	Grading plan check, precise (0-10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
108	Grading plan check, precise (>10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
109	Grading plan check, precise (each additional 5 acres)	Each	$ 517.98	$ 517.50	7/1/2021
	Grading Permit Fees				
110	Grading permit, rough (0-50 acres)	Each	$ 345.32	$ 345.00	7/1/2021
111	Grading permit, rough (each additional 10 acres)	Each	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
112	Grading permit, precise (0-50 acres)	Each	$ 431.65	$ 431.50	7/1/2021
113	Grading permit, precise (each additional 10 acres)	Each	$ 129.50	$ 129.50	7/1/2021
114	Soil Disturbance Permit - Dust Control	Each	N/A	$ 250.00	7/1/2021
Miscellaneous Fees					
115	Building plan retention fee	Per Plan Page	N/A	$ 1.50	7/1/2021
116	Permits, Calcs and Misc. doc	8.5x11 / per page	N/A	$ 0.35	7/1/2021
Sewer, Water, Storm Drain Permit & Plan Check Fees					
117	Sewer Main Inspection Permit	Per Lineal Foot	$ 3.17	$ 3.17	7/1/2021
118	Water Main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
119	Storm Drain - main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
120	Storm Drain - yard Inspection Permit	Per Lineal Foot	$ 0.29	$ 0.29	7/1/2021
121	Sewer, Water, Storm Drain Plan check fee = % of permit valuation	% of Permit Valuation	2.00%	2.00%	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Inspection / Permit - Base Fee	Base	$ 164.09	$ 164.00	7/1/2021
2	Inspection / Permit Fees $1 - $50,000	Construction cost estimate	5.97%	5.97%	7/1/2021
3	Inspection / Permit Fees $50,001 - $500,000	Construction cost estimate	5.45%	5.45%	7/1/2021
4	Inspection / Permit Fees >$500,000	Construction cost estimate	4.24%	4.24%	7/1/2021
5	Plan Check - Base Fee (includes grading, NPDES etc.)	Base	$ 1,371.16	$ 1,371.00	7/1/2021
6	Plan Check Fees $1 - $50,000	Construction cost estimate	6.00%	6.00%	7/1/2021
7	Plan Check Fees $50,001 - $500,000	Construction cost estimate	4.65%	4.65%	7/1/2021
8	Plan Check Fees >$500,000	Construction cost estimate	3.62%	3.62%	7/1/2021
9	Encroachment Permit Fee	Each	$ 162.91	$ 112.80	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
10	Inspection for minor improvements (driveways, pole replacement, etc.)	Inspection for single item (2 inspections, before and after)	$ 167.02	$ 108.15	8/21/2021
11	Traffic Control Permit	Each	$ 103.49	$ 103.00	7/1/2021
12	Overload Permit (single trip) - One time	Each	N/A	$ 19.20	8/21/2021
13	Overload Permit (round trip) - Annual	Each	N/A	$ 108.00	8/21/2021
14	Permit Penalty Fee	Percent of Permit Value	N/A	50.00%	7/1/2021
15	Map Review (Parcel/Tract) - Base Fee	Each	$ 7,666.96	$ 2,588.40	8/21/2021
16	Map Review - Addt'l per parcel	Per Parcel	$ 70.48	$ 70.00	8/21/2021
17	Certificate of Compliance	Each	$ 790.69	$ 745.20	8/21/2021
18	Lot Line Adjustment - Base Fee	Each	$ 1,286.16	$ 1,159.20	8/21/2021
19	Lot Line Adjustment - Addt'l per parcel	Per parcel	$ 59.43	$ 59.00	7/1/2021
20	General Vacation	Each	$ 3,805.94	$ 1,902.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
21	Quit Claim / Summary Vacation	Each	$ 2,049.22	$ 1,087.20	8/21/2021
22	Certificate of Correction	Each	$ 823.10	$ 480.00	8/21/2021
23	Easement review	Each	$ 1,691.08	$ 1,691.00	7/1/2021
24	NPDES business inspection fee - low priority	One inspection every 5 years	$ 59.43	$ 59.00	7/1/2021
25	NPDES business inspection fee - medium priority	One inspection every 2 years	$ 118.85	$ 118.00	7/1/2021
26	NPDES business inspection fee - high priority	Inspection each year	$ 237.70	$ 237.50	7/1/2021
27	NPDES/WQMP Plan Review	Each	$ 2,160.65	$ 1,112.40	8/21/2021
28	NPDES Construction Inspection Fee (< 10 acres)	Each	$ 505.66	$ 505.50	7/1/2021
29	NPDES Construction Inspection Fee (10-25 acres)	Each	$ 905.50	$ 905.50	7/1/2021
30	NPDES Construction Inspection Fee (> 25 acres)	Each	$ 2,074.37	$ 2,074.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
31	Overtime Pay for Inspection (Weekends & Holidays)	Per Hour	N/A	Hourly Rate	7/1/2021
32	Misc. / Special Technical Report Review Fee	Actual Cost (Plus 25% Admin for consultant review, if applicable)	N/A	Varies	7/1/2021
33	Water Meter - OMUC Fee	Based on meter size - OMUC Fee	N/A	Varies	7/1/2021
34	Storm Water Pollution Abatement	Monthly BAU fee based on land use type & site acreage (applied to utility bill)	N/A	Varies	7/1/2021
35	Legal review	Per Hour	N/A	Hourly Rate	7/1/2021
PLANNING APPLICATIONS REVIEWED BY LAND DEVELOPMENT ENGINEERING					
36	Development Agreement	Deposit	N/A	Varies	7/1/2021
37	Development Agreement Amendment	Deposit	N/A	Varies	7/1/2021
38	Development Code Amendment	Deposit	N/A	Varies	7/1/2021
39	Environmental Impact Report	Deposit	N/A	Varies	7/1/2021
40	General Plan Amendment	Deposit	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
41	Planned Unit Development	Deposit	N/A	Varies	7/1/2021
42	Planned Unit Development Amendment	Deposit	N/A	Varies	7/1/2021
43	Specific Plan	Deposit	N/A	Varies	7/1/2021
44	Specific Plan Amendment	Deposit	N/A	Varies	7/1/2021
45	Specific Plan Minor Amendment	Deposit	N/A	Varies	7/1/2021
46	Zone Change - 5 acres or more	Deposit	N/A	Varies	7/1/2021
47	Zone Change - Less than 5 acres	Deposit	N/A	Varies	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Land Conservation Contract Non-renewal	Each	$ 3,817.21	$ 1,401.85	8/21/2021
2	Land Conservation Contract Cancellation	Each	$ 16,679.06	$ 6,431.53	8/21/2021
3	Appeal-Homeowner	Each	N/A	$ 130.00	7/1/2021
4	Appeal-Other	Each	N/A	$ 902.00	7/1/2021
5	Covenants Conditions and Restrictions Review	Each	$ 4,940.68	$ 3,067.50	8/21/2021
6	Conditional Use Permit-Homeowner	Each	$ 4,894.70	$ 1,784.26	8/21/2021
7	Conditional Use Permit-Nonprofit	Each	$ 3,520.01	$ 2,691.60	8/21/2021
8	Conditional Use Permit-Other	Each	$ 5,901.35	$ 5,900.00	7/1/2021
9	Conditional Use Permit-Modification	Each	$ 5,901.35	$ 3,693.27	8/21/2021
10	Conditional Use Permit-w/ Development Plan	Each	$ 4,724.75	$ 1,567.20	8/21/2021
11	Conditional Use Permit Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
12	Determination of Use	Each	$ 3,316.06	$ 3,316.00	7/1/2021
13	Development Agreement	Deposit	N/A	$ 10,000.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
14	Development Agreement Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
15	Development Code Amendment	Deposit	N/A	$ 2,000.00	7/1/2021
16	Development Plan Review - 5 acres or more	Each	$ 24,846.74	$ 17,914.80	8/21/2021
17	Development Plan Review - less than 5 acres	Each	$ 21,465.84	$ 11,913.15	8/21/2021
18	Development Plan Revision	Each	$ 16,735.49	$ 4,582.85	8/21/2021
19	Development Plan Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
20	Environmental Assessment/Negative Declaration	Each	$ 3,155.59	$ 3,155.00	7/1/2021
21	Environmental Impact Report	Deposit	N/A	$ 10,000.00	7/1/2021
22	General Plan Amendment - Text	Deposit	N/A	$ 5,000.00	7/1/2021
23	General Plan Amendment - Map	Deposit	N/A	$ 7,500.00	7/1/2021
24	Historic Preservation - COA-Nonresidential	Each	$ 4,677.04	$ 1,533.75	8/21/2021
25	Historic Preservation - COA-Residential	Each	$ 4,677.04	$ 214.73	8/21/2021
26	Historic Preservation - COEH-Nonresidential	Each	$ 6,846.51	$ 2,045.00	8/21/2021
27	Historic Preservation - COEH-Residential	Each	$ 6,846.51	$ 268.92	8/21/2021
28	Historic Preservation - Removal from Eligibility List (No Charge)	Each	$ 6,366.15	No Charge	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
29	Historic Preservation - Waiver	Each	$ 42.96	$ 42.50	7/1/2021
30	Historic Preservation - Landmark Designation (No Charge)	Each	$ 12,025.51	No Charge	7/1/2021
31	Historic Preservation - Plaque	Actual Cost	Varies	Varies	7/1/2021
32	Inspection - Construction (3 inspections)	Each	$ 5,342.05	$ 613.50	8/21/2021
33	Inspection - Field (includes construction inspections in excess of 3)	Each	$ 1,335.51	$ 255.63	8/21/2021
34	Residential Mills Act[A]	Each	$ 10,939.36	$ 214.73	8/21/2021
35	Nonresidential Mills Act[A]	Each	$ 10,939.36	$ 669.74	8/21/2021
36	Large Family Daycare	Each	$ 2,127.81	$ 1,116.57	8/21/2021
37	Lodging House Permit	Each	$ 2,127.81	$ 2,127.00	7/1/2021
38	Massage Permits	Each	$ 2,127.81	$ 2,127.00	7/1/2021
39	Plan Check - 5 or more acres	Each	$ 9,196.43	$ 3,070.10	8/21/2021
40	Plan Check - less than 5 acres	Each	$ 5,685.72	$ 1,717.10	8/21/2021
41	Planned Unit Development	Deposit	$ 20,926.28	$ 10,225.00	8/21/2021
42	Planned Unit Development Amendment	Deposit	$ 13,947.59	$ 7,668.75	8/21/2021
43	Planning Area Plan	Deposit	N/A	$ 7,500.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
44	Planning Director Review	Each	$ 1,057.33	$ 706.55	8/21/2021
45	Preliminary Plan Review	Each	$ 4,207.14	$ 4,203.00	7/1/2021
46	Public Hearing - City Council	Each	$ 769.75	$ 604.30	8/21/2021
47	Public Hearing - Development Advisory Board	Each	$ 497.12	$ 325.16	8/21/2021
48	Public Hearing - Planning Commission	Each	$ 1,325.44	$ 604.30	8/21/2021
49	Public Hearing - Zoning Administrator-Homeowner	Each	$ 1,764.14	$ 74.64	8/21/2021
50	Public Hearing - Zoning Administrator-Other	Each	$ 1,764.14	$ 584.87	8/21/2021
51	Sign Plan	Each	$ 519.34	$ 246.42	8/21/2021
52	Sign Program - administrative approval	Each	$ 2,825.58	$ 862.99	8/21/2021
53	Sign Program - planning commission approval	Each	$ 3,059.86	$ 2,934.58	8/21/2021
54	Specific Plan	Deposit	N/A	$ 20,000.00	7/1/2021
55	Specific Plan Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
56	Specific Plan Minor Amendment	Deposit	N/A	$ 620.00	7/1/2021
57	Temporary Sign Permit	Each	$ 124.89	$ 58.28	8/21/2021
58	Temporary Use Permit - interim uses	Each	$ 2,757.54	$ 838.45	8/21/2021
59	Temporary Use Permit - special event	Each	$ 1,064.72	$ 492.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
60	Tentative Parcel Map	Each	$ 15,986.07	$ 6,641.14	8/21/2021
61	Tentative Parcel Map Modification	Each	$ 11,706.32	$ 4,262.80	8/21/2021
62	Tentative Tract Map (Base)	Flat	$ 18,403.54	$ 9,805.78	8/21/2021
63	Tentative Tract Map (per lot)	Each	$ 65.00	$ 65.00	7/1/2021
64	Tentative Tract Map Modification	Each	$ 12,681.18	$ 3,125.78	8/21/2021
65	Tentative Tract/Parcel Map Time Extension	Each	$ 7,378.97	$ 1,227.00	8/21/2021
66	Variance - Administrative Exception or Minor	Each	$ 3,978.78	$ 2,451.96	8/21/2021
67	Variance - Homeowner	Each	$ 3,978.78	$ 309.82	8/21/2021
68	Variance - Other	Each	$ 5,266.37	$ 3,508.20	8/21/2021
69	Wireless Permit: Facilities in Public Rights-of-Way	Each	$ 3,978.78	$ 3,978.00	7/1/2021
70	Zone Change - 5 acres or more	Each	$ 10,575.56	$ 7,666.71	8/21/2021
71	Zone Change - Less than 5 acres	Each	$ 9,194.99	$ 7,497.99	8/21/2021
72	Zoning Administrator Review - Homeowner	Each	$ 3,978.78	$ 200.41	8/21/2021
73	Zoning Administrator Review - Other	Each	$ 3,978.78	$ 1,160.54	8/21/2021
74	Zoning/Land Use Verification Letter	Each	$ 499.56	$ 195.30	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
75	Notice of Exemption Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
76	Notice of Determination Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
77	Filing of a Negative/Mitigated Declaration	County Fee	N/A	$ 2,404.75	7/1/2021
78	Filing of an Environmental Impact Report	County Fee	N/A	$ 3,321.00	7/1/2021
79	Outside consultant or legal expenses	Actual Cost Plus 25% Admin. Fee	N/A	Varies	7/1/2021
80	Advanced Long Range Planning	Percent of all Building Permits & Planning Applications	$ 914,960.12	5.00%	7/1/2021

Resolution No. 2004-065 (Entitlement Processing Fees excl. Mills Act)
[A] Resolution No. 2005-115 (Mills Act Fees)
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062
CPI Adjustment of 2.25% applied to select fees based on year-over-year change from Jan. 2020 to Jan. 2021 as measured by "Riverside-San Bernardino-Ontario Consumer Price Index"

RESOLUTION NO. PC22-029

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDA22-003-C, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 94 RESIDENTIAL UNITS AND UP TO 11,047 SQUARE FEET OF COMMERCIAL/OFFICE RETAIL USES, ON APPROXIMETLY 1.93 ACRES OF LAND FOR LOCATED AT THE SOUTHWEST CORNER OF ONTARIO VIA PIEMONTE AND VIA VILLAGIO WITHIN THE MIXED-USE SUBAREAS 8 OF THE PIEMONTE OVERLAY AT THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-204-39.

WHEREAS, OTC Owner, LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-C, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 1.93 acres of land, located at the southwest corner of Via Piemonte and Via Villagio. The project site within the proposed mixed-use Subarea 8 of the Piemonte Overlay at the Ontario Center Specific Plan, and is presently vacant; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration was subsequently adopted on May 16, 2017, (hereinafter referred to as “MND”), in which development and use of the Project

site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San

Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the Planning Commission, and the specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as

the recommending body for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

a. The Development Agreement applies to approximately 1.93 acres of land generally located southwest corner of Via Piemonte and Via Villagio; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot C, consisting of 94 residential units and up to 11,047 square feet retail uses, within the proposed Mixed-Use Subarea 8 of the Piemonte

Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA22-003-C) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located

at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of June 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Planning Commission Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-029, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on June 28, 2022, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Gage, Lampkin, Ricci, Willoughby

NOES: None

ABSENT: Dean

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA22-003-C

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Owner, LLC
Lot C

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Owner, LLC
Lot C

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-033-C

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot C, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-C; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots A, B, and D. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots A, B, and D as follows:

Lot A - Development Plan Entitlement – File No. PDEV22-014;

Lot B - Development Plan Entitlement – File No. PDEV22-014; and

Lot D - Development Plan Entitlement – File No. PDEV22-014.

Lots A, B, and D are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots A, B, and D in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots A, B, and D currently comprised of the following development as shown on Table 1 below:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot C) of up to 11,047 square feet of commercial/office/retail uses and 94 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.1 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement. The Property is referred to as Lot C on Exhibit B. The Property constitutes one parcel of the Phased Development. Lots A, B, and D comprise the remaining parcels of the planned Phased Development.

1.1.2 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.3 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.4 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.5 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.6 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.7 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.8 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot C Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.
2.	Commencement of Construction of the Project	On or before two (2) years following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase; provided, however

		Commencement of Construction shall occur within 6 months of the Commencement of Construction of Lot D. In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21) days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the

regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent (3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for

purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not

acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the

terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related

Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time

thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death (Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a

California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing

with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall

continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or

threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this

Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot C Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

City OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

APN NO. 0210-204-38

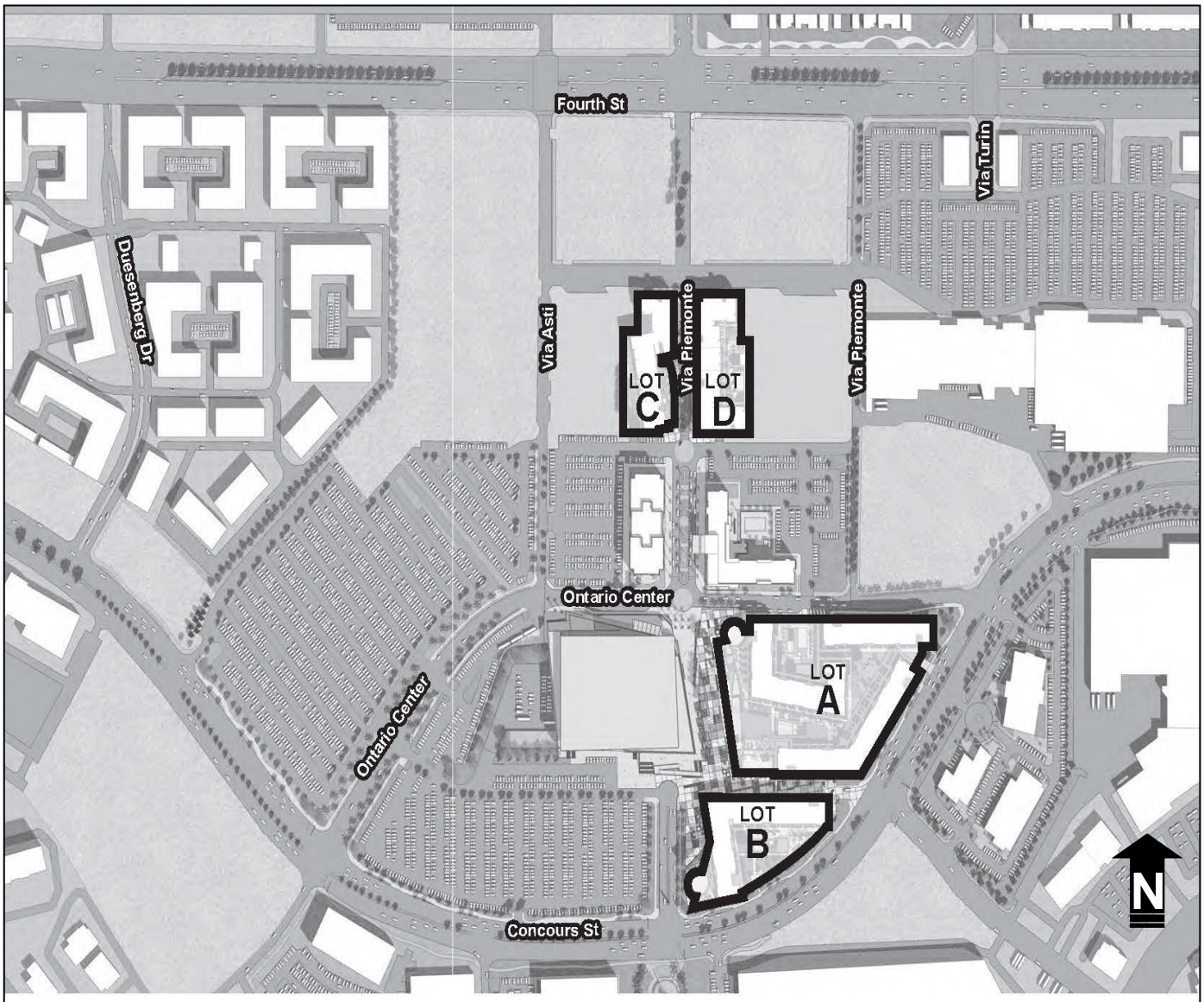
BEING A PORTION OF PARCEL 20, PARCEL MAP NO. 17550, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 216, PAGES 7 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 20, AS SHOWN ON SAID PARCEL MAP;
THENCE NORTH 89° 22' 30" WEST, ALONG THE SOUTH LINE OF SAID PARCEL 20, 184.06 FEET;
THENCE LEAVING SAID SOUTH LINE, THE FOLLOWING THREE (3) COURSES:
NORTH 00° 00' 00' EAST 302.44 FEET;
NORTH 90° 00' 00" EAST 42.92 FEET;
NORTH 00° 00' 00" WEST 96.10 FEET, TO A POINT ON A LINE THAT IS PARALLEL WITH AND 31.00 FEET SOUTH, MEASURED AT RIGHT ANGLES, TO THE NORTH LINE OF SAID PARCEL 20;
THENCE, NORTH 89° 22' 30" WEST 287.51 FEET, TO A POINT ON THE WEST LINE OF SAID PARCEL 20;
THENCE, NORTH 00° 37' 30" EAST 31.00 FEET, TO THE NORTHWEST CORNER OF SAID PARCEL 20;
THENCE, SOUTH 89° 22' 30" EAST ALONG THE NORTH LINE OF SAID PARCEL 20, 430.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 20;
THENCE, SOUTH 00° 37' 30" WEST 430.00 FEET, TO THE POINT OF BEGINNING;

SAID LAND IS SHOWN AS PARCEL B OF LOT LINE ADJUSTMENT NO. LLA17-008, RECORDED SEPTEMBER 7, 2017 AS INSTRUMENT NO. 2017-0370546, OF OFFICIAL RECORDS.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "B" CONTINUED
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

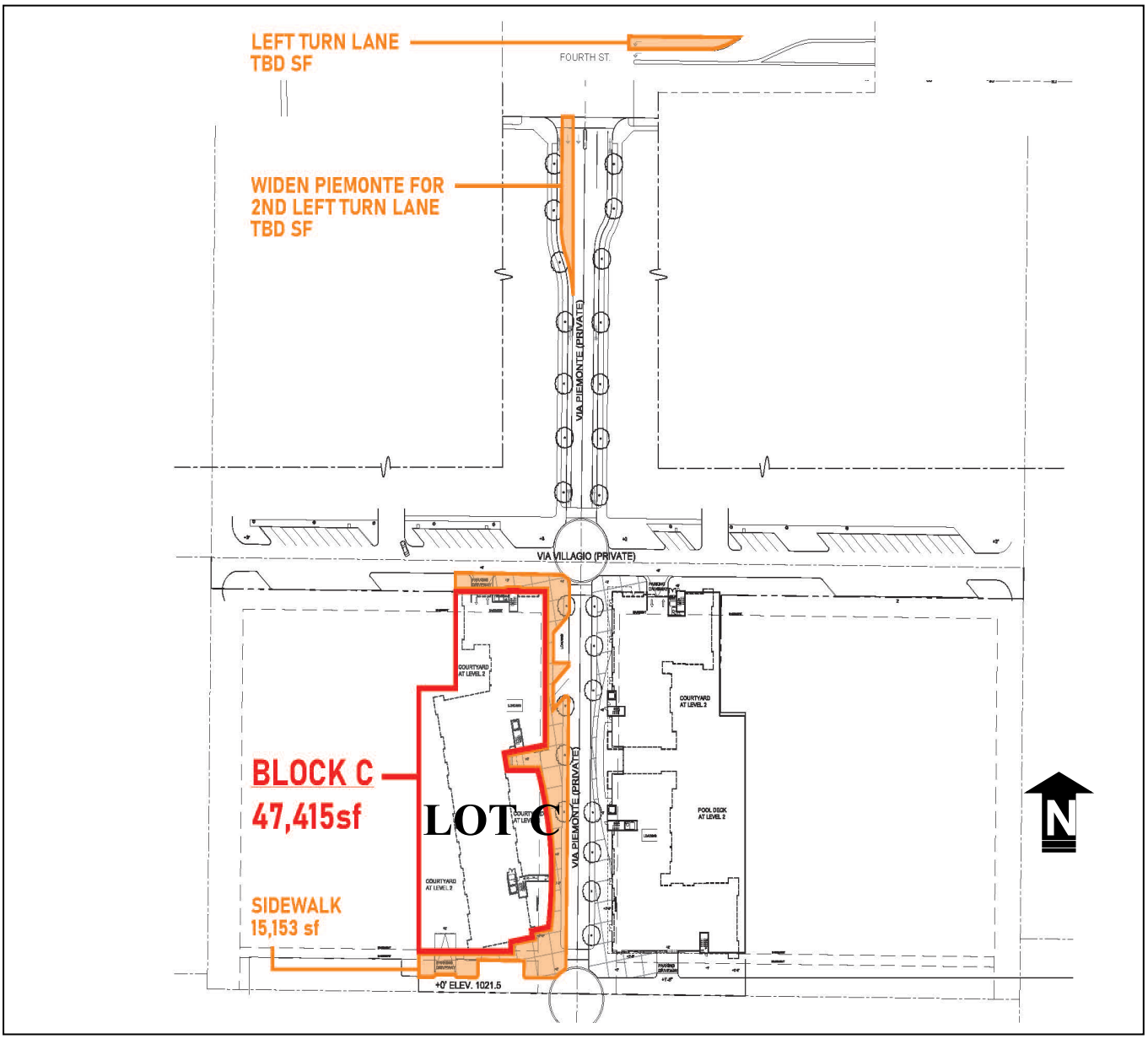


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Development Impact Fees as of the Approval Date

(Development Impact Fees to follow this page)

Exhibit C

FY 2021-22
Citywide Fee Schedule

(Fees, Fines & Charges)

Component of the FY 2021-22 Budget

Adopted June 21, 2021 (Resolution No. 2021-062)

Table of Contents

II. Community Life & Culture
Section 5. Housing Fees 3

III. Community Development
Section 1. Building Fees 4
Section 2. Engineering Fees 15
Section 3. Planning Fees 20

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

II. - Community Life & Culture
Section 5. Housing Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Housing Fees					
1	Base Affordable Housing Monitoring Fee*	Base	$ 747.68	$ 747.00	7/1/2021
2	Per Unit Affordable Housing Monitoring Fee*	Per unit	$ 107.94	$ 107.00	7/1/2021
3	Loan Payoff Process Fee - without equity share	Each	$ 251.11	$ 251.00	7/1/2021
4	Loan Payoff Process Fee - with equity share	Each	$ 400.39	$ 400.00	7/1/2021
5	Preparation of Full Reconveyance	Each	$ 248.13	$ 248.00	7/1/2021

** Affordable Housing Monitoring Fee does not apply to bond-funded projects.*

Note: Loan Payoff and Reconveyance fees may be waived if individuals are under financial hardship.

Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Plan Check Fees					
1	Building Plan Check Fee	% of Permit	N/A	80.00%	7/1/2021
2	Building Plan Check for track housing or duplicate building	% of Permit	N/A	40.00%	7/1/2021
3	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Less than $1 million	N/A	50.00%	7/1/2021
4	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $1 and $5 million	N/A	40.00%	7/1/2021
5	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $5 and $10 million	N/A	30.00%	7/1/2021
6	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $10 and $20 million	N/A	20.00%	7/1/2021
7	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Greater than $20 million	N/A	10.00%	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Permit Fees					
8	Building Permit - Base Fee ($1-$500)	Valuation: $1 to $500	N/A	$ 23.50	7/1/2021
9	Building Permit - Base Fee ($501-$2000)	Valuation: $501 to $2,000	N/A	$ 23.50	7/1/2021
10	Building Permit Fee (Each additional $100, or fraction thereof, up to and including $2000)	Each additional $100, or fraction thereof, up to and including $2,000	N/A	$ 3.05	7/1/2021
11	Building Permit - Base Fee ($2001-$25,000)	Valuation: $2,001 to $25,000	N/A	$ 69.25	7/1/2021
12	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $25,000)	Each additional $1,000, or fraction thereof, up to and including $25,000	N/A	$ 14.00	7/1/2021
13	Building Permit - Base Fee ($25,001-$50,000)	Valuation: $25,001 to $50,000	N/A	$ 391.25	7/1/2021
14	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $50,000)	Each additional $1,000, or fraction thereof, up to and including $50,000	N/A	$ 10.10	7/1/2021
15	Building Permit - Base Fee ($50,001-$100,000)	Valuation: $50,001 to $100,000	N/A	$ 643.75	7/1/2021
16	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $100,000)	Each additional $1,000, or fraction thereof, up to and including $100,000	N/A	$ 7.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
17	Building Permit - Base Fee ($100,001-$500,000)	Valuation: $100,001 to $500,000	N/A	$ 993.75	7/1/2021
18	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $500,000)	Each additional $1,000, or fraction thereof, up to and including $500,000	N/A	$ 5.60	7/1/2021
19	Building Permit - Base Fee ($500,001-$1,000,000)	Valuation: $500,001 to $1,000,000	N/A	$ 3,233.75	7/1/2021
20	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $1,000,000)	Each additional $1,000, or fraction thereof, up to and including $1,000,000	N/A	$ 4.75	7/1/2021
21	Building Permit - Base Fee (Greater than $1,000,001)	Valuation: $1,000,001 and up	N/A	$ 5,608.75	7/1/2021
22	Building Permit Fee (Each additional $1,000 or fraction thereof, greater than $1,000,001)	Each additional $1,000, or fraction thereof	N/A	$ 3.65	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Misc. Standard Building Permits					
23	Kitchen Remodel (non-structural)	Each	$ 258.99	$ 258.00	7/1/2021
24	Bathroom Remodel	Each	$ 129.50	$ 129.00	7/1/2021
25	Demolition - Entire Structure	Valuation	N/A	Varies	7/1/2021
26	Patio Covers - Solid	Valuation	N/A	Varies	7/1/2021
27	Patio Covers - Lattice	Valuation	N/A	Varies	7/1/2021
28	Patio Covers - Enclosures	Valuation	N/A	Varies	7/1/2021
29	Pole Bases	Valuation	N/A	Varies	7/1/2021
30	Roofing	Valuation	N/A	Varies	7/1/2021
31	Storage Sheds	Valuation	N/A	Varies	7/1/2021
32	Stucco	Valuation	N/A	Varies	7/1/2021
33	Swimming Pools/Spas	Valuation	N/A	Varies	7/1/2021
34	Tenant Improvements - With Ceiling	Valuation	N/A	Varies	7/1/2021
35	Tenant Improvements - Without Ceiling	Valuation	N/A	Varies	7/1/2021
36	Trash Enclosures - Single	Valuation	N/A	Varies	7/1/2021
37	Trash Enclosures - Double	Valuation	N/A	Varies	7/1/2021
38	Walls - Retaining	Valuation	N/A	Varies	7/1/2021
39	Walls - Screen Garden	Valuation	N/A	Varies	7/1/2021
40	Walls - Tilt-Up Screen Walls	Valuation	N/A	Varies	7/1/2021
41	Window Changeout	Valuation	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Electrical Permit Fees					
42	Electrical Permit Issuance Fee	Each	$ 41.63	$ 41.00	7/1/2021
43	Electrical Permit - Temporary Power Service Pedestal	Each	$ 86.33	$ 86.00	7/1/2021
44	Electrical Permit - Temporary Power Service Distribution system	Each	$ 43.17	$ 43.00	7/1/2021
45	Electrical Permit - outlet/switch/fixture	First 20 fixtures	$ 129.50	$ 129.00	7/1/2021
46	Electrical Permit - Additional Fixtures	Each	$ 2.94	$ 2.90	7/1/2021
47	Electrical Permit - Power Apparatus -up to and including 1	each HP, kW, kVA or kVAR	$ 143.83	$ 143.00	7/1/2021
48	Electrical Permit - Power Apparatus - over 1 to 10	each HP, kW, kVA or kVAR	$ 158.33	$ 158.00	7/1/2021
49	Electrical Permit - Power Apparatus - over 10 to 50	each HP, kW, kVA or kVAR	$ 172.66	$ 172.00	7/1/2021
50	Electrical Permit - Power Apparatus - over 50 to 100	each HP, kW, kVA or kVAR	$ 258.99	$ 258.00	7/1/2021
51	Electrical Permit - Power Apparatus - over 100	each HP, kW, kVA or kVAR	$ 345.32	$ 345.00	7/1/2021
52	Electrical Permit - Services -for services of 600 volts or less and not over 200 amperes in rating	Each	$ 172.66	$ 172.00	7/1/2021
53	Electrical Permit Fee - Services -for services of 600 volts or less and over 200 amperes to 1,000 amperes in rating	Each	$ 258.99	$ 258.00	7/1/2021
54	Electrical Permit Fee - Services -for services over 600 volts or over 1,000 amperes in rating	Each	$ 431.65	$ 431.00	7/1/2021
55	Electrical Permit Fee - Miscellaneous Apparatus, Conduits and Conductors	Each	$ 143.83	$ 143.00	7/1/2021
56	Electrical Permit Fee- Subpanel	Each	N/A	$ 172.00	7/1/2021
57	Electrical Permit Fee - Signs	Each	N/A	$ 86.00	7/1/2021
58	Electrical Permit Fee - Private Swimming Pools	Each Pool or Spa	N/A	$ 129.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
59	Electrical Permit Fee - Other Inspections and Fees, inspections outside of normal business hours: minimum charge 3 hrs.	Per Hour	$ 113.00	$ 113.00	7/1/2021
60	Electrical Permit Fee - Inspections	Per Hour	$ 113.00	$ 113.00	7/1/2021
61	Electrical Permit Fee - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
62	Electrical Permit Fee - Additional plan review	Per Hour	$ 113.00	$ 113.00	7/1/2021
63	New Construction Trades - Electrical : Residential	Per Square Foot	$ 0.10791	$ 0.1079	7/1/2021
64	New Construction Trades - Electrical : Commercial	Per Square Foot	$ 5.22301	$ 0.1200	7/1/2021
65	New Construction Trades - Electrical: Industrial / warehouse (0-50,000 sf)	Per Square Foot	$ 0.01209	$ 0.0120	7/1/2021
66	New Construction Trades - Electrical : Industrial / warehouse (>50,000 sf)	Per Square Foot	$ 0.00388	$ 0.0038	7/1/2021
Mechanical Permit Fees					
67	Mechanical Permit Issuance Fee	Each	$ 41.75	$ 41.00	7/1/2021
68	Mechanical Permit Fee (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -under 3 HP (10.6kW) or to and including 100,000 Btu/h (29.3kW)	Each	$ 172.66	$ 172.00	7/1/2021
69	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems-over 3 HP (10.6kW) to and including 15 HP (52.7kW), or over 100,000 Btu (29.3kW) to and including 500,000 Btu/h (146.6kW)	Each	$ 215.83	$ 215.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
70	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -over 15 HP (52.7 kW) to and including 30 HP (105.5 kW), over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW)	Each	$ 258.99	$ 258.00	7/1/2021
71	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 30 HP (105.5 kW) to and including 50 HP (176 kW), or over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW)	Each	$ 345.32	$ 345.00	7/1/2021
72	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 50 HP (176 kW) or over 1,7500,000 Btu/h (512.9kW)	Each	$ 517.98	$ 517.00	7/1/2021
73	Mechanical Permit Fees (includes issuance fee)- Evaporative Coolers	Each	$ 172.66	$ 172.00	7/1/2021
74	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each fan connected to single duct	Each	$ 172.66	$ 172.00	7/1/2021
75	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust-each which is not a portion of any heating or a/c system authorized by a permit	Each	$ 172.66	$ 172.00	7/1/2021
76	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each hood served by mechanical exhaust	Each	$ 345.32	$ 345.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
77	Mechanical Permit Fee - Process Piping	Valuation	N/A	Varies	7/1/2021
78	Mechanical Permit Fee - Wall Heater	Each	N/A	$ 43.00	7/1/2021
79	Mechanical Permit Fees - Miscellaneous (one inspection)	Each	$ 86.33	$ 86.00	7/1/2021
80	Mechanical Permit Fees - Inspection outside of normal business hours	Per Hour	$ 113.00	$ 113.00	7/1/2021
81	Mechanical Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
82	Mechanical Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
83	Mechanical Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
84	New Construction Trades - Mechanical: Residential	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
85	New Construction Trades - Mechanical : Commercial	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
Plumbing Permit Fees					
86	Permit issuance fee	Each	$ 41.75	$ 41.00	7/1/2021
87	Plumbing Permit Fees - First 15 Fixtures and Vents (new & alterations)	First 15 Fixtures/Vents	$ 172.66	$ 172.50	7/1/2021
88	Plumbing Permit Fees - Each Additional	Each	$ 172.66	$ 10.78	7/1/2021
89	Plumbing Permit Fees - Sewers	Each	$ 172.66	$ 172.50	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
90	Plumbing Permit Fees - Sewage disposal system	Each	$ 431.65	$ 431.50	7/1/2021
91	Plumbing Permit Fees -Industrial waste pretreatment interceptor	Each	$ 172.66	$ 172.50	7/1/2021
92	Plumbing Permit Fees - Water Piping First 20 outlets	First 20 Outlets	$ 129.50	$ 129.00	7/1/2021
93	Plumbing Permit Fees - Water Piping Each Additional Outlet	Each Outlet	$ 129.50	$ 5.23	7/1/2021
94	Plumbing Permit Fees - Water heater including vent	Each	$ 172.66	$ 12.92	7/1/2021
95	Plumbing Permit Fees - Gas Piping Systems First 5 Outlets	First 5 Outlets	$ 647.50	$ 129.50	7/1/2021
96	Plumbing Permit Fees - Gas Piping Systems Each Additional	Each Addt'l Outlet	$ 129.50	$ 6.77	7/1/2021
97	Plumbing Permit Fees - Lawn Sprinklers	Each lawn sprinkler system on any one meter	$ 172.66	$ 172.50	7/1/2021
98	Plumbing Permit Fees - Backflow Protection Devices	Each Device	$ 172.66	$ 172.50	7/1/2021
99	Plumbing Permit Fees - Miscellaneous	Each appliance or equipment regulated by the Plumbing Code but not classed in other appliance categories, or for which no fee is listed in this code	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
100	Plumbing Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
101	Plumbing Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
102	Plumbing Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
103	New Construction Trades - Plumbing : Residential	Per SF	$ 0.10791	$ 0.1070	7/1/2021
	Grading Plan Review Fees (up to three submittals of plans)				
104	Grading plan check, rough (0-10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
105	Grading plan check, rough (>10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
106	Grading plan check, rough (each additional 5 acres)	Each	$ 345.32	$ 345.00	7/1/2021
107	Grading plan check, precise (0-10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
108	Grading plan check, precise (>10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
109	Grading plan check, precise (each additional 5 acres)	Each	$ 517.98	$ 517.50	7/1/2021
	Grading Permit Fees				
110	Grading permit, rough (0-50 acres)	Each	$ 345.32	$ 345.00	7/1/2021
111	Grading permit, rough (each additional 10 acres)	Each	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
112	Grading permit, precise (0-50 acres)	Each	$ 431.65	$ 431.50	7/1/2021
113	Grading permit, precise (each additional 10 acres)	Each	$ 129.50	$ 129.50	7/1/2021
114	Soil Disturbance Permit - Dust Control	Each	N/A	$ 250.00	7/1/2021
Miscellaneous Fees					
115	Building plan retention fee	Per Plan Page	N/A	$ 1.50	7/1/2021
116	Permits, Calcs and Misc. doc	8.5x11 / per page	N/A	$ 0.35	7/1/2021
Sewer, Water, Storm Drain Permit & Plan Check Fees					
117	Sewer Main Inspection Permit	Per Lineal Foot	$ 3.17	$ 3.17	7/1/2021
118	Water Main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
119	Storm Drain - main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
120	Storm Drain - yard Inspection Permit	Per Lineal Foot	$ 0.29	$ 0.29	7/1/2021
121	Sewer, Water, Storm Drain Plan check fee = % of permit valuation	% of Permit Valuation	2.00%	2.00%	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Inspection / Permit - Base Fee	Base	$ 164.09	$ 164.00	7/1/2021
2	Inspection / Permit Fees $1 - $50,000	Construction cost estimate	5.97%	5.97%	7/1/2021
3	Inspection / Permit Fees $50,001 - $500,000	Construction cost estimate	5.45%	5.45%	7/1/2021
4	Inspection / Permit Fees >$500,000	Construction cost estimate	4.24%	4.24%	7/1/2021
5	Plan Check - Base Fee (includes grading, NPDES etc.)	Base	$ 1,371.16	$ 1,371.00	7/1/2021
6	Plan Check Fees $1 - $50,000	Construction cost estimate	6.00%	6.00%	7/1/2021
7	Plan Check Fees $50,001 - $500,000	Construction cost estimate	4.65%	4.65%	7/1/2021
8	Plan Check Fees >$500,000	Construction cost estimate	3.62%	3.62%	7/1/2021
9	Encroachment Permit Fee	Each	$ 162.91	$ 112.80	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
10	Inspection for minor improvements (driveways, pole replacement, etc.)	Inspection for single item (2 inspections, before and after)	$ 167.02	$ 108.15	8/21/2021
11	Traffic Control Permit	Each	$ 103.49	$ 103.00	7/1/2021
12	Overload Permit (single trip) - One time	Each	N/A	$ 19.20	8/21/2021
13	Overload Permit (round trip) - Annual	Each	N/A	$ 108.00	8/21/2021
14	Permit Penalty Fee	Percent of Permit Value	N/A	50.00%	7/1/2021
15	Map Review (Parcel/Tract) - Base Fee	Each	$ 7,666.96	$ 2,588.40	8/21/2021
16	Map Review - Addt'l per parcel	Per Parcel	$ 70.48	$ 70.00	8/21/2021
17	Certificate of Compliance	Each	$ 790.69	$ 745.20	8/21/2021
18	Lot Line Adjustment - Base Fee	Each	$ 1,286.16	$ 1,159.20	8/21/2021
19	Lot Line Adjustment - Addt'l per parcel	Per parcel	$ 59.43	$ 59.00	7/1/2021
20	General Vacation	Each	$ 3,805.94	$ 1,902.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
21	Quit Claim / Summary Vacation	Each	$ 2,049.22	$ 1,087.20	8/21/2021
22	Certificate of Correction	Each	$ 823.10	$ 480.00	8/21/2021
23	Easement review	Each	$ 1,691.08	$ 1,691.00	7/1/2021
24	NPDES business inspection fee - low priority	One inspection every 5 years	$ 59.43	$ 59.00	7/1/2021
25	NPDES business inspection fee - medium priority	One inspection every 2 years	$ 118.85	$ 118.00	7/1/2021
26	NPDES business inspection fee - high priority	Inspection each year	$ 237.70	$ 237.50	7/1/2021
27	NPDES/WQMP Plan Review	Each	$ 2,160.65	$ 1,112.40	8/21/2021
28	NPDES Construction Inspection Fee (< 10 acres)	Each	$ 505.66	$ 505.50	7/1/2021
29	NPDES Construction Inspection Fee (10-25 acres)	Each	$ 905.50	$ 905.50	7/1/2021
30	NPDES Construction Inspection Fee (> 25 acres)	Each	$ 2,074.37	$ 2,074.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
31	Overtime Pay for Inspection (Weekends & Holidays)	Per Hour	N/A	Hourly Rate	7/1/2021
32	Misc. / Special Technical Report Review Fee	Actual Cost (Plus 25% Admin for consultant review, if applicable)	N/A	Varies	7/1/2021
33	Water Meter - OMUC Fee	Based on meter size - OMUC Fee	N/A	Varies	7/1/2021
34	Storm Water Pollution Abatement	Monthly BAU fee based on land use type & site acreage (applied to utility bill)	N/A	Varies	7/1/2021
35	Legal review	Per Hour	N/A	Hourly Rate	7/1/2021
PLANNING APPLICATIONS REVIEWED BY LAND DEVELOPMENT ENGINEERING					
36	Development Agreement	Deposit	N/A	Varies	7/1/2021
37	Development Agreement Amendment	Deposit	N/A	Varies	7/1/2021
38	Development Code Amendment	Deposit	N/A	Varies	7/1/2021
39	Environmental Impact Report	Deposit	N/A	Varies	7/1/2021
40	General Plan Amendment	Deposit	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
41	Planned Unit Development	Deposit	N/A	Varies	7/1/2021
42	Planned Unit Development Amendment	Deposit	N/A	Varies	7/1/2021
43	Specific Plan	Deposit	N/A	Varies	7/1/2021
44	Specific Plan Amendment	Deposit	N/A	Varies	7/1/2021
45	Specific Plan Minor Amendment	Deposit	N/A	Varies	7/1/2021
46	Zone Change - 5 acres or more	Deposit	N/A	Varies	7/1/2021
47	Zone Change - Less than 5 acres	Deposit	N/A	Varies	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Land Conservation Contract Non-renewal	Each	$ 3,817.21	$ 1,401.85	8/21/2021
2	Land Conservation Contract Cancellation	Each	$ 16,679.06	$ 6,431.53	8/21/2021
3	Appeal-Homeowner	Each	N/A	$ 130.00	7/1/2021
4	Appeal-Other	Each	N/A	$ 902.00	7/1/2021
5	Covenants Conditions and Restrictions Review	Each	$ 4,940.68	$ 3,067.50	8/21/2021
6	Conditional Use Permit-Homeowner	Each	$ 4,894.70	$ 1,784.26	8/21/2021
7	Conditional Use Permit-Nonprofit	Each	$ 3,520.01	$ 2,691.60	8/21/2021
8	Conditional Use Permit-Other	Each	$ 5,901.35	$ 5,900.00	7/1/2021
9	Conditional Use Permit-Modification	Each	$ 5,901.35	$ 3,693.27	8/21/2021
10	Conditional Use Permit-w/ Development Plan	Each	$ 4,724.75	$ 1,567.20	8/21/2021
11	Conditional Use Permit Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
12	Determination of Use	Each	$ 3,316.06	$ 3,316.00	7/1/2021
13	Development Agreement	Deposit	N/A	$ 10,000.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
14	Development Agreement Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
15	Development Code Amendment	Deposit	N/A	$ 2,000.00	7/1/2021
16	Development Plan Review - 5 acres or more	Each	$ 24,846.74	$ 17,914.80	8/21/2021
17	Development Plan Review - less than 5 acres	Each	$ 21,465.84	$ 11,913.15	8/21/2021
18	Development Plan Revision	Each	$ 16,735.49	$ 4,582.85	8/21/2021
19	Development Plan Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
20	Environmental Assessment/Negative Declaration	Each	$ 3,155.59	$ 3,155.00	7/1/2021
21	Environmental Impact Report	Deposit	N/A	$ 10,000.00	7/1/2021
22	General Plan Amendment - Text	Deposit	N/A	$ 5,000.00	7/1/2021
23	General Plan Amendment - Map	Deposit	N/A	$ 7,500.00	7/1/2021
24	Historic Preservation - COA-Nonresidential	Each	$ 4,677.04	$ 1,533.75	8/21/2021
25	Historic Preservation - COA-Residential	Each	$ 4,677.04	$ 214.73	8/21/2021
26	Historic Preservation - COEH-Nonresidential	Each	$ 6,846.51	$ 2,045.00	8/21/2021
27	Historic Preservation - COEH-Residential	Each	$ 6,846.51	$ 268.92	8/21/2021
28	Historic Preservation - Removal from Eligibility List (No Charge)	Each	$ 6,366.15	No Charge	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
29	Historic Preservation - Waiver	Each	$ 42.96	$ 42.50	7/1/2021
30	Historic Preservation - Landmark Designation (No Charge)	Each	$ 12,025.51	No Charge	7/1/2021
31	Historic Preservation - Plaque	Actual Cost	Varies	Varies	7/1/2021
32	Inspection - Construction (3 inspections)	Each	$ 5,342.05	$ 613.50	8/21/2021
33	Inspection - Field (includes construction inspections in excess of 3)	Each	$ 1,335.51	$ 255.63	8/21/2021
34	Residential Mills Act[A]	Each	$ 10,939.36	$ 214.73	8/21/2021
35	Nonresidential Mills Act[A]	Each	$ 10,939.36	$ 669.74	8/21/2021
36	Large Family Daycare	Each	$ 2,127.81	$ 1,116.57	8/21/2021
37	Lodging House Permit	Each	$ 2,127.81	$ 2,127.00	7/1/2021
38	Massage Permits	Each	$ 2,127.81	$ 2,127.00	7/1/2021
39	Plan Check - 5 or more acres	Each	$ 9,196.43	$ 3,070.10	8/21/2021
40	Plan Check - less than 5 acres	Each	$ 5,685.72	$ 1,717.10	8/21/2021
41	Planned Unit Development	Deposit	$ 20,926.28	$ 10,225.00	8/21/2021
42	Planned Unit Development Amendment	Deposit	$ 13,947.59	$ 7,668.75	8/21/2021
43	Planning Area Plan	Deposit	N/A	$ 7,500.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
44	Planning Director Review	Each	$ 1,057.33	$ 706.55	8/21/2021
45	Preliminary Plan Review	Each	$ 4,207.14	$ 4,203.00	7/1/2021
46	Public Hearing - City Council	Each	$ 769.75	$ 604.30	8/21/2021
47	Public Hearing - Development Advisory Board	Each	$ 497.12	$ 325.16	8/21/2021
48	Public Hearing - Planning Commission	Each	$ 1,325.44	$ 604.30	8/21/2021
49	Public Hearing - Zoning Administrator-Homeowner	Each	$ 1,764.14	$ 74.64	8/21/2021
50	Public Hearing - Zoning Administrator-Other	Each	$ 1,764.14	$ 584.87	8/21/2021
51	Sign Plan	Each	$ 519.34	$ 246.42	8/21/2021
52	Sign Program - administrative approval	Each	$ 2,825.58	$ 862.99	8/21/2021
53	Sign Program - planning commission approval	Each	$ 3,059.86	$ 2,934.58	8/21/2021
54	Specific Plan	Deposit	N/A	$ 20,000.00	7/1/2021
55	Specific Plan Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
56	Specific Plan Minor Amendment	Deposit	N/A	$ 620.00	7/1/2021
57	Temporary Sign Permit	Each	$ 124.89	$ 58.28	8/21/2021
58	Temporary Use Permit - interim uses	Each	$ 2,757.54	$ 838.45	8/21/2021
59	Temporary Use Permit - special event	Each	$ 1,064.72	$ 492.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
60	Tentative Parcel Map	Each	$ 15,986.07	$ 6,641.14	8/21/2021
61	Tentative Parcel Map Modification	Each	$ 11,706.32	$ 4,262.80	8/21/2021
62	Tentative Tract Map (Base)	Flat	$ 18,403.54	$ 9,805.78	8/21/2021
63	Tentative Tract Map (per lot)	Each	$ 65.00	$ 65.00	7/1/2021
64	Tentative Tract Map Modification	Each	$ 12,681.18	$ 3,125.78	8/21/2021
65	Tentative Tract/Parcel Map Time Extension	Each	$ 7,378.97	$ 1,227.00	8/21/2021
66	Variance - Administrative Exception or Minor	Each	$ 3,978.78	$ 2,451.96	8/21/2021
67	Variance - Homeowner	Each	$ 3,978.78	$ 309.82	8/21/2021
68	Variance - Other	Each	$ 5,266.37	$ 3,508.20	8/21/2021
69	Wireless Permit: Facilities in Public Rights-of-Way	Each	$ 3,978.78	$ 3,978.00	7/1/2021
70	Zone Change - 5 acres or more	Each	$ 10,575.56	$ 7,666.71	8/21/2021
71	Zone Change - Less than 5 acres	Each	$ 9,194.99	$ 7,497.99	8/21/2021
72	Zoning Administrator Review - Homeowner	Each	$ 3,978.78	$ 200.41	8/21/2021
73	Zoning Administrator Review - Other	Each	$ 3,978.78	$ 1,160.54	8/21/2021
74	Zoning/Land Use Verification Letter	Each	$ 499.56	$ 195.30	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
75	Notice of Exemption Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
76	Notice of Determination Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
77	Filing of a Negative/Mitigated Declaration	County Fee	N/A	$ 2,404.75	7/1/2021
78	Filing of an Environmental Impact Report	County Fee	N/A	$ 3,321.00	7/1/2021
79	Outside consultant or legal expenses	Actual Cost Plus 25% Admin. Fee	N/A	Varies	7/1/2021
80	Advanced Long Range Planning	Percent of all Building Permits & Planning Applications	$ 914,960.12	5.00%	7/1/2021

Resolution No. 2004-065 (Entitlement Processing Fees excl. Mills Act)
[A] Resolution No. 2005-115 (Mills Act Fees)
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062
CPI Adjustment of 2.25% applied to select fees based on year-over-year change from Jan. 2020 to Jan. 2021 as measured by "Riverside-San Bernardino-Ontario Consumer Price Index"

RESOLUTION NO. PC22-030

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDA22-003-D, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 104 RESIDENTIAL UNITS AND UP TO 14,095 SQUARE FEET OF COMMERCIAL/OFFICE/ RETAIL USES, ON APPROXIMETLY 2.04 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF ONTARIO VIA PIEMONTE AND VIA VILLAGIO WITHIN THE MIXED-USE SUBAREAS 11 OF THE PIEMONTE OVERLAY AT THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-204-38.

WHEREAS, OTC Owner, LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-D, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 2.04 acres of land, located at the southeast corner of Via Piemonte and Via Villagio. The project site within the proposed mixed-use Subarea 8 of the Piemonte Overlay at the Ontario Center Specific Plan, and is presently vacant; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration was subsequently adopted on May 16, 2017, (hereinafter referred to as “MND”), in which development and use of the Project site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the Planning Commission, and the specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the

Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

a. The Development Agreement applies to approximately 2.04 acres of land generally located southeast corner of Via Piemonte and Via Villagio; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot D, consisting of 104 residential units and up to 14,095 square feet retail uses, within the proposed Mixed-Use Subarea 11 of the Piemonte Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are

consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA22-003-D) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of June 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Planning Commission Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-030, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on June 28, 2022, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Gage, Lampkin, Ricci, Willoughby

NOES: None

ABSENT: Dean

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA22-003-D

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Owner, LLC
Lot D

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Owner, LLC
Lot D

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-033-D

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot D, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-D; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots A, B, and C. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots A, B, and C as follows:

Lot A - Development Plan Entitlement – File No. PDEV22-014;

Lot B - Development Plan Entitlement – File No. PDEV22-014; and

Lot C - Development Plan Entitlement – File No. PDEV22-014.

Lots A, B, and C are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots A, B, and C in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots A, B, and C currently comprised of the following development as shown on Table 1 below:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot D) of up to 14,095 square feet of commercial/office/ retail uses and 104 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.31 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement. The Property is referred to as Lot D on Exhibit B. The Property constitutes one parcel of the Phased Development. Lots A, B, and C comprise the remaining parcels of the planned Phased Development.

1.1.32 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.33 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.34 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.35 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.36 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.37 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.38 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot D Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.
2.	Commencement of Construction of the Project	On or before two (2) years following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase; provided, however

		Commencement of Construction shall occur within 6 months of the Commencement of Construction of Lot C. In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21) days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the

regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent (3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for

purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not

acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the

terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related

Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time

thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death (Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a

California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing

with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall

continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or

threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this

Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot D Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

City OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

APN NO. 0210-204-39

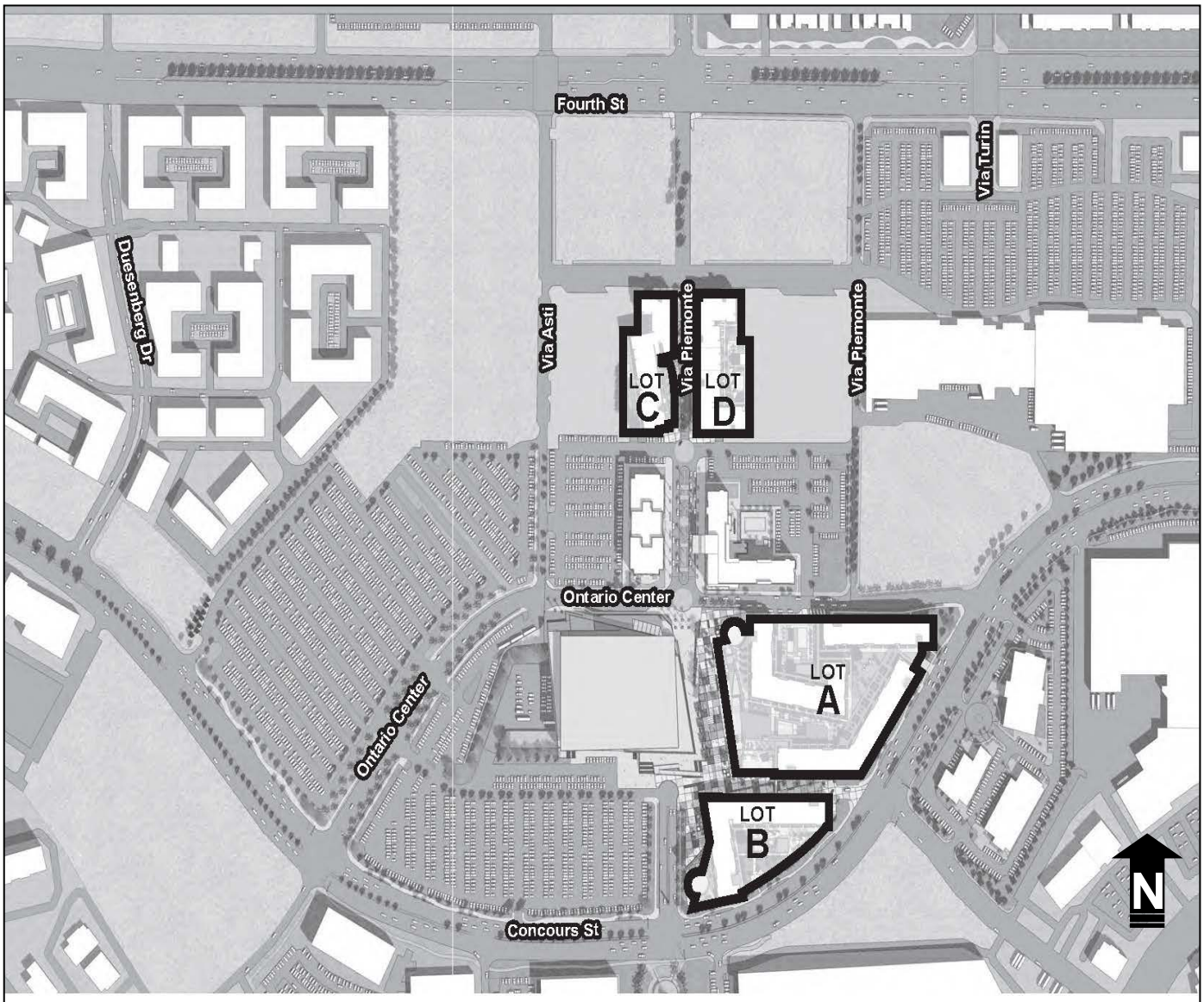
BEING A PORTION OF PARCEL 23, PARCEL MAP NO. 17550, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 216, PAGE(S) 7 THROUGH 20, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 23, AS SHOWN ON SAID PARCEL MAP;
THENCE NORTH 00°37'30" EAST, ALONG THE WEST LINE OF SAID PARCEL 23, 430.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 23;
THENCE SOUTH 89°22'30" EAST, ALONG THE NORTH LINE OF SAID PARCEL 23, 515.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 23;
THENCE, SOUTH 00°37'30" WEST, ALONG THE EAST LINE OF SAID PARCEL 23, 31.00 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 31.00 FEET SOUTH, MEASURED AT RIGHT ANGLES, TO THE NORTH LINE OF SAID PARCEL 23;
THENCE, ALONG SAID PARALLEL LINE NORTH 89°22'30" WEST 351.45 FEET;
THENCE SOUTH 00°37'22" WEST 116.97 FEET;
THENCE NORTH 89°59'51" EAST 29.41 FEET;
THENCE, SOUTH 00°00'06" EAST 282.37 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL 23;
THENCE NORTH 89°22'30" WEST, ALONG SAID SOUTH LINE, 196.05 FEET TO THE POINT OF BEGINNING;

SAID LAND IS SHOWN AS PARCEL C OF LOT LINE ADJUSTMENT NO. LLA 17-008 RECORDED SEPTEMBER 7, 2017, AS INSTRUMENT NO. 2017-0370546, OFFICIAL RECORDS.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "B" CONTINUED
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

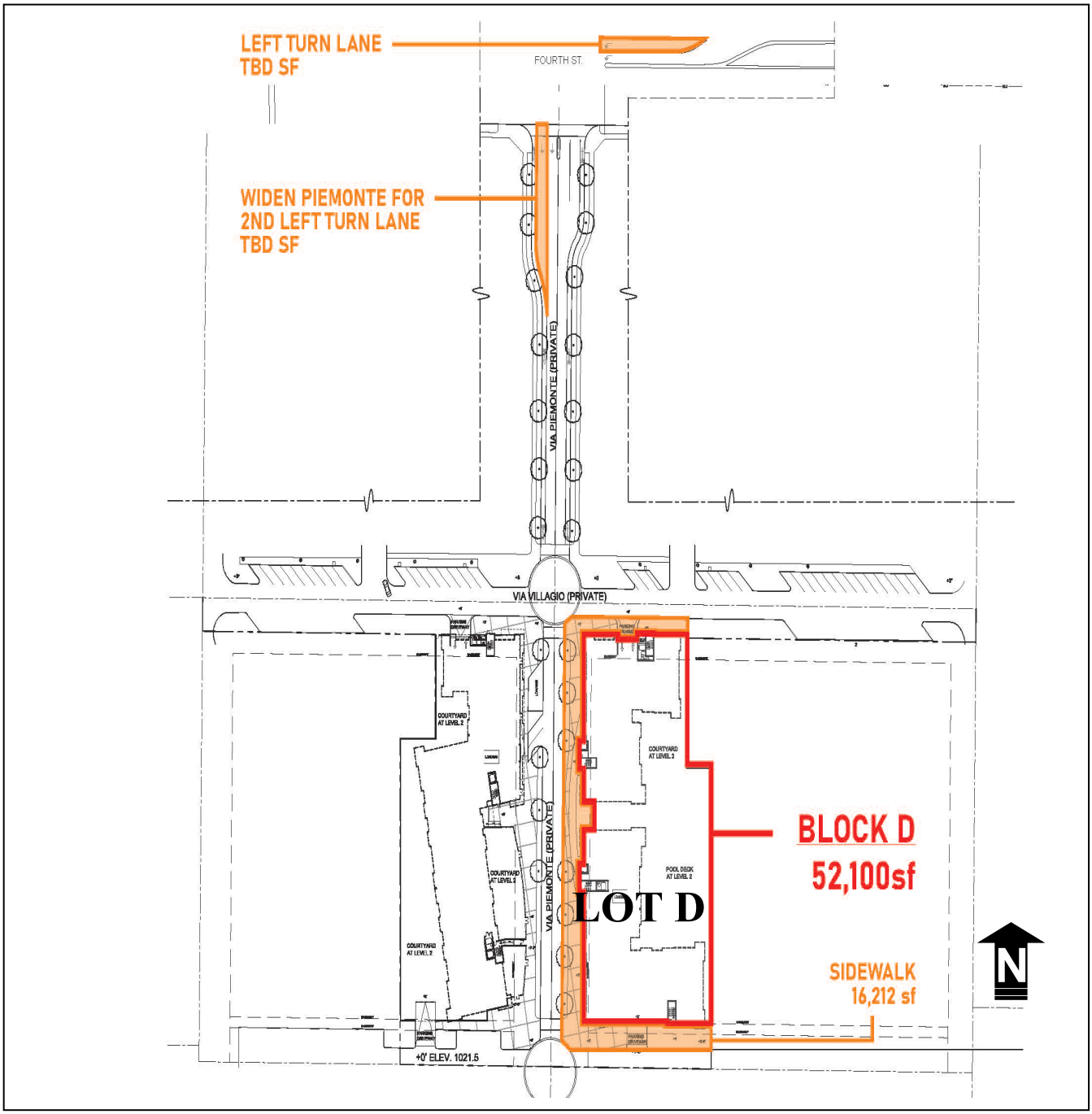


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Development Impact Fees as of the Approval Date

(Development Impact Fees to follow this page)

Exhibit C

FY 2021-22
Citywide Fee Schedule

(Fees, Fines & Charges)

Component of the FY 2021-22 Budget

Adopted June 21, 2021 (Resolution No. 2021-062)

Table of Contents

II. Community Life & Culture
Section 5. Housing Fees 3

III. Community Development
Section 1. Building Fees 4
Section 2. Engineering Fees 15
Section 3. Planning Fees 20

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

II. - Community Life & Culture
Section 5. Housing Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Housing Fees					
1	Base Affordable Housing Monitoring Fee*	Base	$ 747.68	$ 747.00	7/1/2021
2	Per Unit Affordable Housing Monitoring Fee*	Per unit	$ 107.94	$ 107.00	7/1/2021
3	Loan Payoff Process Fee - without equity share	Each	$ 251.11	$ 251.00	7/1/2021
4	Loan Payoff Process Fee - with equity share	Each	$ 400.39	$ 400.00	7/1/2021
5	Preparation of Full Reconveyance	Each	$ 248.13	$ 248.00	7/1/2021

** Affordable Housing Monitoring Fee does not apply to bond-funded projects.*

Note: Loan Payoff and Reconveyance fees may be waived if individuals are under financial hardship.

Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Plan Check Fees					
1	Building Plan Check Fee	% of Permit	N/A	80.00%	7/1/2021
2	Building Plan Check for track housing or duplicate building	% of Permit	N/A	40.00%	7/1/2021
3	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Less than $1 million	N/A	50.00%	7/1/2021
4	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $1 and $5 million	N/A	40.00%	7/1/2021
5	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $5 and $10 million	N/A	30.00%	7/1/2021
6	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Between $10 and $20 million	N/A	20.00%	7/1/2021
7	Expedited Plan Check Program	Original Plan Check Fee Plus Additional Percent: Greater than $20 million	N/A	10.00%	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Building Permit Fees					
8	Building Permit - Base Fee ($1-$500)	Valuation: $1 to $500	N/A	$ 23.50	7/1/2021
9	Building Permit - Base Fee ($501-$2000)	Valuation: $501 to $2,000	N/A	$ 23.50	7/1/2021
10	Building Permit Fee (Each additional $100, or fraction thereof, up to and including $2000)	Each additional $100, or fraction thereof, up to and including $2,000	N/A	$ 3.05	7/1/2021
11	Building Permit - Base Fee ($2001-$25,000)	Valuation: $2,001 to $25,000	N/A	$ 69.25	7/1/2021
12	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $25,000)	Each additional $1,000, or fraction thereof, up to and including $25,000	N/A	$ 14.00	7/1/2021
13	Building Permit - Base Fee ($25,001-$50,000)	Valuation: $25,001 to $50,000	N/A	$ 391.25	7/1/2021
14	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $50,000)	Each additional $1,000, or fraction thereof, up to and including $50,000	N/A	$ 10.10	7/1/2021
15	Building Permit - Base Fee ($50,001-$100,000)	Valuation: $50,001 to $100,000	N/A	$ 643.75	7/1/2021
16	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $100,000)	Each additional $1,000, or fraction thereof, up to and including $100,000	N/A	$ 7.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
17	Building Permit - Base Fee ($100,001-$500,000)	Valuation: $100,001 to $500,000	N/A	$ 993.75	7/1/2021
18	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $500,000)	Each additional $1,000, or fraction thereof, up to and including $500,000	N/A	$ 5.60	7/1/2021
19	Building Permit - Base Fee ($500,001-$1,000,000)	Valuation: $500,001 to $1,000,000	N/A	$ 3,233.75	7/1/2021
20	Building Permit Fee (Each additional $1,000, or fraction thereof, up to and including $1,000,000)	Each additional $1,000, or fraction thereof, up to and including $1,000,000	N/A	$ 4.75	7/1/2021
21	Building Permit - Base Fee (Greater than $1,000,001)	Valuation: $1,000,001 and up	N/A	$ 5,608.75	7/1/2021
22	Building Permit Fee (Each additional $1,000 or fraction thereof, greater than $1,000,001)	Each additional $1,000, or fraction thereof	N/A	$ 3.65	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Misc. Standard Building Permits					
23	Kitchen Remodel (non-structural)	Each	$ 258.99	$ 258.00	7/1/2021
24	Bathroom Remodel	Each	$ 129.50	$ 129.00	7/1/2021
25	Demolition - Entire Structure	Valuation	N/A	Varies	7/1/2021
26	Patio Covers - Solid	Valuation	N/A	Varies	7/1/2021
27	Patio Covers - Lattice	Valuation	N/A	Varies	7/1/2021
28	Patio Covers - Enclosures	Valuation	N/A	Varies	7/1/2021
29	Pole Bases	Valuation	N/A	Varies	7/1/2021
30	Roofing	Valuation	N/A	Varies	7/1/2021
31	Storage Sheds	Valuation	N/A	Varies	7/1/2021
32	Stucco	Valuation	N/A	Varies	7/1/2021
33	Swimming Pools/Spas	Valuation	N/A	Varies	7/1/2021
34	Tenant Improvements - With Ceiling	Valuation	N/A	Varies	7/1/2021
35	Tenant Improvements - Without Ceiling	Valuation	N/A	Varies	7/1/2021
36	Trash Enclosures - Single	Valuation	N/A	Varies	7/1/2021
37	Trash Enclosures - Double	Valuation	N/A	Varies	7/1/2021
38	Walls - Retaining	Valuation	N/A	Varies	7/1/2021
39	Walls - Screen Garden	Valuation	N/A	Varies	7/1/2021
40	Walls - Tilt-Up Screen Walls	Valuation	N/A	Varies	7/1/2021
41	Window Changeout	Valuation	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
Electrical Permit Fees					
42	Electrical Permit Issuance Fee	Each	$ 41.63	$ 41.00	7/1/2021
43	Electrical Permit - Temporary Power Service Pedestal	Each	$ 86.33	$ 86.00	7/1/2021
44	Electrical Permit - Temporary Power Service Distribution system	Each	$ 43.17	$ 43.00	7/1/2021
45	Electrical Permit - outlet/switch/fixture	First 20 fixtures	$ 129.50	$ 129.00	7/1/2021
46	Electrical Permit - Additional Fixtures	Each	$ 2.94	$ 2.90	7/1/2021
47	Electrical Permit - Power Apparatus -up to and including 1	each HP, kW, kVA or kVAR	$ 143.83	$ 143.00	7/1/2021
48	Electrical Permit - Power Apparatus - over 1 to 10	each HP, kW, kVA or kVAR	$ 158.33	$ 158.00	7/1/2021
49	Electrical Permit - Power Apparatus - over 10 to 50	each HP, kW, kVA or kVAR	$ 172.66	$ 172.00	7/1/2021
50	Electrical Permit - Power Apparatus - over 50 to 100	each HP, kW, kVA or kVAR	$ 258.99	$ 258.00	7/1/2021
51	Electrical Permit - Power Apparatus - over 100	each HP, kW, kVA or kVAR	$ 345.32	$ 345.00	7/1/2021
52	Electrical Permit - Services -for services of 600 volts or less and not over 200 amperes in rating	Each	$ 172.66	$ 172.00	7/1/2021
53	Electrical Permit Fee - Services -for services of 600 volts or less and over 200 amperes to 1,000 amperes in rating	Each	$ 258.99	$ 258.00	7/1/2021
54	Electrical Permit Fee - Services -for services over 600 volts or over 1,000 amperes in rating	Each	$ 431.65	$ 431.00	7/1/2021
55	Electrical Permit Fee - Miscellaneous Apparatus, Conduits and Conductors	Each	$ 143.83	$ 143.00	7/1/2021
56	Electrical Permit Fee- Subpanel	Each	N/A	$ 172.00	7/1/2021
57	Electrical Permit Fee - Signs	Each	N/A	$ 86.00	7/1/2021
58	Electrical Permit Fee - Private Swimming Pools	Each Pool or Spa	N/A	$ 129.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
59	Electrical Permit Fee - Other Inspections and Fees, inspections outside of normal business hours: minimum charge 3 hrs.	Per Hour	$ 113.00	$ 113.00	7/1/2021
60	Electrical Permit Fee - Inspections	Per Hour	$ 113.00	$ 113.00	7/1/2021
61	Electrical Permit Fee - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
62	Electrical Permit Fee - Additional plan review	Per Hour	$ 113.00	$ 113.00	7/1/2021
63	New Construction Trades - Electrical : Residential	Per Square Foot	$ 0.10791	$ 0.1079	7/1/2021
64	New Construction Trades - Electrical : Commercial	Per Square Foot	$ 5.22301	$ 0.1200	7/1/2021
65	New Construction Trades - Electrical: Industrial / warehouse (0-50,000 sf)	Per Square Foot	$ 0.01209	$ 0.0120	7/1/2021
66	New Construction Trades - Electrical : Industrial / warehouse (>50,000 sf)	Per Square Foot	$ 0.00388	$ 0.0038	7/1/2021
Mechanical Permit Fees					
67	Mechanical Permit Issuance Fee	Each	$ 41.75	$ 41.00	7/1/2021
68	Mechanical Permit Fee (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -under 3 HP (10.6kW) or to and including 100,000 Btu/h (29.3kW)	Each	$ 172.66	$ 172.00	7/1/2021
69	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems-over 3 HP (10.6kW) to and including 15 HP (52.7kW), or over 100,000 Btu (29.3kW) to and including 500,000 Btu/h (146.6kW)	Each	$ 215.83	$ 215.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
70	Mechanical Permit Fees (includes issuance fee) - Furnaces, Boilers, Compressors and Absorption Systems -over 15 HP (52.7 kW) to and including 30 HP (105.5 kW), over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW)	Each	$ 258.99	$ 258.00	7/1/2021
71	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 30 HP (105.5 kW) to and including 50 HP (176 kW), or over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW)	Each	$ 345.32	$ 345.00	7/1/2021
72	Mechanical Permit Fees (includes issuance fee)- Furnaces, Boilers, Compressors and Absorption Systems -over 50 HP (176 kW) or over 1,7500,000 Btu/h (512.9kW)	Each	$ 517.98	$ 517.00	7/1/2021
73	Mechanical Permit Fees (includes issuance fee)- Evaporative Coolers	Each	$ 172.66	$ 172.00	7/1/2021
74	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each fan connected to single duct	Each	$ 172.66	$ 172.00	7/1/2021
75	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust-each which is not a portion of any heating or a/c system authorized by a permit	Each	$ 172.66	$ 172.00	7/1/2021
76	Mechanical Permit Fees (includes issuance fee)- Ventilation and Exhaust -each hood served by mechanical exhaust	Each	$ 345.32	$ 345.00	7/1/2021

III. - Community Development

Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
77	Mechanical Permit Fee - Process Piping	Valuation	N/A	Varies	7/1/2021
78	Mechanical Permit Fee - Wall Heater	Each	N/A	$ 43.00	7/1/2021
79	Mechanical Permit Fees - Miscellaneous (one inspection)	Each	$ 86.33	$ 86.00	7/1/2021
80	Mechanical Permit Fees - Inspection outside of normal business hours	Per Hour	$ 113.00	$ 113.00	7/1/2021
81	Mechanical Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
82	Mechanical Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
83	Mechanical Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
84	New Construction Trades - Mechanical: Residential	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
85	New Construction Trades - Mechanical : Commercial	Per Square Foot	$ 0.0647	$ 0.0647	7/1/2021
Plumbing Permit Fees					
86	Permit issuance fee	Each	$ 41.75	$ 41.00	7/1/2021
87	Plumbing Permit Fees - First 15 Fixtures and Vents (new & alterations)	First 15 Fixtures/Vents	$ 172.66	$ 172.50	7/1/2021
88	Plumbing Permit Fees - Each Additional	Each	$ 172.66	$ 10.78	7/1/2021
89	Plumbing Permit Fees - Sewers	Each	$ 172.66	$ 172.50	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
90	Plumbing Permit Fees - Sewage disposal system	Each	$ 431.65	$ 431.50	7/1/2021
91	Plumbing Permit Fees -Industrial waste pretreatment interceptor	Each	$ 172.66	$ 172.50	7/1/2021
92	Plumbing Permit Fees - Water Piping First 20 outlets	First 20 Outlets	$ 129.50	$ 129.00	7/1/2021
93	Plumbing Permit Fees - Water Piping Each Additional Outlet	Each Outlet	$ 129.50	$ 5.23	7/1/2021
94	Plumbing Permit Fees - Water heater including vent	Each	$ 172.66	$ 12.92	7/1/2021
95	Plumbing Permit Fees - Gas Piping Systems First 5 Outlets	First 5 Outlets	$ 647.50	$ 129.50	7/1/2021
96	Plumbing Permit Fees - Gas Piping Systems Each Additional	Each Addt'l Outlet	$ 129.50	$ 6.77	7/1/2021
97	Plumbing Permit Fees - Lawn Sprinklers	Each lawn sprinkler system on any one meter	$ 172.66	$ 172.50	7/1/2021
98	Plumbing Permit Fees - Backflow Protection Devices	Each Device	$ 172.66	$ 172.50	7/1/2021
99	Plumbing Permit Fees - Miscellaneous	Each appliance or equipment regulated by the Plumbing Code but not classed in other appliance categories, or for which no fee is listed in this code	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
100	Plumbing Permit Fees - Reinspection Fees	Per Hour	$ 113.00	$ 113.00	7/1/2021
101	Plumbing Permit Fees - No Fee Specifically Indicated	Per Hour	$ 113.00	$ 113.00	7/1/2021
102	Plumbing Permit Fees - Additional Plan Review	Per Hour	$ 113.00	$ 113.00	7/1/2021
103	New Construction Trades - Plumbing : Residential	Per SF	$ 0.10791	$ 0.1070	7/1/2021
	Grading Plan Review Fees (up to three submittals of plans)				
104	Grading plan check, rough (0-10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
105	Grading plan check, rough (>10 acres)	Each	$ 1,381.29	$ 1,381.00	7/1/2021
106	Grading plan check, rough (each additional 5 acres)	Each	$ 345.32	$ 345.00	7/1/2021
107	Grading plan check, precise (0-10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
108	Grading plan check, precise (>10 acres)	Each	$ 1,726.61	$ 1,726.50	7/1/2021
109	Grading plan check, precise (each additional 5 acres)	Each	$ 517.98	$ 517.50	7/1/2021
	Grading Permit Fees				
110	Grading permit, rough (0-50 acres)	Each	$ 345.32	$ 345.00	7/1/2021
111	Grading permit, rough (each additional 10 acres)	Each	$ 86.33	$ 86.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 1. Building Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
112	Grading permit, precise (0-50 acres)	Each	$ 431.65	$ 431.50	7/1/2021
113	Grading permit, precise (each additional 10 acres)	Each	$ 129.50	$ 129.50	7/1/2021
114	Soil Disturbance Permit - Dust Control	Each	N/A	$ 250.00	7/1/2021
Miscellaneous Fees					
115	Building plan retention fee	Per Plan Page	N/A	$ 1.50	7/1/2021
116	Permits, Calcs and Misc. doc	8.5x11 / per page	N/A	$ 0.35	7/1/2021
Sewer, Water, Storm Drain Permit & Plan Check Fees					
117	Sewer Main Inspection Permit	Per Lineal Foot	$ 3.17	$ 3.17	7/1/2021
118	Water Main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
119	Storm Drain - main Inspection Permit	Per Lineal Foot	$ 0.63	$ 0.63	7/1/2021
120	Storm Drain - yard Inspection Permit	Per Lineal Foot	$ 0.29	$ 0.29	7/1/2021
121	Sewer, Water, Storm Drain Plan check fee = % of permit valuation	% of Permit Valuation	2.00%	2.00%	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Inspection / Permit - Base Fee	Base	$ 164.09	$ 164.00	7/1/2021
2	Inspection / Permit Fees $1 - $50,000	Construction cost estimate	5.97%	5.97%	7/1/2021
3	Inspection / Permit Fees $50,001 - $500,000	Construction cost estimate	5.45%	5.45%	7/1/2021
4	Inspection / Permit Fees >$500,000	Construction cost estimate	4.24%	4.24%	7/1/2021
5	Plan Check - Base Fee (includes grading, NPDES etc.)	Base	$ 1,371.16	$ 1,371.00	7/1/2021
6	Plan Check Fees $1 - $50,000	Construction cost estimate	6.00%	6.00%	7/1/2021
7	Plan Check Fees $50,001 - $500,000	Construction cost estimate	4.65%	4.65%	7/1/2021
8	Plan Check Fees >$500,000	Construction cost estimate	3.62%	3.62%	7/1/2021
9	Encroachment Permit Fee	Each	$ 162.91	$ 112.80	8/21/2021

III. - Community Development

Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
10	Inspection for minor improvements (driveways, pole replacement, etc.)	Inspection for single item (2 inspections, before and after)	$ 167.02	$ 108.15	8/21/2021
11	Traffic Control Permit	Each	$ 103.49	$ 103.00	7/1/2021
12	Overload Permit (single trip) - One time	Each	N/A	$ 19.20	8/21/2021
13	Overload Permit (round trip) - Annual	Each	N/A	$ 108.00	8/21/2021
14	Permit Penalty Fee	Percent of Permit Value	N/A	50.00%	7/1/2021
15	Map Review (Parcel/Tract) - Base Fee	Each	$ 7,666.96	$ 2,588.40	8/21/2021
16	Map Review - Addt'l per parcel	Per Parcel	$ 70.48	$ 70.00	8/21/2021
17	Certificate of Compliance	Each	$ 790.69	$ 745.20	8/21/2021
18	Lot Line Adjustment - Base Fee	Each	$ 1,286.16	$ 1,159.20	8/21/2021
19	Lot Line Adjustment - Addt'l per parcel	Per parcel	$ 59.43	$ 59.00	7/1/2021
20	General Vacation	Each	$ 3,805.94	$ 1,902.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
21	Quit Claim / Summary Vacation	Each	$ 2,049.22	$ 1,087.20	8/21/2021
22	Certificate of Correction	Each	$ 823.10	$ 480.00	8/21/2021
23	Easement review	Each	$ 1,691.08	$ 1,691.00	7/1/2021
24	NPDES business inspection fee - low priority	One inspection every 5 years	$ 59.43	$ 59.00	7/1/2021
25	NPDES business inspection fee - medium priority	One inspection every 2 years	$ 118.85	$ 118.00	7/1/2021
26	NPDES business inspection fee - high priority	Inspection each year	$ 237.70	$ 237.50	7/1/2021
27	NPDES/WQMP Plan Review	Each	$ 2,160.65	$ 1,112.40	8/21/2021
28	NPDES Construction Inspection Fee (< 10 acres)	Each	$ 505.66	$ 505.50	7/1/2021
29	NPDES Construction Inspection Fee (10-25 acres)	Each	$ 905.50	$ 905.50	7/1/2021
30	NPDES Construction Inspection Fee (> 25 acres)	Each	$ 2,074.37	$ 2,074.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
31	Overtime Pay for Inspection (Weekends & Holidays)	Per Hour	N/A	Hourly Rate	7/1/2021
32	Misc. / Special Technical Report Review Fee	Actual Cost (Plus 25% Admin for consultant review, if applicable)	N/A	Varies	7/1/2021
33	Water Meter - OMUC Fee	Based on meter size - OMUC Fee	N/A	Varies	7/1/2021
34	Storm Water Pollution Abatement	Monthly BAU fee based on land use type & site acreage (applied to utility bill)	N/A	Varies	7/1/2021
35	Legal review	Per Hour	N/A	Hourly Rate	7/1/2021
PLANNING APPLICATIONS REVIEWED BY LAND DEVELOPMENT ENGINEERING					
36	Development Agreement	Deposit	N/A	Varies	7/1/2021
37	Development Agreement Amendment	Deposit	N/A	Varies	7/1/2021
38	Development Code Amendment	Deposit	N/A	Varies	7/1/2021
39	Environmental Impact Report	Deposit	N/A	Varies	7/1/2021
40	General Plan Amendment	Deposit	N/A	Varies	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 2. Engineering Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
41	Planned Unit Development	Deposit	N/A	Varies	7/1/2021
42	Planned Unit Development Amendment	Deposit	N/A	Varies	7/1/2021
43	Specific Plan	Deposit	N/A	Varies	7/1/2021
44	Specific Plan Amendment	Deposit	N/A	Varies	7/1/2021
45	Specific Plan Minor Amendment	Deposit	N/A	Varies	7/1/2021
46	Zone Change - 5 acres or more	Deposit	N/A	Varies	7/1/2021
47	Zone Change - Less than 5 acres	Deposit	N/A	Varies	7/1/2021

Resolution No. 2004-065
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
1	Land Conservation Contract Non-renewal	Each	$ 3,817.21	$ 1,401.85	8/21/2021
2	Land Conservation Contract Cancellation	Each	$ 16,679.06	$ 6,431.53	8/21/2021
3	Appeal-Homeowner	Each	N/A	$ 130.00	7/1/2021
4	Appeal-Other	Each	N/A	$ 902.00	7/1/2021
5	Covenants Conditions and Restrictions Review	Each	$ 4,940.68	$ 3,067.50	8/21/2021
6	Conditional Use Permit-Homeowner	Each	$ 4,894.70	$ 1,784.26	8/21/2021
7	Conditional Use Permit-Nonprofit	Each	$ 3,520.01	$ 2,691.60	8/21/2021
8	Conditional Use Permit-Other	Each	$ 5,901.35	$ 5,900.00	7/1/2021
9	Conditional Use Permit-Modification	Each	$ 5,901.35	$ 3,693.27	8/21/2021
10	Conditional Use Permit-w/ Development Plan	Each	$ 4,724.75	$ 1,567.20	8/21/2021
11	Conditional Use Permit Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
12	Determination of Use	Each	$ 3,316.06	$ 3,316.00	7/1/2021
13	Development Agreement	Deposit	N/A	$ 10,000.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
14	Development Agreement Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
15	Development Code Amendment	Deposit	N/A	$ 2,000.00	7/1/2021
16	Development Plan Review - 5 acres or more	Each	$ 24,846.74	$ 17,914.80	8/21/2021
17	Development Plan Review - less than 5 acres	Each	$ 21,465.84	$ 11,913.15	8/21/2021
18	Development Plan Revision	Each	$ 16,735.49	$ 4,582.85	8/21/2021
19	Development Plan Time Extension	Each	$ 1,381.04	$ 1,380.00	7/1/2021
20	Environmental Assessment/Negative Declaration	Each	$ 3,155.59	$ 3,155.00	7/1/2021
21	Environmental Impact Report	Deposit	N/A	$ 10,000.00	7/1/2021
22	General Plan Amendment - Text	Deposit	N/A	$ 5,000.00	7/1/2021
23	General Plan Amendment - Map	Deposit	N/A	$ 7,500.00	7/1/2021
24	Historic Preservation - COA-Nonresidential	Each	$ 4,677.04	$ 1,533.75	8/21/2021
25	Historic Preservation - COA-Residential	Each	$ 4,677.04	$ 214.73	8/21/2021
26	Historic Preservation - COEH-Nonresidential	Each	$ 6,846.51	$ 2,045.00	8/21/2021
27	Historic Preservation - COEH-Residential	Each	$ 6,846.51	$ 268.92	8/21/2021
28	Historic Preservation - Removal from Eligibility List (No Charge)	Each	$ 6,366.15	No Charge	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
29	Historic Preservation - Waiver	Each	$ 42.96	$ 42.50	7/1/2021
30	Historic Preservation - Landmark Designation (No Charge)	Each	$ 12,025.51	No Charge	7/1/2021
31	Historic Preservation - Plaque	Actual Cost	Varies	Varies	7/1/2021
32	Inspection - Construction (3 inspections)	Each	$ 5,342.05	$ 613.50	8/21/2021
33	Inspection - Field (includes construction inspections in excess of 3)	Each	$ 1,335.51	$ 255.63	8/21/2021
34	Residential Mills Act[A]	Each	$ 10,939.36	$ 214.73	8/21/2021
35	Nonresidential Mills Act[A]	Each	$ 10,939.36	$ 669.74	8/21/2021
36	Large Family Daycare	Each	$ 2,127.81	$ 1,116.57	8/21/2021
37	Lodging House Permit	Each	$ 2,127.81	$ 2,127.00	7/1/2021
38	Massage Permits	Each	$ 2,127.81	$ 2,127.00	7/1/2021
39	Plan Check - 5 or more acres	Each	$ 9,196.43	$ 3,070.10	8/21/2021
40	Plan Check - less than 5 acres	Each	$ 5,685.72	$ 1,717.10	8/21/2021
41	Planned Unit Development	Deposit	$ 20,926.28	$ 10,225.00	8/21/2021
42	Planned Unit Development Amendment	Deposit	$ 13,947.59	$ 7,668.75	8/21/2021
43	Planning Area Plan	Deposit	N/A	$ 7,500.00	7/1/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
44	Planning Director Review	Each	$ 1,057.33	$ 706.55	8/21/2021
45	Preliminary Plan Review	Each	$ 4,207.14	$ 4,203.00	7/1/2021
46	Public Hearing - City Council	Each	$ 769.75	$ 604.30	8/21/2021
47	Public Hearing - Development Advisory Board	Each	$ 497.12	$ 325.16	8/21/2021
48	Public Hearing - Planning Commission	Each	$ 1,325.44	$ 604.30	8/21/2021
49	Public Hearing - Zoning Administrator-Homeowner	Each	$ 1,764.14	$ 74.64	8/21/2021
50	Public Hearing - Zoning Administrator-Other	Each	$ 1,764.14	$ 584.87	8/21/2021
51	Sign Plan	Each	$ 519.34	$ 246.42	8/21/2021
52	Sign Program - administrative approval	Each	$ 2,825.58	$ 862.99	8/21/2021
53	Sign Program - planning commission approval	Each	$ 3,059.86	$ 2,934.58	8/21/2021
54	Specific Plan	Deposit	N/A	$ 20,000.00	7/1/2021
55	Specific Plan Amendment	Deposit	N/A	$ 7,500.00	7/1/2021
56	Specific Plan Minor Amendment	Deposit	N/A	$ 620.00	7/1/2021
57	Temporary Sign Permit	Each	$ 124.89	$ 58.28	8/21/2021
58	Temporary Use Permit - interim uses	Each	$ 2,757.54	$ 838.45	8/21/2021
59	Temporary Use Permit - special event	Each	$ 1,064.72	$ 492.00	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
60	Tentative Parcel Map	Each	$ 15,986.07	$ 6,641.14	8/21/2021
61	Tentative Parcel Map Modification	Each	$ 11,706.32	$ 4,262.80	8/21/2021
62	Tentative Tract Map (Base)	Flat	$ 18,403.54	$ 9,805.78	8/21/2021
63	Tentative Tract Map (per lot)	Each	$ 65.00	$ 65.00	7/1/2021
64	Tentative Tract Map Modification	Each	$ 12,681.18	$ 3,125.78	8/21/2021
65	Tentative Tract/Parcel Map Time Extension	Each	$ 7,378.97	$ 1,227.00	8/21/2021
66	Variance - Administrative Exception or Minor	Each	$ 3,978.78	$ 2,451.96	8/21/2021
67	Variance - Homeowner	Each	$ 3,978.78	$ 309.82	8/21/2021
68	Variance - Other	Each	$ 5,266.37	$ 3,508.20	8/21/2021
69	Wireless Permit: Facilities in Public Rights-of-Way	Each	$ 3,978.78	$ 3,978.00	7/1/2021
70	Zone Change - 5 acres or more	Each	$ 10,575.56	$ 7,666.71	8/21/2021
71	Zone Change - Less than 5 acres	Each	$ 9,194.99	$ 7,497.99	8/21/2021
72	Zoning Administrator Review - Homeowner	Each	$ 3,978.78	$ 200.41	8/21/2021
73	Zoning Administrator Review - Other	Each	$ 3,978.78	$ 1,160.54	8/21/2021
74	Zoning/Land Use Verification Letter	Each	$ 499.56	$ 195.30	8/21/2021

City of Ontario
FY 2021-22 Citywide Fee Schedule - *Fees, Fines & Charges*

III. - Community Development
Section 3. Planning Fees

Fee #	Fee Description	Unit/Notes	Total Cost to Provide Services	FY 2021-22 Fee	Effective Date
75	Notice of Exemption Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
76	Notice of Determination Filing Fee	County Fee	N/A	$ 50.00	7/1/2021
77	Filing of a Negative/Mitigated Declaration	County Fee	N/A	$ 2,404.75	7/1/2021
78	Filing of an Environmental Impact Report	County Fee	N/A	$ 3,321.00	7/1/2021
79	Outside consultant or legal expenses	Actual Cost Plus 25% Admin. Fee	N/A	Varies	7/1/2021
80	Advanced Long Range Planning	Percent of all Building Permits & Planning Applications	$ 914,960.12	5.00%	7/1/2021

Resolution No. 2004-065 (Entitlement Processing Fees excl. Mills Act)
[A] Resolution No. 2005-115 (Mills Act Fees)
Resolution No. 2020-009
Resolution No. 2020-083
Resolution No. 2021-062
CPI Adjustment of 2.25% applied to select fees based on year-over-year change from Jan. 2020 to Jan. 2021 as measured by "Riverside-San Bernardino-Ontario Consumer Price Index"

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-003-A, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT A OWNER LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 384 RESIDENTIAL UNITS AND UP TO 25,256 SQUARE FEET OF COMMERCIAL/OFFICE/ RETAIL USES, ON APPROXIMETLY 4.83 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ONTARIO CENTER PARKWAY AND CONCOURS STREET, WITHIN MIXED-USE SUBAREA 16 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: NORTHEAST PORTION OF 0210-205-01.

WHEREAS, OTC Lot A Owner LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-A, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 4.83 acres of land, consisting of the northeast Toyota Arena Parking lot, located at the southwest corner of Ontario Center Parkway and Concours Street. The project site within the proposed mixed-use Subarea 16 of the Piemonte Overlay at the Ontario Center Specific Plan, and is presently vacant and improved with the Toyota Area parking lot; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration (hereinafter referred to as “MND”) was subsequently adopted on May 16, 2017, in which development and use of the Project site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay of the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to approve the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution PC22-027, recommending the City Council approve the Application; and

WHEREAS, on July 19, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2. ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures.

SECTION 3. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario

approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making authority for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the CITY COUNCIL, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

a. The Development Agreement applies to approximately 4.83 acres of land generally located southwest corner of Ontario Center Parkway and Concours Street; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot A, consisting of 384 residential units and up to 25,256 square feet retail uses, within the proposed Mixed-Use Subarea 16 of the Piemonte Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This

Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA222-003-A) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7. ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 11. ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3217 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 19, 2022 and adopted at the regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3217 duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022 and that Summaries of the Ordinance were published on July 26, 2022 and August 9, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

<u>ATTACHMENT A</u>:

File No. PDA22-003-A

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Lot A Owner LLC

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC LOT A Owner, LLC

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-003-A

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot A, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-A; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots B, C, and D. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots B, C, and D as follows:

Lot B - Development Plan Entitlement – File No. PDEV22-014;

Lot C - Development Plan Entitlement – File No. PDEV22-014; and

Lot D - Development Plan Entitlement – File No. PDEV22-014.

Lots B, C, and D are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots B, C, and D in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots B, C, and D currently comprised of the following development as shown on Table 1 below:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot A) of up to 25,256 square feet of commercial/office/retail uses and 384 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.31 "Property" means the real property described and depicted on Exhibit "A" to this Agreement. The Property is referred to as Lot A on Exhibit "B". The Property constitutes one parcel of the Phased Development. Lots B, C, and D comprise the remaining parcels of the planned Phased Development.

1.1.32 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.33 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.34 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.35 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.36 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.37 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.38 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description and depiction of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot A Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the Final Non-Appealable Date.
2.	Commencement of Construction of the Project	On or before two (2) years following the Final Non-Appealable Date. In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21)

		days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent

(3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to

any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death

(Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County

Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner

Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of

the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement

shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot A Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

LEASE AREA DESCRIPTION (LOT A)

APN NO. 0210-205-01

THAT PORTION OF LAND IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, LYING WITHIN A PORTION OF PARCEL 1 OF PARCEL MAP NO. 17978 AS PER MAP FILED IN BOOK 216 PAGES 44 AND 45 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE ALONG THE EASTERLY BOUNDARY LINE OF SAID PARCEL 1, SAID COURSE HAVING A BEARING OF N 33°23' 13" E AS SHOWN ON SAID PARCEL MAP. THENCE, N 33° 23' 13" E 42.97' ALONG SAID EASTERLY LINE. THENCE, LEAVING SAID EASTERLY LINEN 56°36' 47" W 18.58' TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION. THENCE, ALONG THE FOLLOWING DESCRIBED COURSES:

N 33°23' 24" E 259.97'

S 56°36' 36" E 8.00'

N 33°23' 24" E 25.41'

N 56°36' 36" W 5.50'

N 33°23' 24" E 30.58'

N 56°36' 36" W 18.50'

N 33°23' 24" E 46.27'

N 0° 00' 00" E 19.25'

N 90° 00' 00" E 30.59'

N 0° 00' 00" E 67.50'

N 90° 00' 00" W 274.60'

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DESCRIPTION (LOT A)

N O' 00' 00" E 8.00'

N 90° 00' 00" W 25.41'

SO' 00' 00" W 8.00'

N 90° 00' 00" W 251.51'

SO' 00' 00" W 30.58'

N 90° 00' 00" W 16.82' TO THE BEGINNING OF A NON-TANGENT 31.67' RADIUS CURVE CONCAVE SOUTHEASTERLY AND TO WHICH A RADIAL LINE BEARS N 78°55' 48" E. THENCE, NORTHWESTERLY, WESTERLY, AND SOUTHEASTERLY 110.94' ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 200' 43' 26". THENCE, ALONG THE FOLLOWING DESCRIBED COURSES:

S 80' 09' 47" W 25.36'

S 09° 50' 13" E 343.01'

N 90° 00' 00" E 121.65

S 00° 00' 00" W 4.00'

S 90° 00' 00" E 32.63'

S 00° 00' 00" E 6.35'

N 90° 00' 00" E 25.41'

NO' 00' 00" E 10.11'

S 90° 00' 00" E 43.73'

S 00° 00' 00" W 2.11'

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DESCRIPTION (LOT A)

THENCE, S 90° 00' 00" E 152.72' TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE-DESCRIBED PARCEL OF LAND CONTAINS 210,250 SQUARE FEET, 4.83 ACRES MORE OR LESS.

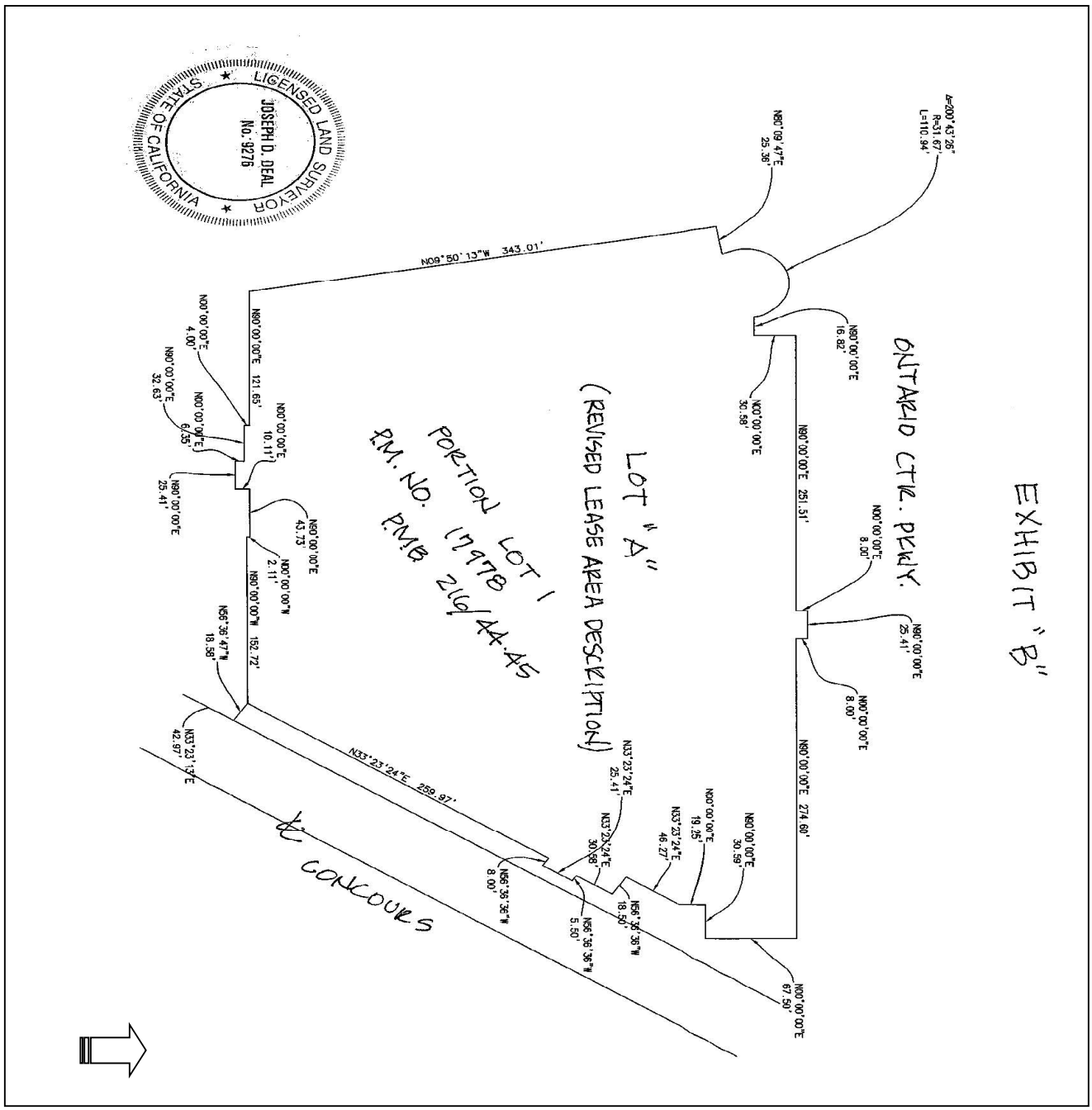


EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DEPICTION (LOT A)

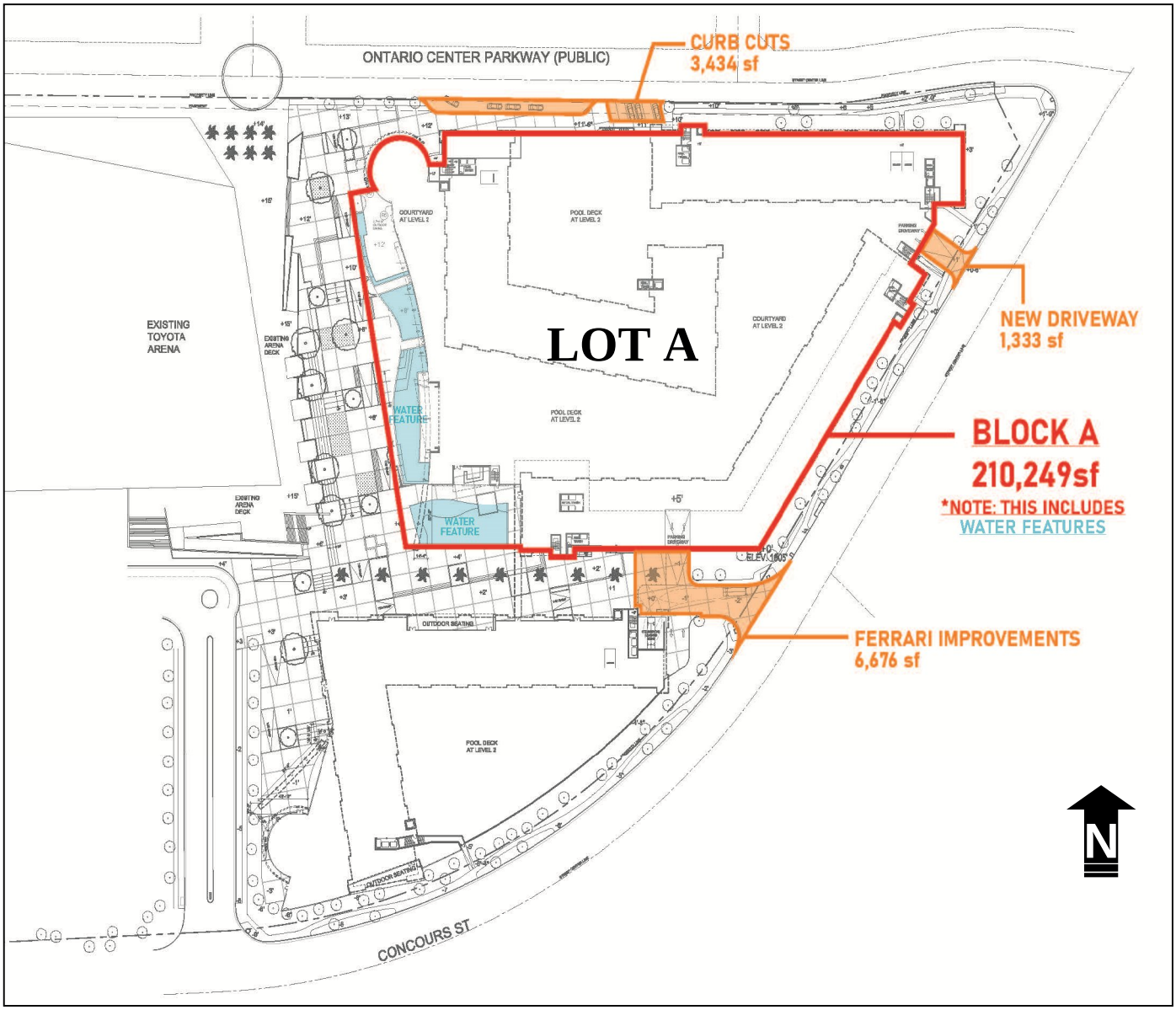
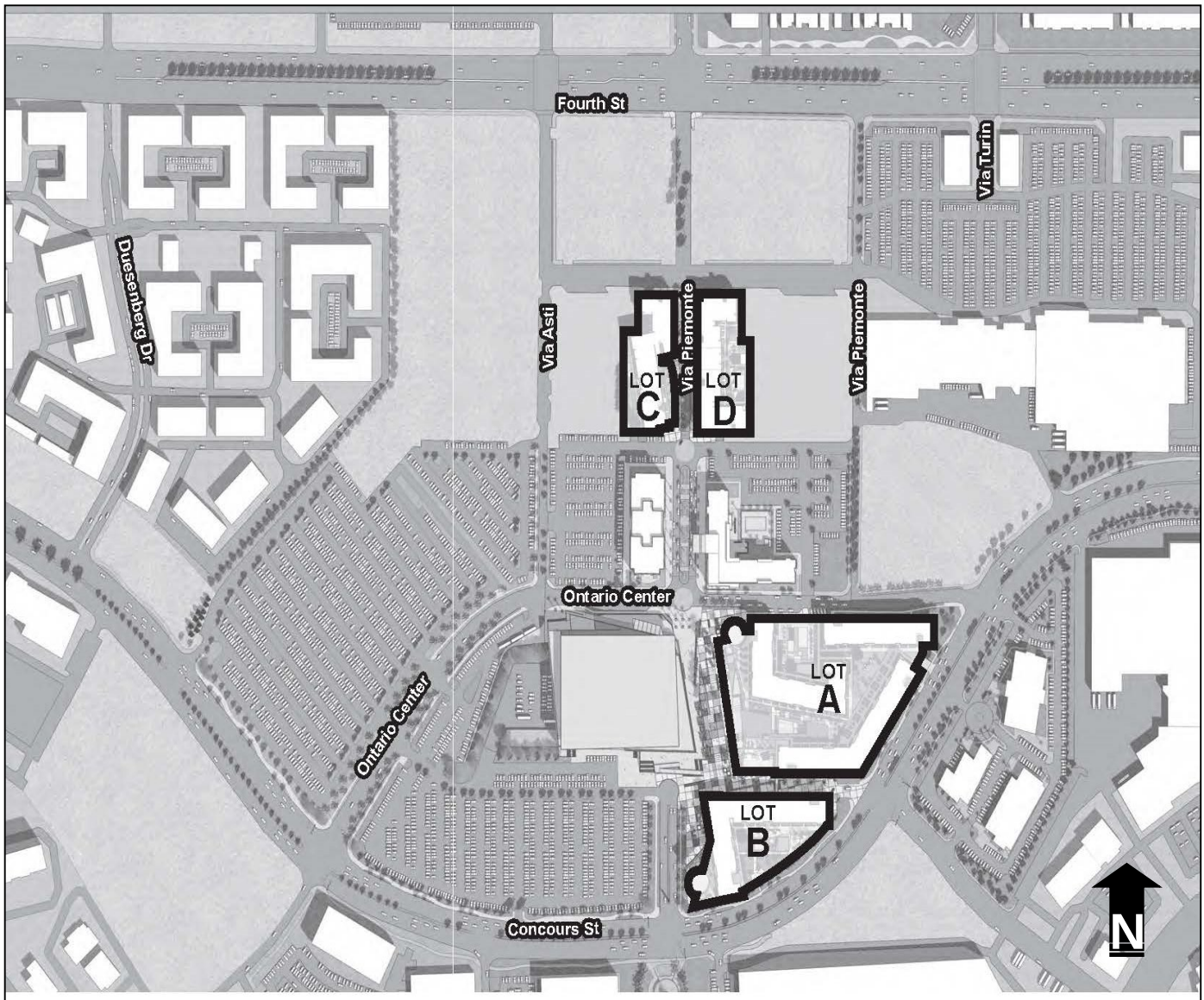


EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

MAP SHOWING PROPERTY AND ITS LOCATION



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Development Impact Fees as of the Approval Date

(Development Impact Fees to follow this page)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-003-B, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT B OWNER LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 112 RESIDENTIAL UNITS AND UP TO 20,802 SQUARE FEET OF COMMERCIAL/OFFICE/RETAIL USES, ON APPROXIMATELY 1.69 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ONTARIO CENTER PARKWAY AND FERRARI LANE, WITHIN MIXED-USE SUBAREA 17 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: SOUTHEAST PORTION OF 0210-205-01.

WHEREAS, OTC Lot B Owner LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-B, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 1.69 acres of land, consisting of the southeast parking Toyota Arena Parking lot, located at the southwest corner of Ontario Center Parkway and Ferrari Lane. The project site is within the proposed mixed-use Subarea 17 of the Piemonte Overlay of the Ontario Center Specific Plan, and is presently vacant and improved with the Toyota Area parking lot; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration (hereinafter referred to as “MND”) was subsequently adopted on May 16, 2017, in which development and use of the Project site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay of the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to approve the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution PC22-028, recommending the City Council approve the Application; and

WHEREAS, on July 19, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2. ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures.

SECTION 3. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario

approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making authority for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the CITY COUNCIL, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

a. The Development Agreement applies to approximately 4.83 acres of land generally located southwest corner of Ontario Center Parkway and Concours Street; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for lot b, consisting of 112 residential units and up to 20,802 square feet of commercial/office/retail uses, within the proposed Mixed-Use Subarea 17 of the Piemonte Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant the right to develop, the ability to quantify the fees; and establish the terms, and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte

Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA222-003-B) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7. ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 11. ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3218 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 19, 2022 and adopted at the regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3218 duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022 and that Summaries of the Ordinance were published on July 26, 2022 and August 9, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA22-003-B

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Lot B Owner LLC

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Lot B Owner, LLC

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-003-B

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot B, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-B; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq.*) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots A, C, and D. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots A, C, and D as follows:

Lot A - Development Plan Entitlement – File No. PDEV22-014;

Lot C - Development Plan Entitlement – File No. PDEV22-014; and

Lot D - Development Plan Entitlement – File No. PDEV22-014.

Lots A, C, and D are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots A, C, and D in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots A, C, and D currently comprised of the following development:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot B) of up to 20,802 square feet of commercial/office/retail uses and 112 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.131 "Property" means the real property described and depicted Exhibit "A" to this Agreement. The Property is referred to as Lot B on Exhibit B. The Property constitutes one parcel of the Phased Development. Lots A, C, and D comprise the remaining parcels of the planned Phased Development.

1.1.32 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.33"Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.34"Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.35"Security Instrument" shall have the meaning set forth in Section 10.

1.1.36"Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.37"Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.38"Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description and depiction of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot B Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.
2.	Commencement of Construction of the Project	On or before two (2) years following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.

		In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21) days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use

Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent (3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for

purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not

acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the

terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related

Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time

thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death (Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a

California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing

with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall

continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or

threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this

Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot B Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

City OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

APN NO. 0210-205-01

That portion of land in the City of Ontario, County of San Bernardino, State of California, lying within a portion of Parcel 1 of Parcel Map No. 17978 as per map filed in Book 216 pages 44 and 45 of Parcel Maps in the office of the County Recorder of said County; described as follows:

Beginning at the southwesterly terminus of that certain course along the easterly boundary line of said Parcel 1, said course having a bearing of N 33°23' 13" E as shown on said Parcel Map, said point also being the beginning of a 717.00' radius curve, concave northwesterly. Thence, southwesterly 128.35' along said curve through a central angle of 10°15' 22". Thence, leaving said easterly boundary line, N 46°21' 25" W 18.33' to the true point of beginning of this description. Thence, along the following described courses:

N 00°00'00" E 63.07'

N 90°00'00" W 28.23'

N 00°00'00" E 12.67'

N 90°00'00" W 25.77'

S 00°00'00" W 11.00'

N 90°00'00" W 46.21'

N 00°00'00" E 0.67'

N 90°00'00" W 13.71'

S 00°00'00" W 0.67'

N 90°00'00" W 65.95'

N 00°00'00" E 6.00'

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

N 90°00'00" W 119.26'

S 00°00'00" W 5.00'

N 90°00'00" W 15.98'

S 00°00'00" W 1.00'

N 90°00'00" W 54.75'

S 09°56'06" E 19.72'

S 80°03'54" W 1.00'

S 09°56'06" E 38.55'

N 80°03'54" E 1.00'

S 09°56'06" E 42.96'

S 17°02'26" W 90.75' to the beginning of a non□tangent 31.67' radius curve concave southeasterly and to which point a radial line bears N 20°28'42" E. Thence, westerly, southerly, and southeasterly 103.28' along said curve through a central angle of 186°52'31". Thence, S 17°02'26" W 34.39' to the beginning of a non□tangent 751.75' radius curve concave northerly, and to which point a radial line bears S 09°26'45" E. Thence, northeasterly 74.89' along said curve through a central angle of 5°42'27". Thence, N 15°12'11" W 8.83'. Thence, N 71°45'08" E
78.87'. Thence, S 21°24'33" E 8.83' to the beginning of a non□tangent 750.49' radius curve concave northwesterly and to which point a radial line bears
S 21°17'23" E. Thence, northeasterly 46.48' along said curve through a central angle of 3°32'55". Thence, N 24°54'42" W 4.01' to the beginning of a non□tangent 747.42' radius curve concave northwesterly to which point a radial line bears
S 24°49'36" E. Thence, northeasterly 266.34' along said curve through a central angle of 20°25'03" to the true point of beginning of this description.

The above□described parcel of land contains 73,640 Square Feet, 1.69 Acres more or less.

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

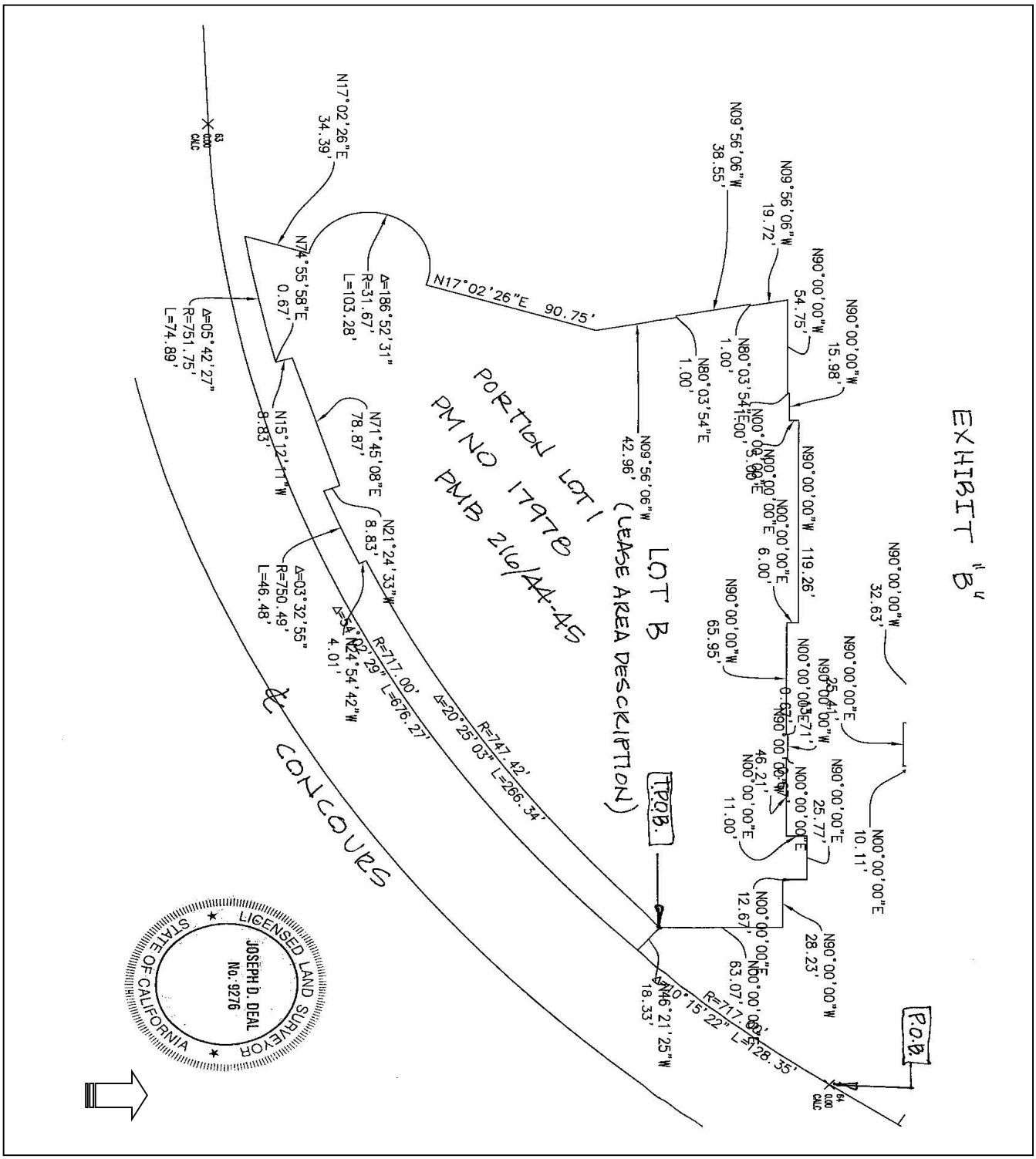


EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DEPICTION (LOT B)

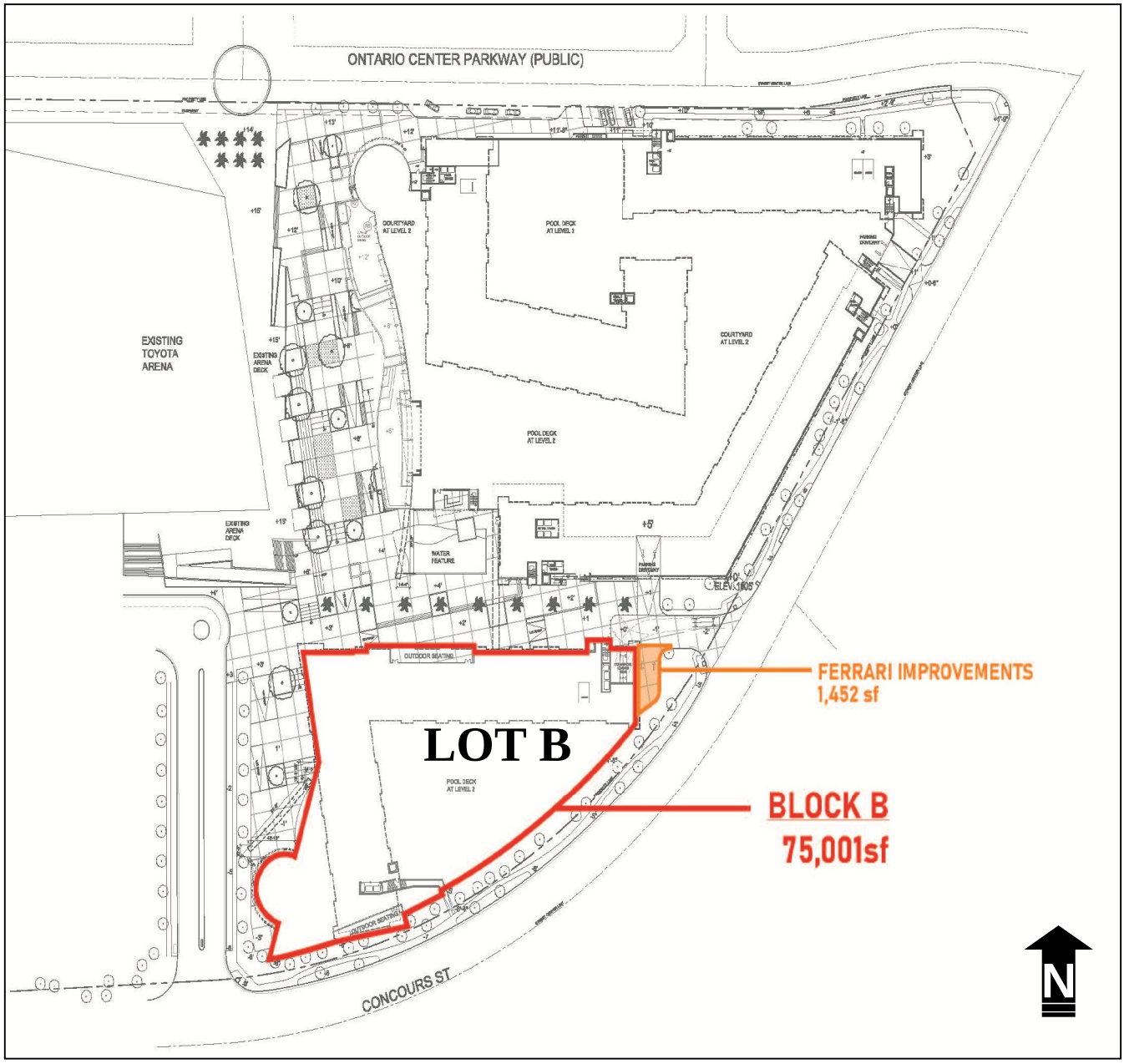
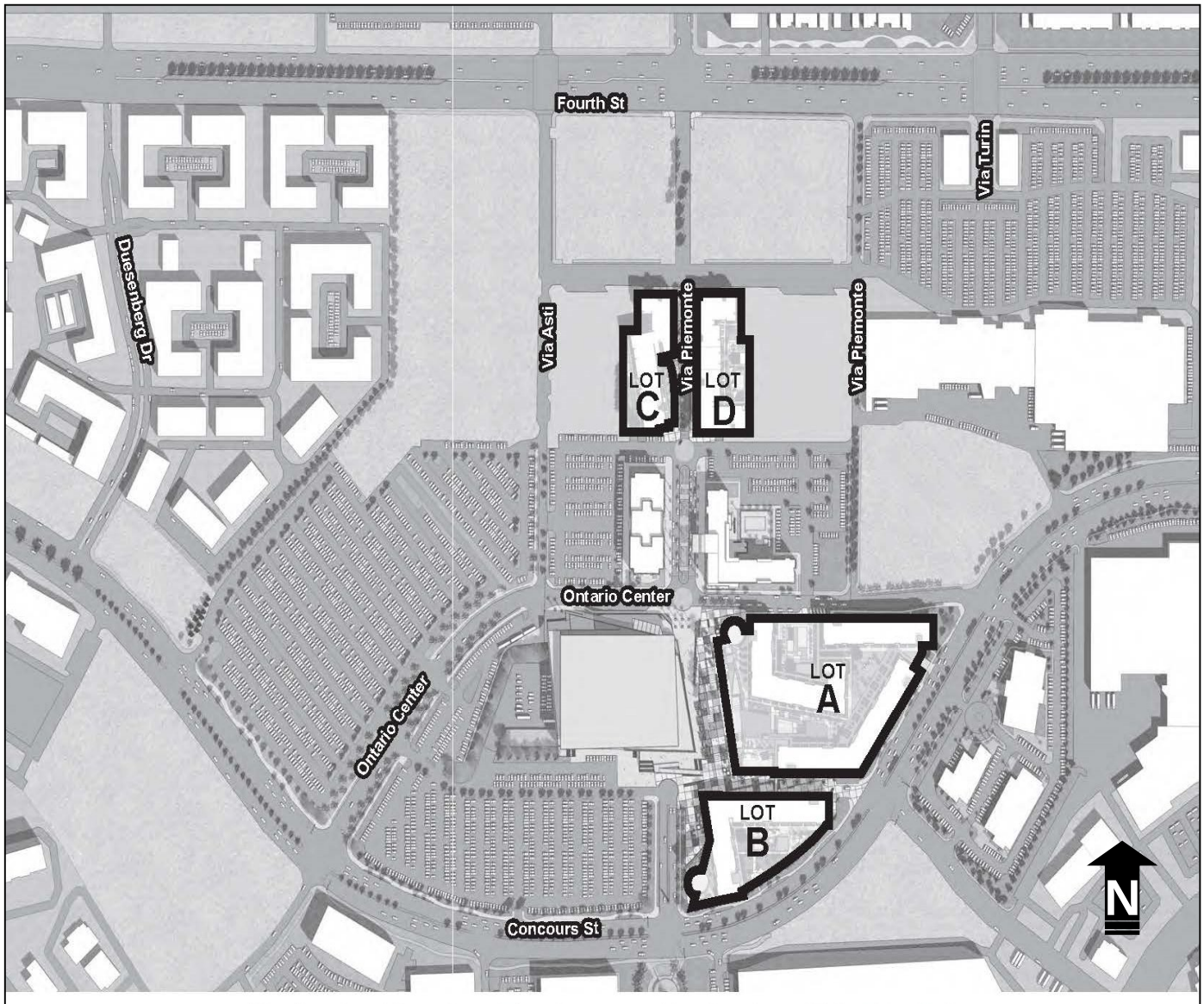


EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

MAP SHOWING PROPERTY AND ITS LOCATION



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

DEVELOPMENT IMPACT FEES AS OF THE APPROVAL DATE

(Development Impact Fees to follow this page)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-003-C, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT C OWNER LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 94 RESIDENTIAL UNITS AND UP TO 11,047 SQUARE FEET OF COMMERCIAL/OFFICE/RETAIL USES, ON APPROXIMATELY 1.93 ACRES OF LAND FOR LOCATED AT THE SOUTHWEST CORNER OF ONTARIO VIA PIEMONTE AND VIA VILLAGIO, WITHIN MIXED-USE SUBAREA 8 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-204-39.

WHEREAS, OTC Lot C Owner LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-C, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 1.93 acres of land, located at the southwest corner of Via Piemonte and Via Villagio. The project site within the proposed mixed-use Subarea 8 of the Piemonte Overlay at the Ontario Center Specific Plan, and is presently vacant; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration (hereinafter referred to as “MND”) was subsequently adopted on May 16, 2017, in which development and use of the Project site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay of the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to approve the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, a Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution PC22-029, recommending the City Council approve the Application; and

WHEREAS, on July 19, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2. ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures.

SECTION 3. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario

International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making authority for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the CITY COUNCIL, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

a. The Development Agreement applies to approximately 4.83 acres of land generally located southwest corner of Ontario Center Parkway and Concours Street; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot C, consisting of 94 residential units and up to 11,047 square feet of retail uses, within the proposed Mixed-Use Subarea 8 of the Piemonte Overlay of the Ontario Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This Application introduces no new significant environmental impacts. All previously adopted

mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA222-003-C) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7. ***Indemnification.*** The Applicant shall agree to defend, indemnify, and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 11. ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3219 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 19, 2022 and adopted at the regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3219 duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022 and that Summaries of the Ordinance were published on July 26, 2022 and August 9, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA22-003-C

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Lot C Owner LLC

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Lot C Owner, LLC

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-033-C

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot C, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-C; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots A, B, and D. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots A, B, and D as follows:

Lot A - Development Plan Entitlement – File No. PDEV22-014;

Lot B - Development Plan Entitlement – File No. PDEV22-014; and

Lot D - Development Plan Entitlement – File No. PDEV22-014.

Lots A, B, and D are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots A, B, and D in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots A, B, and D currently comprised of the following development as shown on Table 1 below:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot C) of up to 11,047 square feet of commercial/office/retail uses and 94 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.31 "Property" means the real property described and depicted on Exhibit "A" to this Agreement. The Property is referred to as Lot C on Exhibit "B". The Property constitutes one parcel of the Phased Development. Lots A, B, and D comprise the remaining parcels of the planned Phased Development.

1.1.32 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.33 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.34 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.35 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.36 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.37 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.38"Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description and depiction Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot C Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.
2.	Commencement of Construction of the Project	On or before two (2) years following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase; provided, however

		Commencement of Construction shall occur within 6 months of the Commencement of Construction of Lot D. In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21) days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the

regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent (3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for

purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not

acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the

terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related

Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time

thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death (Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a

California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing

with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall

continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or

threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this

Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot C Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

City OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

APN NO. 0210-204-38

BEING A PORTION OF PARCEL 20, PARCEL MAP NO. 17550, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 216, PAGES 7 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 20, AS SHOWN ON SAID PARCEL MAP;
THENCE NORTH 89° 22' 30" WEST, ALONG THE SOUTH LINE OF SAID PARCEL 20, 184.06 FEET;
THENCE LEAVING SAID SOUTH LINE, THE FOLLOWING THREE (3) COURSES:
NORTH 00° 00' 00' EAST 302.44 FEET;
NORTH 90° 00' 00" EAST 42.92 FEET;
NORTH 00° 00' 00" WEST 96.10 FEET, TO A POINT ON A LINE THAT IS PARALLEL WITH AND 31.00 FEET SOUTH, MEASURED AT RIGHT ANGLES, TO THE NORTH LINE OF SAID PARCEL 20;
THENCE, NORTH 89° 22' 30" WEST 287.51 FEET, TO A POINT ON THE WEST LINE OF SAID PARCEL 20;
THENCE, NORTH 00° 37' 30" EAST 31.00 FEET, TO THE NORTHWEST CORNER OF SAID PARCEL 20;
THENCE, SOUTH 89° 22' 30" EAST ALONG THE NORTH LINE OF SAID PARCEL 20, 430.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 20;
THENCE, SOUTH 00° 37' 30" WEST 430.00 FEET, TO THE POINT OF BEGINNING;

SAID LAND IS SHOWN AS PARCEL B OF LOT LINE ADJUSTMENT NO. LLA17-008, RECORDED SEPTEMBER 7, 2017 AS INSTRUMENT NO. 2017-0370546, OF OFFICIAL RECORDS.

EXHIBIT "A" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DEPICTION (LOT C)

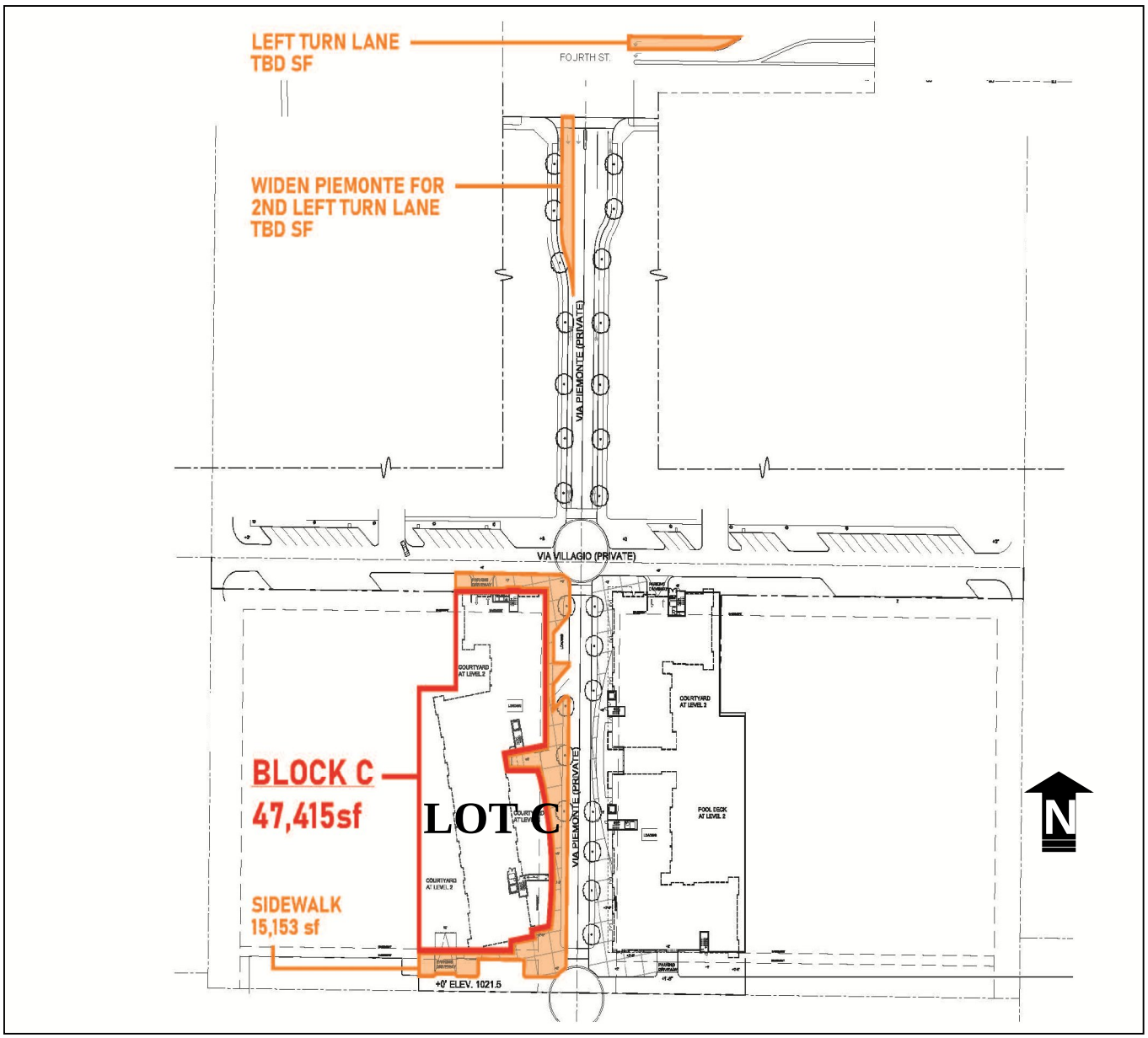
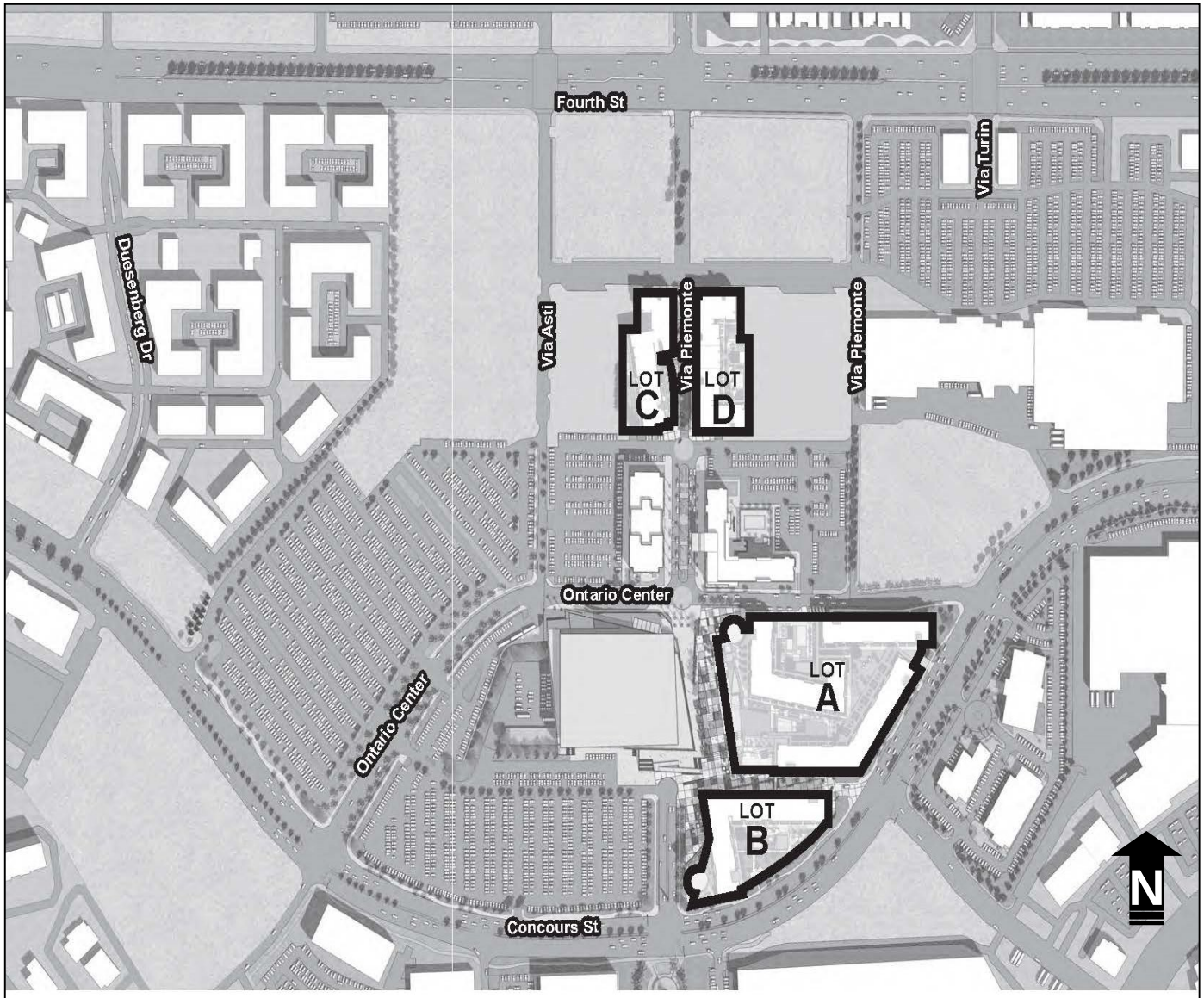


EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

MAP SHOWING PROPERTY AND ITS LOCATION



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

DEVELOPMENT IMPACT FEES AS OF THE APPROVAL DATE

(Development Impact Fees to follow this page)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FILE NO. PDA22-003-D, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND OTC LOT D OWNER, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR A DEVELOPMENT PLAN (FILE NO. PDEV22-014) TO CONSTRUCT 104 RESIDENTIAL UNITS AND UP TO 14,095 SQUARE FEET OF COMMERCIAL/OFFICE/RETAIL USES, ON APPROXIMATELY 2.04 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF ONTARIO VIA PIEMONTE AND VIA VILLAGIO WITHIN THE MIXED-USE SUBAREA 11 OF THE PIEMONTE OVERLAY OF THE ONTARIO CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-204-38.

WHEREAS, OTC Lot D Owner LLC, ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-003-D, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 2.04 acres of land, located at the southeast corner of Via Piemonte and Via Villagio. The project site within the proposed mixed-use Subarea 11 of the Piemonte Overlay of the Ontario Center Specific Plan, and is presently vacant; and

WHEREAS, in 2006, the City Council approved the creation of the Piemonte Overlay of the Ontario Center Specific Plan (“Piemonte Overlay”), within the Urban Commercial land use district of the Ontario Center Specific Plan, establishing a master plan for the development of approximately 1.3 million square feet of retail, office, hotel, and entertainment uses, and more than 800 multiple-family dwelling units on the 84-acre overlay site. Several Specific Plan Amendments have been approved for the Piemonte Overlay, modifying development intensities, parking requirements, architectural guidelines, and land use designations. The most recent Specific Plan Amendment, File No. PSPA21-001, was approved by the City Council on April 19, 2022, and involved expanding the overlay boundary, adding the Mixed-Use land use designation, and establishing design guidelines for mixed-use projects; and

WHEREAS, the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) was certified on March 19, 1991, (hereinafter referred to as “Certified EIR”), in which development and use of the Project site was discussed in the Amendment to the Ontario Center Specific Plan (File No. 4059-SPA); and

WHEREAS, a Mitigated Negative Declaration (hereinafter referred to as “MND”) was subsequently adopted on May 16, 2017, in which development and use of the Project site was discussed in association with an Amendment to the Ontario Center Specific Plan (File No. PSPA16-003); and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified EIR and adopted MND, an Addendum to the Certified EIR and MND (hereinafter collectively referred to as “EIR Addendum”) in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as “CEQA”); and

WHEREAS, the EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay of the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the Certified EIR and EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to approve the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as “ALUCP”), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, A Development Plan Application (File No. PDEV22-014) to construct four mixed-use buildings totaling 63,655 commercial square feet and 694 dwelling units on 13.3 acres of land located at 4000 East Ontario Center Parkway and the southeast and southwest corner of Via Piemonte and Via Villagio, within the Mixed-Use land use district of the Piemonte Overlay of the Ontario Center Specific Plan, has been filed in conjunction with the Development Agreement Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution PC22-030, recommending the City Council approve the Application; and

WHEREAS, on July 19, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearinghouse No. 1989041009) ("Certified EIR"), certified by the Ontario City Council on March 19, 1991, in conjunction with File No. 4059-SPA, in combination with an Addendum to the Mitigated Negative Declaration, adopted by the Ontario City Council on May 17, 2017, in conjunction with File No. PSPA16-003. In addition, an EIR Addendum was adopted by the City Council on April 19, 2022, in conjunction with File No. PSPA21-001, a Specific Plan Amendment to the Piemonte Overlay at the Ontario Center Specific Plan, in which development and use of the Project site was discussed; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2. ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures.

SECTION 3. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The proposed changes affect two of the four properties listed in the Available Land Inventory (Subareas 8 and 11; Map ID No. 124 and 125). The residential capacity proposed in this Project is consistent with the number of dwelling units (198) and density (48 du/ac) specified in the Available Land Inventory.

SECTION 4. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for

Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making authority for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the CITY COUNCIL, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

a. The Development Agreement applies to approximately 4.83 acres of land generally located southwest corner of Ontario Center Parkway and Concours Street; and

b. The Development Agreement establishes parameters for the development of a mixed-use project for Lot D, consisting of 104 residential units and up to 14,095 square feet of commercial/office/retail uses, within the proposed mixed-use subarea 11 of the Piemonte Overlay of the Ontario Center Specific Plan. the Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Piemonte Overlay of the Ontario Center Specific Plan; and

c. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

d. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

e. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

f. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were reviewed with an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) prepared for the related Amendment to the Piemonte Overlay at the Ontario Center Specific Plan (File No. PSPA21-001). This

Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA22-003-D) attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7. ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 11. ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3220 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 19, 2022 and adopted at the regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3220 duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022 and that Summaries of the Ordinance were published on July 26, 2022 and August 9, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA22-003-D

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

OTC Lot D Owner LLC

a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

OTC Lot D Owner, LLC
Lot

a Delaware limited liability company

DEVELOPMENT AGREEMENT NO. PDA22-033-D

This Development Agreement (hereinafter "Agreement") is dated as of July _____, 2022, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "City"), and OTC Owner, LLC, Lot D, a Delaware limited liability company (together with its successors and assigns, "Owner"):

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, Owner has a leasehold interest in the Property pursuant to the Ground Lease; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, on July ____, 2022, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2022; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement. On April 19, 2022, pursuant to Resolution No. 2022-034, the City Council reviewed and adopted an Addendum to the Ontario Center Specific Plan Environmental Impact Report (State Clearing House No. 89041009) dated March 2022 under City's File No. PSPA21-001 (the "EIR Addendum"). The proposed Project is consistent with the EIR Addendum and no further environmental review is required; and

WHEREAS, on April 19, 2022, pursuant to Resolution No. 2022-035, the City Council approved the Piemonte Overlay at the Ontario Center Specific Plan Amendment - File No. PSPA21-001 (the "Specific Plan Amendment"); and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Approval Date" means _____, 2022 the hearing date on which the City Council adopted the ordinance approving this Agreement.

1.1.3 "Certificate" shall have the meaning set forth in Section 6.4.

1.1.4 "Certificate of Performance" shall have the meaning set forth in Section 2.5.3.

1.1.5 "City" means the City of Ontario, California, a California municipal corporation.

1.1.6 "City Council" means the City Council of the City of Ontario.

1.1.7 "City Manager" means City's City Manager or his or her designee.

1.1.8 "City Parties" shall have the meaning set forth in Section 9.2.

1.1.9 "City Response Delay" shall have the meaning set forth in Section 3.3.

1.1.10 "Completion" means the date on which all of the following has occurred (a) the Building Department of the City (in its capacity as the municipal authority) has issued (i) a temporary certificate of occupancy (or its equivalent) for the residential dwelling units within the Project and (ii) final sign off or its equivalent of the core and shell for the commercial space within the Project (but not the tenant improvements for such space) and (b) Owner has satisfied the conditions of the Development Approvals to the extent required in connection with the Project (as opposed to conditions required in connection with the development of the other Lots within the Phased Development) other than ongoing conditions that are not required to be satisfied prior to completion of the Project.

1.1.11 "Deferred DIF" shall have the meaning set forth in Section 4.2.2.

1.1.12 "Deferred DIF Repayment Date" shall have the meaning set forth in Section 4.2.2.

1.1.13 "Development Approval" or "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property whether Existing Development Approvals or Subsequent Development Approvals, including, but not limited to, the following:

(a) Amendment to the Piemonte Overlay at Ontario Center Specific Plan -File No. PSPA21-001;

(b) Development Plan Entitlement – File No. PDEV22-014;

(c) EIR Addendum;

(d) Development Agreement - File No. PDA22-003-D; and

(e) Amendment to the Piemonte Overlay Sign Program – File No. PSGP22-002.

1.1.14 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee, exaction, charge, assessment or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The rates as of the Approval Date for the Development Impact Fees that may apply to the Project are shown on Exhibit "C" attached hereto.

1.1.15 "Effective Date" means the date on which both of the following are true: (a) the ordinance approving this Agreement goes into effect; and (b) the Effective Date of the Ground Lease has occurred. Promptly after the Effective Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Effective Date and, thereafter, the Effective Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.16 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals are listed in the definition of "Development Approvals" above and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.17 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Approval Date, as modified by the Development Approvals.

1.1.18 "Final Non-Appealable Date" means the date Existing Development Approvals are final and non-appealable as set forth in the City Development Code and any applicable Laws and (ii) the applicable statute of limitations has expired under the California Environmental

Quality Act (Public Resources Code §21000 *et seq*.) and implementing Guidelines for CEQA (14 Cal. Code Regs. §15000 *et seq*.) with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to Owner. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.19 "Force Majeure Event(s)" shall have the meaning set forth in Section 11.11.

1.1.20 "General Plan" means the City's Comprehensive General Plan adopted on January 27, 2010, by Resolution No. 2010-006, as may be amended as of the Approval Date.

1.1.21 "Ground Lease" means that certain Ground Lease by and between City and Owner dated on or about the Approval Date pertaining to the Property, as the same may be amended, modified, or supplemented from time to time.

1.1.22 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or

(e) the exercise of the power of eminent domain.

1.1.23 "Lender Proposed Amendment" shall have the meaning set forth in Section 10.

1.1.24 "Lot" or "Lots" shall mean Lot A, B, C, or D, as the context may require, as shown on Exhibit "B" to this Agreement.

1.1.25 "Mortgagee" means any lender under any mortgage, deed of trust, or other security device securing financing with respect to the Owner's then-current interest in the Property, and their successors and assigns.

1.1.26 "Non-Deferrable Fees" shall have the meaning set forth in Section 4.2.2.

1.1.27 "Owner" means the person or entity defined as such in the introductory paragraph of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.28 "Owner Parties" shall have the meaning set forth in Section 9.3.2.

1.1.29 "Phased Development" means the phased development and construction contemplated by Owner on the Property and each of the other "Owners" under the Related Development Agreements (as defined below) on Lots A, B, and C. The projects to be developed and constructed in the Phased Development include the Project and projects on Lots A, B, and C as follows:

Lot A - Development Plan Entitlement – File No. PDEV22-014;

Lot B - Development Plan Entitlement – File No. PDEV22-014; and

Lot C - Development Plan Entitlement – File No. PDEV22-014.

Lots A, B, and C are each also currently subject to a ground lease between the City and ground lease tenant of the applicable Lot which is being entered into concurrently with the Ground Lease in form and content similar to the Ground Lease. The City is also concurrently entering into a statutory development agreement with each of the ground lease tenants for Lots A, B, and C in form and content similar to this Agreement (the "Related Development Agreements"). It is currently contemplated that the Project will be developed and constructed as part of the Phased Development of the Property and Lots A, B, and C currently comprised of the following development as shown on Table 1 below:

Table 1:
Maximum Development Density (Units) and Intensity
(Based on Piemonte Overlay at the Ontario Center Specific Plan)

DA File No's.	Approx. Acres	Lot	Subarea Area	Dwelling Units	Commercial (Square Feet)
PDA22-003-A	4.83	A	16	384	25,256
PDA22-003-B	1.69	B	17	112	20,802
PDA22-003-C	1.93	C	8	94	11,047
PDA22-003-D	2.04	D	11	104	14,095
Total	**10.49**			**694**	**71,200**

1.1.30 "Project" means the proposed development and construction on the Property (Lot D) of up to 14,095 square feet of commercial/office/ retail uses and 104 multi-family residential dwelling units, all as consistent with File No. PDEV22-014 (as the same may be modified by Owner from time to time in accordance with the Existing Development Approvals). The commercial/office/retail uses shall be those permitted or conditionally permitted within Section 3.2 *Allowed Uses* of The Piemonte at Ontario Center Specific Plan.

1.1.31 "Property" means the real property described and depicted on Exhibit "A" to this Agreement. The Property is referred to as Lot D on Exhibit "B". The Property constitutes one parcel of the Phased Development. Lots A, B, and C comprise the remaining parcels of the planned Phased Development.

1.1.32 "Protected Lot" shall have the meaning set forth in Section 8.2.3.

1.1.33 "Related Development Agreement" shall have the meaning set forth in the definition of "Phased Development" above.

1.1.34 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.35 "Security Instrument" shall have the meaning set forth in Section 10.

1.1.36 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Piemonte Overlay at the Ontario Center Specific Plan," as amended by the Specific Plan Amendment.

1.1.37 "Subsequent Development Approvals" means all Development Approvals obtained subsequent to the Approval Date in connection with development of the Property.

1.1.38 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Approval Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" Legal Description and depiction of the Property

Exhibit "B" Map showing location of Property and the other Lots within the Phased Development

Exhibit "C" Development Impact Fees as of the Approval Date

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and if and to the extent commenced shall be carried out in accordance with the terms of this Agreement.

2.2 Ownership of Property. Owner represents and covenants that it is the owner of a leasehold interest in the Property or a portion thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) Owner provides at least 180 days written notice to City prior to expiration of the initial term;

(b) Owner is not then in uncured default of this Agreement (after notice and the expiration of any applicable cure periods); and

(c) if less than three (3) of the Lots in the Phased Development have achieved Completion, such extension must be approved by the City Manager in his or her reasonable discretion.

For the avoidance of doubt, any time limits that may otherwise apply to the Development Approvals absent this Development Agreement (including without limitation, any of the time limits imposed on approvals pursuant to Section 2.02.025A of the Ontario Development Code or any other the Land Use Regulations) shall not govern the Development Approvals or this Agreement and the term set forth in this Section 2.3 shall control.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign its interest in the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) Any such sale, transfer, or assignment is done in compliance with the Ground Lease if such Ground Lease is then in effect;

(b) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or substantially all of Owner's leasehold or fee interest (as applicable) in the Property;

(c) Prior to any such sale, transfer, or assignment, Owner shall notify City's City Manager, in writing, of such sale, transfer, or assignment and shall provide City with: (1) an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement with

respect to the portion of the Property so sold, transferred, or assigned; and (2) the payment of the applicable processing charge to cover the City's review and consideration of such sale, transfer, or assignment; and

(d) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement.

Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (c) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer, or assignment that is not made in compliance with this Subsection 2.4.1. Notwithstanding any contrary provision of this Agreement, the Owner of the Property shall not have any liability hereunder with respect to any other Lot and a default by the Owner of one Lot shall not impact the rights and obligations of the Owner of any other Lot.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring owner of all of the following conditions:

(a) such transferring owner no longer has a legal or equitable interest in the portion of the Property sold, transferred, or assigned;

(b) such transferring owner is not then in default under this Agreement (after notice and the expiration of any applicable cure periods), in which case such transferring owner shall remain liable for such default but not any future defaults by the assignee after the date of the transfer; and

(c) such transferring owner has provided City with the notice and executed agreement required under Paragraph (c) of Subsection 2.4.1 above.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.4 For the avoidance of doubt, this Section 2.4 does not apply to assignments or transfers of this Agreement to Mortgagees or their initial transferees after a foreclosure, deed in lieu, or similar action permitted under the mortgage, deed of trust, or other security device securing financing with respect to the Owner's interest in the Property.

2.5 Amendment or Cancellation of Agreement; Operating Memoranda.

2.5.1 Amendment or Cancellation. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section

65868. Any amendment of this Agreement, which amendment has been requested by Owner, shall be considered by the City only upon the payment of the applicable processing charge. The City hereby agrees to grant priority processing status to any request(s) to amend this Agreement made by Owner. This provision shall not limit any remedy of City or Owner as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the City initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, City shall first give notice to the Owner of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.2 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and Owner and development of the Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of the City and Owner. If and when, from time to time, during the term of this Agreement, the City and Owner agree that such clarifications are necessary or appropriate, the City and Owner shall effectuate such clarifications through operating memoranda approved by the City and Owner, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by the City and Owner. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager shall be authorized to make the determination on behalf of the City whether a requested clarification may be effectuated pursuant to this Section 2.5.2 or whether the requested clarification is of such a character to constitute an amendment hereof. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of the City without further Planning Commission or City Council action.

2.5.3 Certificate of Performance.

Upon Completion of the Project or upon the earlier revocation or termination of this Agreement, the City shall provide Owner, upon Owner's request, with a statement ("Certificate of Performance") evidencing such completion, revocation, or termination of this Agreement, and the release of Owner from further obligations hereunder with respect to the Property except with respect to the obligations which expressly survive such termination pursuant to Sections 3.9 (Rent Control), 4.2.2 (Development Impact Fees), 9 (Third Party Litigation) and 11.22 (Attorneys' Fees). The Certificate of Performance shall be signed by the appropriate agents of Owner and the City and shall be recorded with the County Recorder. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3; or

(b) Completion of the Project to be developed and constructed on the Property in accordance with the terms of this Agreement.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any right and/or obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by Owner to City for residential units on which construction has not yet begun shall be refunded to Owner by City to the extent payment has been received.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to Owner:
OTC Lot D Owner, LLC
c/o Adept Urban
388 Cordova Street, #280
Pasadena, CA 91101
Attention: Patrick Chraghchian; Robert Montano
Email:patrick@adept-dev.com; robert.m@adept-dev.com

with a copy to:
Ruben Duran, City Attorney
Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Munger, Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Attention: Misty M. Sanford, Esq.
Email: misty.sanford@mto.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Development of the Project; Rights to Develop.

3.1.1 Development of the Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Project pursuant to this Agreement, Owner agrees to develop the Project in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. Owner further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. The Project shall be developed in accordance with the Development Approvals. The Project shall be constructed in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Project in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Project shall remain subject to all Development Approvals required to complete the Project. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Phased Development will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop (without the obligation) the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. Notwithstanding the foregoing, subject to (a) Force Majeure Events, (b) up to three one-year extensions of time (provided, however, that (i) only the first one-year extension may be requested by Owner unilaterally and thereafter such extensions must be approved by the City Manager and (ii) such extensions shall not apply to the first milestone (i.e., submission of the building application) for the first of the Lots of the Phased Development to be developed) and (c) any extensions of entitlements or permits granted by any governmental authority on a statewide, citywide or countywide basis, Owner shall achieve the following milestones in accordance with the following schedule:

	Event	Date
1.	Submission by Owner of building permit application to the City for the Project	On or before one hundred eighty (180) days following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase.
2.	Commencement of Construction of the Project	On or before two (2) years following the date a final Certificate of Occupancy is issued with respect to the building(s) of the immediately prior phase; provided, however

		Commencement of Construction shall occur within 6 months of the Commencement of Construction of Lot C. In order to achieve this milestone, City agrees to complete its review of (a) Owner's initial plan check submission within twenty-one (21) days after receipt of such initial submission by City (provided, however, prior to such submission Owner and the City shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the project within fourteen (14) days following receipt of such additional submissions by City. There shall be a day-for-day extension of this Commencement of Construction milestone if the City fails to timely respond to such submissions within the time periods set forth above (each, a "City Response Delay").

3.4 Requirement for Public Infrastructure Improvements. Owner shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Project (as opposed to the other Lots within the Phased Development).

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; (other than in de minimis amounts); or,

(c) Increase the maximum height and size of permitted buildings (other than in de minimis amounts); or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the City shall not be prevented from applying new rules, regulations, and policies upon the Owner, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by City to cover its actual costs of processing applications for, or monitoring compliance with, any development approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City in writing;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, and any other matter of procedure;

(c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the City and any local amendments to those codes adopted by the City; provided however that, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement or Existing Land Use Regulations but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety; and are generally applicable on a citywide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes, pandemics and similar acts of God);

(e) Reserved;

(f) Regulations to which the Owner consents in writing.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Approvals and the Existing Land Use Regulations, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Approvals and the Existing Land Use Regulations.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Approval Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce or comply with as determined by Owner. In the event Owner alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the City does not agree, the Owner may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on City any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations, and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If Owner is required by any Development Approval to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work to the construction standards that would be applicable to City or such other public agency should it have undertaken such construction.

As a condition of development approval, Owner shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, Owner shall contract with the City for City-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to cooperate fully, at no material out-of-pocket cost to City, with Owner in obtaining any required permits or compliance with the

regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations, or policies of the City.

3.9 Rent Control. Notwithstanding anything to the contrary in this Agreement, City agrees that, to the extent permitted by applicable law, City shall not apply any rent control or other renter protections or other moratoria or interim control ordinance against the Property or the Project. The foregoing covenant shall survive the expiration of this Agreement indefinitely and shall be in effect unless this Agreement is terminated for any reason other than a termination due to the Completion of the Project.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Approvals and the Existing Land Use Regulations and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by Owner. The amounts for Development Impact Fees established or imposed by the City to be paid by Owner shall be the amounts that are in effect as of the Approval Date, which are shown on Exhibit "C" attached hereto, and Development Impact Fees established or imposed by other public agencies to be paid by Owner shall be the amounts that are in effect at the time such fees are due and payable during the development process. Nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by City to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by City. Notwithstanding the foregoing, the amounts imposed by the City to be paid by Owner for the following Development Impact Fees may be those in effect at the time such fees are due and payable (subject to the right to deferment set forth in Section 4.2.2 below), so long as such amounts do not increase by more than five percent (5%) over the amount of such rates in effect as of the Approval Date: processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

4.2.2 Time of Payment.

(a) Owner shall have the right to elect (but is not obligated) to amortize the payment of up to fifty percent (50%) of the total amount of Development Impact Fees due and payable for the Project (the amount so elected, the "Deferred DIFs") over a period of thirty (30) years commencing from the Deferred DIF Repayment Date at an annual 3 percent (3%) simple interest rate. As used herein, "Deferred DIF Repayment Date" means the date of issuance of a temporary or other certificate of occupancy for the residential component of the Project. The parties understand and agree that the Development Impact Fees established or imposed by other public agencies that are not controlled by City even if such Development Impact Fees may be collected by City (including without limitation, if applicable, the IEUA Sewer Connection Fee, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Non-Deferrable Fees") must be paid when and as required in their standard course and schedule and may not be deferred hereunder; provided, however, the amount of such Non-Deferrable Fees may be included in the calculation of the total amount of Development Impact Fees due and payable for the Project for

purposes of calculating the fifty percent (50%) amount that Owner may elect to include as Deferred DIFs.

(b) Owner agrees that, commencing upon the Deferred DIF Repayment Date, Owner shall pay to the City, on the 1st day of the next following month and each and every successive month for three hundred sixty (360) consecutive months, an amount equal to the amortized principal and interest of the actual amount of the Deferred DIFs amortized over thirty (30) years at an annual 3 percent (3%) simple interest rate. By way of example only, if the Deferred DIFs equal $4,5000,000, the monthly payment to be made to the City would be $18,972. The entire unpaid principal balance of the amortized Deferred DIFs and any accrued but unpaid interest shall be immediately due and payable to the City upon any of the following events: (1) the termination of this Agreement other than a termination due to the Completion of the Project; (2) any uncured default by Owner with regard to repayment of the amortized Deferred DIFs to the City (if such amounts have not been paid to the City within five (5) business days of Owner's receipt of written notice from the City); or (3) any sale, transfer or assignment of all or substantially all of the Owner's leasehold or fee interest (as applicable) in the Property that is not approved by the City in advance (which such approval shall not be unreasonably withheld, conditioned or delayed). Any monthly payment or portion thereof not paid to the City as and when due under the terms of this Agreement shall accrue interest from the date on which such payment was due at the rate of ten percent (10%), and if not paid within the five (5) business day cure period described above, City may file a lien against the Property for such delinquent amounts including any accrued and unpaid interest. All payments under this Subsection will be applied first to penalties and late fees, then to interest, then to reduce the principal amount owed. The Deferred DIFs and any accrued but unpaid interest may be pre-paid to the City at any time without any pre-payment penalty.

(c) The Deferred DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the Deferred DIFs are paid in full in accordance with this Agreement.

(d) Any Development Impact Fees that are not a Deferred DIF shall be paid when and as required in their standard course and schedule.

4.3 Reserved.

4.4 Reserved.

4.5 Schools Obligations. Owner shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that Owner has met its school obligations may be required by the City as the condition to the issuance by the City of any building permits for the Project.

4.6 Reserved.

4.7 Reserved.

4.8 Reserved.

4.9 Maintenance of Open Space. Owner shall provide for ongoing maintenance of all park, common areas, and open space areas within the Project as may be set forth in the Development Approvals.

4.10 Intentionally Omitted.

4.11 Compliance with Public Benefits Requirements. In the event Owner fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, Owner shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies permitted under this Agreement, including, without limitation, the right of the City to withhold Owner's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. [RESERVED]

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The City shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the Owner with the terms of this Agreement in accordance with Section 65865.1 of the California Government Code. Upon completion of the City's review, City shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of City's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his/her designee. Owner shall be responsible for paying any processing charge in connection with each such annual review, if any, provided that such charge shall be generally consistent with the cost charged for annual reviews for other development agreements to which the City is a party.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the City intends to undertake a special review of this Agreement to the Owner. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission. The cost of any such special review shall be borne by the City, unless such a special review demonstrates that Owner is not

acting in good-faith compliance with the provisions of this Agreement, in which case Owner shall reimburse the City for all costs incurred by the City in connection with such special review.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the Owner must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the Owner.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the Owner has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall specify in writing the respects in which Owner has failed to so comply. The City shall provide Owner with written notice of such noncompliance, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Owner to cure such non-compliance, which time shall be not less than thirty (30) days after Owner's receipt of such notice.

(c) The Owner may appeal a determination pursuant to paragraph (b) in accordance with the City's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Termination. If, upon a finding under Section 6.1.6(b), the City determines to proceed with termination of this Agreement, the City shall give notice to the property Owner of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City proposes to terminate this Agreement; and

(c) Other information that the City considers necessary to inform the Owner of the nature of the proceeding.

6.3 Hearing on Termination. At the time and place set for the hearing on termination, the Owner shall be given an opportunity to be heard. The Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds, based upon substantial evidence in the administrative record, that the Owner has not complied in good faith with the

terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon written request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General; Waiver of Monetary Damages. It is acknowledged by the parties that, subject to and without limiting the Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below, neither party would have entered into this Agreement if it were to be liable in monetary damages under this Agreement, or with respect to this Agreement or the application thereof. The parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages that would adequately compensate Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that neither party shall be liable in monetary damages to the other party, or to any successor in interest of such other party, or to any other person, and each party covenants not to sue for monetary damages or claim any monetary damages:

8.1.1 For any breach of this Agreement or for any cause of action which arises out of this Agreement (other than in connection with Development Impact Fees in Section 4.2, indemnities in Sections 9.2, 9.3 and 9.4 below and the award of attorneys' fees under Section 11.22 below); or

8.1.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

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

8.1.4 The parties understand and agree, however, that nothing in this Section 8.1 shall prohibit, restrict or otherwise affect the rights of a party to seek monetary damages as a result of any default by the other party under any other agreement entered into by the parties with respect to the Property and the Project, including without limitation the Ground Lease, if and to the extent such other agreements allow for monetary damages. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses either party may otherwise have with respect to claims for monetary damages.

8.2 Default by Owner. In the event that Owner does not perform its obligations under the Agreement in a timely manner, subject to the limitations in Section 8.1, the City shall have all rights and remedies provided herein which shall include (a) the right to compel specific performance of the obligations of Owner under this Agreement or (b) termination of this Agreement, provided that the City has first complied with the procedures set forth in this Section 8.2 and in Section 8.5 below. If City elects to proceed under clause (b) with termination of this Agreement, the following shall apply:

8.2.1 If after the applicable cure period has elapsed, the City Manager finds and determines that Owner remains in default, the City Manager shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Owner has not cured the applicable default pursuant to this Section, and that the City should terminate this Agreement, Owner shall be entitled to appeal that finding and determination to the City Council in accordance with the procedure in Section 6.1.6(c) above. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity, and

8.2.2 City may terminate this Agreement after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period in accordance with the procedure described in Section 6.1.6(c) above, relating to the defaulting party's rights and obligations.

8.2.3 City's Limited Cross Termination Right. If City terminates this Agreement in accordance with the procedures set forth herein as a result of a failure of Owner to achieve any of the milestones required pursuant to Section 3.3 above, City shall have the right to simultaneously terminate the Related Development Agreement(s) affecting the Lot(s) within the Phased Development for which none of the milestones under Section 3.3 of the applicable Related Development Agreement(s) have been achieved and for which a standard construction loan from an unrelated third party ("Loan") has not been executed for the development of such Lot(s). For example, if the owner of any Lot in the Phased Development (including the Property) has executed a Loan for the development of such Lot or any of the milestones under Section 3.3 of the applicable Related Development Agreement have been achieved with respect to such Lot (a "Protected Lot"), then the termination of this Agreement or the Related

Development Agreement for any other Lot shall not affect the Related Development Agreement of such Protected Lot and City shall not have any right hereunder to terminate such Related Development Agreement under this Section 8.2.3.

8.3 Default by City. In the event the City defaults under the provisions of this Agreement, subject to the limitations set forth in Section 8.1 above, Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Owner has first complied with the procedures in Section 8.5 below.

8.4 Release. Subject to and without limiting the indemnity in Section 9.3 below, except for nondamage remedies, including the remedy of specific performance, each party, for itself, its successors and assignees, hereby releases the other party, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

8.5 Notice and Cure. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of written notice from the other party, identifying with specificity those obligations of the defaulting party which have not been performed, constitutes a default under this Agreement; provided, however, if such failure or delay cannot reasonably be cured within such thirty (30) day period, no default shall be deemed to have occurred hereunder if the party committing such failure or delay commences cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; provided, however the party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence but (a) with respect to the City only in no event later than sixty (60) days after receipt of written notice from the Owner and (b) with respect to Owner only in no event later than one hundred eighty (180) days after receipt of written notice from City. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default.

8.6 Ground Lease and Other Agreements Not Affected. This Section 8 shall not be deemed to implicate, modify, or affect in any way any provisions in the Ground Lease or any other agreement entered into by the parties with respect to the Property and the Project.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Approval Date, and that the General Plan meets all requirements of law. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Project as the result of a judicial determination that on the Approval Date, or at any time

thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. Subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), at its expense, including attorneys' fees, indemnify, and hold harmless City and its officers and employees (collectively, the "City Parties") from any claim, action or proceeding against the City Parties to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

Nothing in this Section 9 or any other indemnification provision included as a condition to any of the Development Approvals shall be construed to mean that Owner or City shall indemnify, hold any of the City Parties or Owner Parties, as applicable, harmless and/or defend any of the City Parties or Owner Parties, as applicable, from any claims arising from (a) as to Sections 9.3.1 and 9.4 only, any of the City Parties' or Owner Parties', as applicable, violation of law, or (b) as to all such indemnities other than the indemnity set forth in Section 9.3.2, (i) any of the City Parties' or Owner Parties', as applicable, breach of contractual obligations to third parties or (ii) the gross negligence or willful misconduct of any of the City Parties or Owner Parties, as applicable.

9.3 Indemnity.

9.3.1 Owner. In addition to the provisions of 9.2 above, subject to and without limiting the indemnity in Section 9.3.2 below, Owner shall defend (with counsel chosen by Owner and approved by City, which such approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the City Parties from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), based or asserted upon any act or omission of Owner or its officers or employees for property damage, bodily injury, or death (Owner's employees included) arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, and operation the Project. The City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if any of the City Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City Parties.

9.3.2 City. City agrees to indemnify, defend (with counsel chosen by City and approved by Owner, which such approval shall not be unreasonably withheld, conditioned or delayed), and hold harmless Owner, American General Design, Inc. (dba Adept Development), a

California corporation and Povac Investments, Inc., a California corporation and each of their respective officers and employees (collectively, the "Owner Parties") from and against any and all liabilities, losses, damages, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses) arising from any governmental agency stopping or delaying construction or occupancy of the Project after the "Commencement of Construction" (as defined below) as a result of City's failure to pay any amounts imposed by the State of California (if any) pursuant to California Government Code Sections 54220 through 54234 in connection with the City's disposition of the Property to Owner. Owner shall promptly notify City of any such stoppage or delay, and Owner shall cooperate in the defense. If Owner fails to promptly notify Owner of any such stopped or delay, or if any of the Owner Parties fail to cooperate in the defense as finally determined by a court or arbitrator of competent jurisdiction, City shall not thereafter be responsible to defend, indemnify, or hold harmless the Owner Parties. For purposes of this Section 9.3.2, the term "Commencement of Construction" shall mean that both of the following have occurred: (a) construction of a building has commenced pursuant to and in accordance with a building permit issued by the City, City-approved final construction drawings, the Existing Land Use Regulations, the Development Approvals, and all applicable laws; and (b) Owner has expended at least $5,000 in labor and materials for such construction. For purposes of this definition only, "construction" shall mean construction of improvements permanently fixed to the site (e.g., a foundation or similar), including, without limitation, utilities, public or private streets, public or private site improvements, landscaping or ancillary structures such as block walls, trash enclosures, and any grading, excavation, demolition, grubbing, or other site preparation.

9.4 Environment Assurances. Owner shall defend (with counsel chosen by Owner), at its expense, including attorneys' fees, indemnify, and hold harmless the City Parties from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, and/or independent contractors for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property that were not present prior to the date that Owner took possession of the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including reasonable attorneys' fees, the City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reserved.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement for a period of two (2) years after such termination, except to the extent such indemnification relates to any third party claims, in which event such indemnification shall survive until the expiration of any applicable statute of limitations.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing

with respect to the Property ("Security Instrument"). City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve a lien and security interest of its Security Instrument, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or rating agencies) in connection with any such financing (a "Lender Proposed Amendment"). The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate a Lender Proposed Amendment; provided, however, that any such Lender Proposed Amendment shall not in any way materially adversely affect any rights of the City under this Agreement. If there is any conflict between this Article 10 and any other provisions contained in this Agreement, this Article 10 shall control. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Security Instrument on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any Security Instrument, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed one hundred eighty (180) days, to remedy such default, provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the default is cured.

(d) Any Mortgagee who takes title of the Property, or any part thereof, pursuant to foreclosure trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement, provided that any such Mortgagee, including its affiliate, that takes title to the Property shall be entitled to all of the benefits arising under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall

continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer, or assignment after the initial sale, transfer, or assignment by any Mortgagee shall be subject to the provisions of Section 2.4 of this Agreement.

(e) If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Owner, the times specified in Section clause (c) above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) If this Agreement is terminated by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this clause (f).

(g) The City shall, at any time and within thirty (30) days following the written request of a Mortgagee, but not more often than annually, certify in writing to such Mortgagee that (a) this Agreement is in full force and effect, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments and modifications, and (c) to the actual knowledge of City with no duty to investigate, Owner is not in default in the performance of its obligations under this Agreement or, if in default, to describe therein the nature and extent of any such default. Any such estoppel certificate shall be administratively issued by the City Manager or his/her representative or designee.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the City executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates this Agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder. A failure to record the Agreement in a timely fashion shall not impact its effectiveness to the extent permitted by applicable law.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, in the event the provision regarding the payment of Deferred DIFs set forth in Section 4.2.2 of this Agreement is determined to be invalid, void or unenforceable, the parties shall enter into a separate written agreement for the repayment of such Deferred DIFs consistent with Section 4.2.2.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, except that the Owner Parties and City Parties are third party beneficiaries of the indemnities in Section 9. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, insurrection, riots, civil unrest, acts of terrorism or similar hostilities, strikes, boycotts, lock-outs, and other labor difficulties beyond the party's control (including the party's employment force), inability to procure services, labor or materials not related to the price thereof, failure of electric power, governmental actions, governmental laws, regulations or restrictions, third party litigation or administrative proceedings, actual or

threatened public health emergency (including epidemic, pandemic, famine, disease, plague, quarantine, and other public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization (including any shelter-in-place orders, stay at home orders or any restrictions on travel related thereto that preclude Owner, its agents, contractors or its employees from accessing the Property, national or regional emergency), declaration of a state or national emergency, casualties, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Property from being developed or operated in accordance with this Agreement, or other reasons beyond the reasonable control of the party (individually a "Force Majeure Event" or collectively, "Force Majeure Events"). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be automatically extended for the period of time that such events prevented such performance, provided that the extensions of the term of this Agreement solely as a result of one or more Force Majeure Events shall not exceed a period of more than five (5) years in the aggregate.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest; Covenants Running with the Land. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof. In any event, no owner or tenant of an individual completed residential unit within the Project shall have any rights under this Agreement.

11.14 Counterparts. 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 the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide 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. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the City.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. Owner shall pay to City all reasonable costs incurred by City in connection with the issuance of estoppel certificates under this Section 11.20 prior to City's issuance of such certificates.

11.21 Authority to Execute. Each party represents and warrants that the person or persons executing this Agreement on behalf of such party has the authority to execute this

Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations hereunder.

11.22 Attorneys' Fees. In the event of any action between the City and Owner for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees actually and reasonably incurred, as awarded by a court of competent jurisdiction. This Section shall survive the termination of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT

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

"Owner"

OTC Lot D Owner, LLC
a Delaware limited liability company

By: _____
Name:
Its: _____
Date: _____

"CITY"

City OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

_____
Kane, Ballmer & Berkman, City Special Counsel

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

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 _____, 20_____, 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 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, 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_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

APN NO. 0210-204-39

BEING A PORTION OF PARCEL 23, PARCEL MAP NO. 17550, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 216, PAGE(S) 7 THROUGH 20, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 23, AS SHOWN ON SAID PARCEL MAP;
THENCE NORTH 00°37'30" EAST, ALONG THE WEST LINE OF SAID PARCEL 23, 430.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 23;
THENCE SOUTH 89°22'30" EAST, ALONG THE NORTH LINE OF SAID PARCEL 23, 515.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 23;
THENCE, SOUTH 00°37'30" WEST, ALONG THE EAST LINE OF SAID PARCEL 23, 31.00 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 31.00 FEET SOUTH, MEASURED AT RIGHT ANGLES, TO THE NORTH LINE OF SAID PARCEL 23;
THENCE, ALONG SAID PARALLEL LINE NORTH 89°22'30" WEST 351.45 FEET;
THENCE SOUTH 00°37'22" WEST 116.97 FEET;
THENCE NORTH 89°59'51" EAST 29.41 FEET;
THENCE, SOUTH 00°00'06" EAST 282.37 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL 23;
THENCE NORTH 89°22'30" WEST, ALONG SAID SOUTH LINE, 196.05 FEET TO THE POINT OF BEGINNING;

SAID LAND IS SHOWN AS PARCEL C OF LOT LINE ADJUSTMENT NO. LLA 17-008 RECORDED SEPTEMBER 7, 2017, AS INSTRUMENT NO. 2017-0370546, OFFICIAL RECORDS.

EXHIBIT "B" CONTINUED
TO DEVELOPMENT AGREEMENT

LEASE AREA DEPICTION (LOT D)

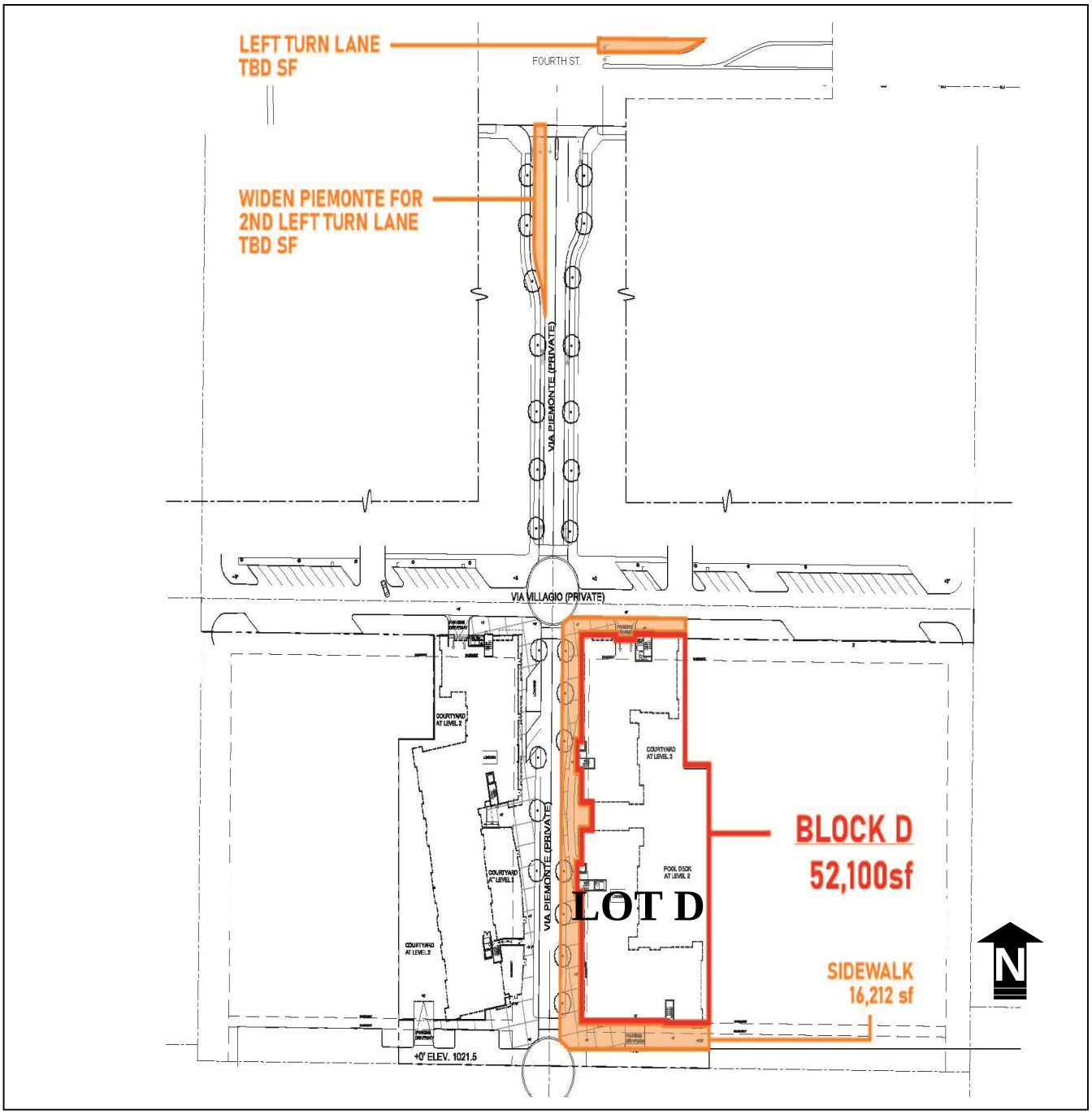
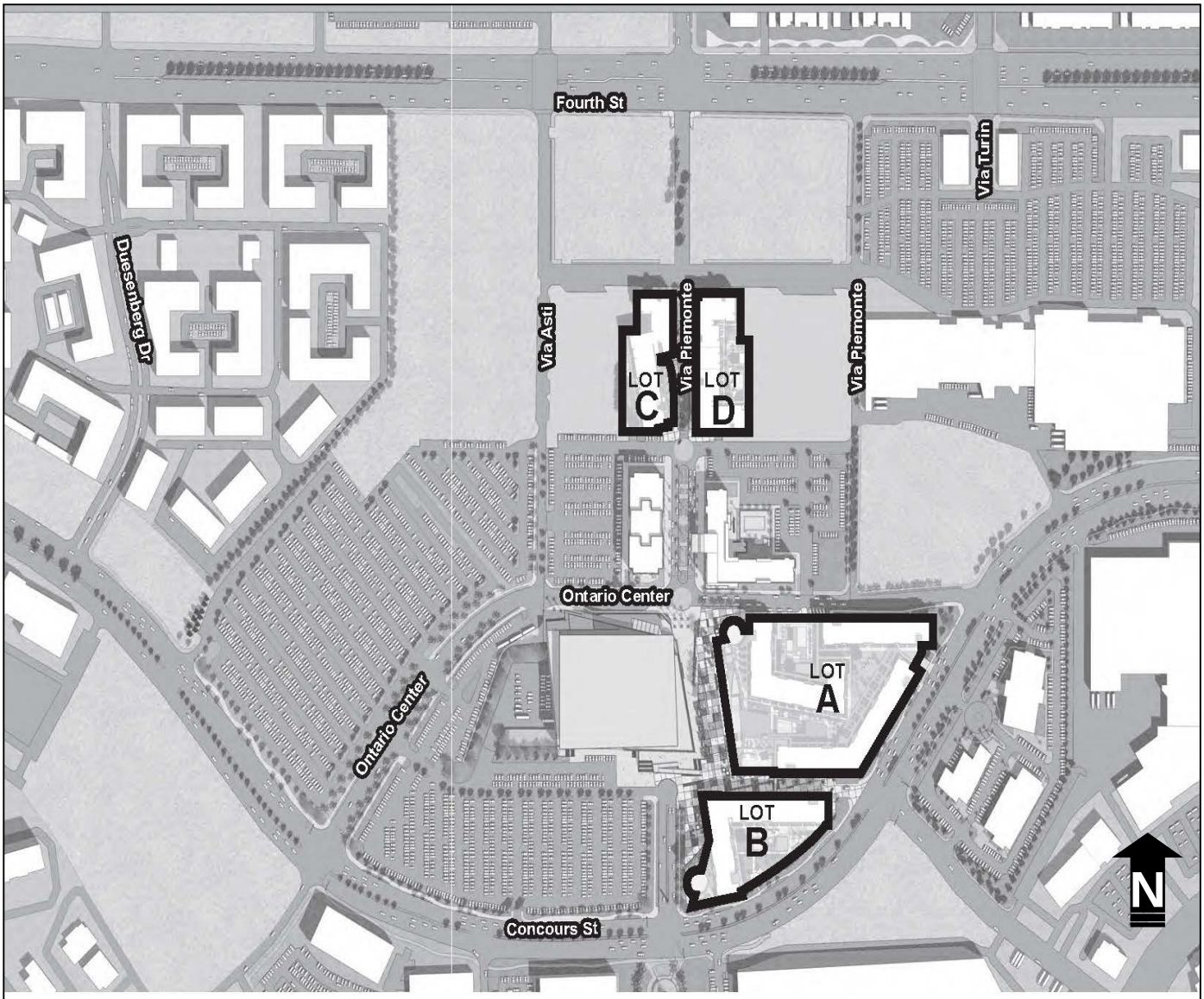


EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

MAP SHOWING PROPERTY AND ITS LOCATION



Ontario Center Parkway, Ontario, CA 91764

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

DEVELOPMENT IMPACT FEES AS OF THE APPROVAL DATE

(Development Impact Fees to follow this page)

CITY OF ONTARIO *Agenda Report* **August 2, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Investments & Revenue Resources Prepared By: Nicole Phillips Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Cecilia House, Armen Harkalyan Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 3082 LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES)**

RECOMMENDATION: That the City Council consider and adopt an amending and restating Ordinance No. 3082 levying special taxes within City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities).

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The use of Mello-Roos financing for facilities in the residential development of the Countryside Phase 2 South-Facilities project is estimated to generate approximately $45 million in bond proceeds to be used to fund a portion of the public infrastructure improvements needed to serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the district; therefore, there is no fiscal impact to the General Fund from the issuance of Mello Roos bonds. City Council approval will be required in future years to process annual special tax levies.

BACKGROUND & ANALYSIS: At a public hearing conducted by the City Council on July 19, 2022, the City Council adopted a Resolution calling a special election for proposed changes to the Rate and Method of Apportionment of the existing Special Tax of City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities); adopted a Resolution declaring results of the special election, determining that changes to the Rate and Method of Apportionment of the existing Special Tax of City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities) are lawfully authorized and directing recording of an amendment to Notice of Special Tax Lien; introduced and waived further reading of an Ordinance amending and restating Ordinance No.

3082 levying special taxes within City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities); adopted a Resolution deeming it necessary to amend Resolution No. 2017-124 in order to increase the maximum aggregate amount of bonded indebtedness that Community Facilities District No. 35 (Countryside Phase 2 South-Facilities) is authorized to incur; adopted a Resolution calling a special election for Community Facilities District No. 35 (Countryside Phase 2 South-Facilities); and adopted a Resolution declaring the results of the special election. Adoption of the amended and restated Ordinance No. 3082 will conclude the change proceeding process for City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities).

The Mello-Roos Community Facilities Act of 1982 provides local government the authority to establish a community facilities district for the purpose of financing various kinds of public infrastructure facilities. In October, 2017, the City established Community Facilities District No. 35 (Countryside Phase 2 South-Facilities) to finance public improvements for the project. The Countryside Phase 2 South-Facilities project addresses the development of approximately 34.22 gross acres located generally east of the Cucamonga Creek Channel, west of Archibald Avenue, south of Chino Avenue, and north of Schaefer Avenue. At build out, the development is projected to include 235 single-family detached units.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND RESTATING ORDINANCE NO. 3082 LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH - FACILITIES).

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") previously established City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities) (the "Community Facilities District") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, the qualified electors of the Community Facilities District authorized the levy of a special tax (the "Special Tax") within the Community Facilities District to pay, in whole or in part, the cost of providing certain facilities (the "Facilities") and certain services (the "Services") and incidental expenses pursuant to the Act referenced in the proposition submitted to such qualified electors; and

WHEREAS, pursuant to Section 53340 of the Act, the City Council, on November 7, 2017, adopted Ordinance No. 3082, entitled "An Ordinance of the City Council of the City of Ontario, California, Levying Special Taxes within the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities)" (the "Levy Ordinance"), levying the Special Tax at the rate and in accordance with the method of apportionment referenced therein (the "Original Rate and Method"); and

WHEREAS, on June 7, 2022, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Consideration to Change the Rate and Method of Apportionment of the Existing Special Tax of City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities)" proposing changes to the Original Rate and Method so as to increase certain of the Special Tax rates thereunder; and

WHEREAS, on July 19, 2022, the City Council, pursuant to the Act, adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, Calling a Special Election for Proposed Changes to the Rate and Method of Apportionment of the Existing Special Tax of City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities)" (the "Resolution Calling Election") calling for a special election of the qualified electors within the Community Facilities District and submitting to such qualified electors the proposition to change the Original Rate and Method so as to increase certain of the Special Tax rates thereunder, as reflected in the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities) Amended and Restated Rate and Method of Apportionment of Special Tax (the "Restated Rate and Method") attached thereto and incorporated therein; and

WHEREAS, on July 19, 2022, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, Declaring Results of a Special Election, Determining That Changes to the Rate and Method of Apportionment of the Existing Special Tax of City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities) Are Lawfully Authorized and Directing Recording of an Amendment to Notice of Special Tax Lien," declaring that the ballot proposition submitted to the qualified electors of the Community Facilities District pursuant to the Resolution Calling Election has been passed and approved by such electors and finding and determining that that the changes to the Original Rate and Method, as reflected in the Restated Rate and Method, were lawfully authorized; and

WHEREAS, this Ordinance amends and restates the Levy Ordinance in order to reflect such changes.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The Levy Ordinance is hereby amended and restated to read in full as set forth herein.

SECTION 2. The City Council hereby authorizes and levies the Special Tax within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in the Restated Rate and Method. The Special Tax is hereby levied in each fiscal year until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Restated Rate and Method.

SECTION 3. The City Council may, in accordance with subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the Special Tax in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the Special Tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Restated Rate and Method.

SECTION 4. The Special Tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Restated Rate and Method.

SECTION 5. The proceeds of the Special Tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

SECTION 6. The Special Tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes, unless another procedure is adopted by the City Council.

SECTION 7. If for any reason any portion of this Ordinance is found to be invalid, or if the Special Tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the Special Tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 8. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary hereof to be published at least once in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

The City Clerk of the City of Ontario shall certify as to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3221 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 19, 2022 and adopted at the regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3221 duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022 and that Summaries of the Ordinance were published on July 26, 2022 and August 9, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **August 2, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Lorena Mejia Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **A DEVELOPMENT CODE AMENDMENT (FILE NO. PDCA22-004) PROPOSING CERTAIN CLARIFICATIONS AND REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE PERTAINING TO CHINO AIRPORT**

RECOMMENDATION: That the City Council consider and adopt the Ordinance approving File No. PDCA22-004, a Development Code Amendment proposing certain clarifications and revisions to the City of Ontario Development Code, establishing the Chino Airport Overlay zoning district and Reference L, Chino Airport Land Use Compatibility Plan.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: There is no direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: On July 19, 2022, the City Council introduced and waived further reading of an Ordinance approving the Development Code Amendment. The California State Aeronautics Act (Public Utilities Code, Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan ("ALUCP") be prepared for all public-use airports in the state to "protect the public health, safety, and welfare by ensuring orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible land uses."

State law requires local land use plans and individual development proposals to be consistent with policies set forth in Compatibility Plans. The statutes require that local jurisdictions preparing Compatibility Plans "rely upon" the compatibility guidance provided by the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation ("Caltrans"), Division of Aeronautics.

The responsibility for the preparation and adoption of compatibility plans falls to the Airport Land

Use Commissions ("ALUC") within each county. However, State law also provides for what is generally referred to as an "Alternative Process" wherein a county does not have to form an ALUC and the required compatibility planning responsibilities fall to local jurisdictions. San Bernardino County and its cities elected to follow the Alternative Process when this option became available as a result of the 1994 legislation (Assembly Bill 2831). Specific requirements for implementation of the Alternative Process are set forth in Public Utilities Code Section 21670.1(c)(2).

Use of the Alternative Process within San Bernardino County was established in 1995 by resolutions of the County Board of Supervisors and the city councils of cities affected by airports. The California Division of Aeronautics approved the San Bernardino County Alternative Process in 1996. The approval of the Alternative Process designated the City of Chino as the local jurisdiction responsible for leading the compatibility planning process for Chino Airport.

PROPOSED CHINO AIRPORT OVERLAY DISTRICT: The existing 1991 Chino Airport Land Use Compatibility Plan does not reflect the guidance set forth in the 2011 Caltrans Airport Land Use Planning Handbook ("Handbook"). Although, the City of Ontario does not have the formal responsibility under the "alternative process" to prepare a compatibility plan for Chino Airport, the City of Ontario has prepared an airport land compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries.

The basic function of the proposed ALUCP for Chino Airport ("CNO") is to promote compatibility between CNO and land uses within the City of Ontario. The main objective of the ALUCP is to avoid future compatibility conflicts rather than to remedy existing incompatibilities. In addition, the ALUCP is aimed at addressing future land uses and development and compatibility with The Ontario Plan Policy Plan. The ALUCP does not place any restrictions on the present and future role, configuration, or use of the airport.

The ALUCP addresses three compatibility factors which include safety, airspace protection, and overflight impacts. The compatibility plan includes policies to evaluate land use plans and new development proposals for consistency with CNO. Each compatibility factor takes into consideration present and future aircraft operations or land uses that could negatively affect airport operations.

SAFETY: The intent of the safety compatibility policies is to minimize the risks associated with an off-airport aircraft accident or emergency landing. The policies focus on reducing the potential risks to people and property if such events where to occur. The safety zones place restrictions on new residential or sensitive land uses from being developed within the affected areas and limits the intensity of non-residential development (i.e., number of people allowed per acre of land) and total permissible floor area of any future building developed.

AIRSPACE PROTECTION: Airspace protection compatibility policies seek to prevent creation of land use features that can be hazards to aircraft in flight and have the potential for causing an aircraft accident to occur. Such hazards may be such things as a building being built too high or a land use that may cause visual or electronic hazards.

OVERFLIGHT: The purpose of overflight compatibility policies is to help notify people about the

presence of overflights near airports so that they can make informed decisions regarding acquisition or lease of property in the affected areas.

ALUCP AND GENERAL PLAN LAND USE CONSISTENCY: State Law requires General Plans and Specific Plans be consistent with adopted airport compatibility plans. Government Code Section 65302.3 requires that General Plans and any applicable Specific Plans "shall be consistent with" the Compatibility Plan and is reiterated in local agencies' obligations under the Alternative Process (Public Utilities Code Section 21670.1(c)(2)(D)). General Plans do not need to be identical with the ALUCP in order to achieve consistency. Affected jurisdictions' General Plans must do the following: (1) address compatibility planning issues, either directly or through reference to a zoning ordinance or other policy document; and (2) must avoid direct conflicts with the (ALUCP) development policies and criteria.

The consistency requirement pertains only to future land use development. Nothing in state law or the ALUCP requires that already existing development be removed or modified to eliminate incompatibilities that may already exist. Furthermore, General Plans and Specific Plans can show such land uses as continuing even though they would be nonconforming with the ALUCP criteria. Conflicts of this type do not constitute inconsistencies between a General Plan or Specific Plan and the ALUCP.

DEVELOPMENT CODE AMENDMENT: The proposed Development Code Amendment consists of the following:

A. **Chapter 5:** Provisions to establish the Chino Airport Overlay zoning district within Chapter 5 Development Code Chapter 5, Division 5.01, Section 5.01.005.F.6 (see Attachment A of the Ordinance); and
B. **Reference:** Provisions to establish Reference L, the Chino Airport Land Use Compatibility Plan, within the Reference section of the Development Code (see Attachment B of the Ordinance).

PLANNING COMMISSION REVIEW AND ACTION: On June 28, 2022, the Planning Commission conducted a public hearing to consider the proposed Development Code Amendment. Upon conclusion of the public hearing, the Planning Commission voted unanimously (6-0-1) to approve Resolution No. PC22-032, recommending the City Council approve the proposed Development Code Amendment.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan ("TOP"). Goals and policies of TOP that are furthered by the proposed Development Code Amendment and are addressed in the attached Planning Commission Backup material.

AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted

Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Chino Airport Land Use Compatibility Plan does not create any conflicting policies or inconsistencies with the Ontario International Airport Land use Compatibility Plan.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

June 28, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO: PDCA22-004

SUBJECT: A public hearing to consider certain revisions to the City of Ontario Development Code, establishing the Chino Airport Overlay zoning district and Reference L, Chino Airport Land Use Compatibility Plan; **City Initiated. City Council action is required.**

RECOMMENDED ACTION: That the Planning Commission consider and adopt the resolution recommending the City Council approve File No. PDCA22-004, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The Chino Airport is a general aviation airport located within the City of Chino, immediately adjacent to the southwestern boundary of the City of Ontario. Chino Airport is owned and operated by San Bernardino County and is used by a wide range of general aviation aircraft, including single and multi-engine aircraft, turboprop, business jet, and helicopters. The geographic scope of the Chino Airport Land Use Compatibility Plan ("ALUCP") is the Airport Influence Area ("AIA"), the area in which current or future airport-related noise, safety, airspace protection and/or overflight factors may affect land uses or impose restrictions on those uses. The portion of the AIA within the City of Ontario is generally bounded by Riverside Drive to the north, Merrill Avenue/southern boundary City limits to the south, Euclid Avenue to the west and Haven Avenue to the east. The Airport Influence Area for Chino Airport is depicted in Exhibit A: Chino Airport Influence Area and Policy Map L-1 of the Chino ALUCP.

PROJECT ANALYSIS:

(1) Background — The California State Aeronautics Act (Public Utilities Code, Section 21670 et seq.) requires that an ALUCP be prepared for all public-use airports in the state to "protect the public health, safety, and welfare by ensuring orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible land uses."

State law requires local land use plans and individual development proposals to be consistent with policies set forth in Compatibility Plans. The statutes require that local jurisdictions preparing Compatibility Plans "rely upon" the compatibility guidance provided by the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation ("Caltrans"), Division of Aeronautics.

Case Planner:	Lorena Mejia
Planning Director Approval:	
Submittal Date:	1/3/2022

Hearing Body	*Date*	*Decision*	*Action*
PC	6/28/2022	APPROVAL	Recommend
CC-1st Reading	7/19/2022		Introduction
CC-2nd Reading	8/16/2022		Final

The responsibility for the preparation and adoption of compatibility plans falls to the Airport Land Use Commissions ("ALUC") within each county. However, State law also provides for what is generally referred to as an "Alternative Process" wherein a county does not have to form an ALUC and the required compatibility planning responsibilities fall to local jurisdictions. San Bernardino County and its cities elected to follow the Alternative Process when this option became available as a result of the 1994 legislation (Assembly Bill 2831). Specific requirements for implementation of the Alternative Process are set forth in Public Utilities Code Section 21670.1(c)(2).

Use of the Alternative Process within San Bernardino County was established in 1995 by resolutions of the County Board of Supervisors and the city councils of cities affected by airports. The California Division of Aeronautics approved the San Bernardino County Alternative Process in 1996. The approval of the Alternative Process designated the City of Chino as the local jurisdiction responsible for leading the compatibility planning process for Chino Airport.

(2) Proposed Chino Airport Overlay District — The existing 1991 Chino Airport Land Use Compatibility Plan (ALUCP) does not reflect the guidance set forth in the 2011 Caltrans Airport Land Use Planning Handbook ("Handbook"). Although, the City of Ontario does not have the formal responsibility under the "alternative process" to prepare a compatibility plan for Chino Airport, the City of Ontario has prepared an airport land compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries.

The basic function of the proposed ALUCP for Chino Airport ("CNO") is to promote compatibility between CNO and the land uses impacted within the City of Ontario. The main objective of the ALUCP is to avoid future compatibility conflicts rather than to remedy existing incompatibilities. In addition, the ALUCP is aimed at addressing future land uses and development and compatibility with The Ontario Plan Policy Plan. The ALUCP does not place any restrictions on the present and future role, configuration, or use of the airport.

The ALUCP addresses four compatibility factors which include safety, noise, airspace protection, and overflight impacts. The compatibility plan includes policies to evaluate, land use plans and new development proposals for consistency with CNO. Each compatibility factor takes into consideration present and future aircraft operations or land uses that could negatively affect airport operations.

(a) Safety Zones — The intent of the safety compatibility policies are to minimize the risks associated with an off-airport aircraft accident or emergency landing. The policies focus on reducing the potential risks to people and property if such events where to occur.

The ALUCP relies on the Handbook's generic safety zones for general aviation runways for delineating the CNO safety zone boundaries. Portions of Safety Zones 1, 2, 3, 4, and 6

are located within Ontario city limits and are depicted in Exhibit B—Chino Airport Safety Zones. Safety Zone 5 is located outside of the Ontario city limits and not included in the CNO ALUCP. The safety zones around CNO affect both the intensity of development (i.e., number of people allowed per acre of land), and total permissible floor area of any future building developed. The safety zones also place restrictions on new residential land uses from being developed within the affected areas along with special land uses, such as schools.

(b) Noise — The purpose of noise compatibility policies is to avoid the establishment of noise-sensitive land uses in the portions of the CNO AIA that are exposed to significant levels of aircraft noise. For compatibility planning purposes, the noise contours reflect the County's aircraft activity forecast of 209,400 annual operations for 2025 that is considered to be representative of the likely maximum number of aircraft operations that could be realized over the 20-year forecast period (2039) and are shown in Figure 1: Chino CNEL Contours (2025). For purposes of airport land use compatibility planning, Caltrans advises that 60 dB CNEL is suitable for new residential development and other noise sensitive land uses around most airports.

Figure 1 shows that only the 55 dB CNEL contour affects lands within the City of Ontario. Since the 60 dB CNEL does not extend into the City of Ontario no significant impacts are anticipated and therefore no noise policies and criteria are included within the CNO ALUCP.

(c) Airspace Protection — Airspace protection compatibility policies seek to prevent creation of land use features that can be hazards to aircraft in flight and have the potential for causing an aircraft accident to occur. Such hazards may be physical such as a building being built too high, or land uses on the ground that may cause visual or electronic hazards. The factors considered in setting airspace protection policies in include the Federal Aviation Regulations (FAR) Part 77. To determine the allowable heights of future objects surrounding CNO, the underlying ground elevation is compared

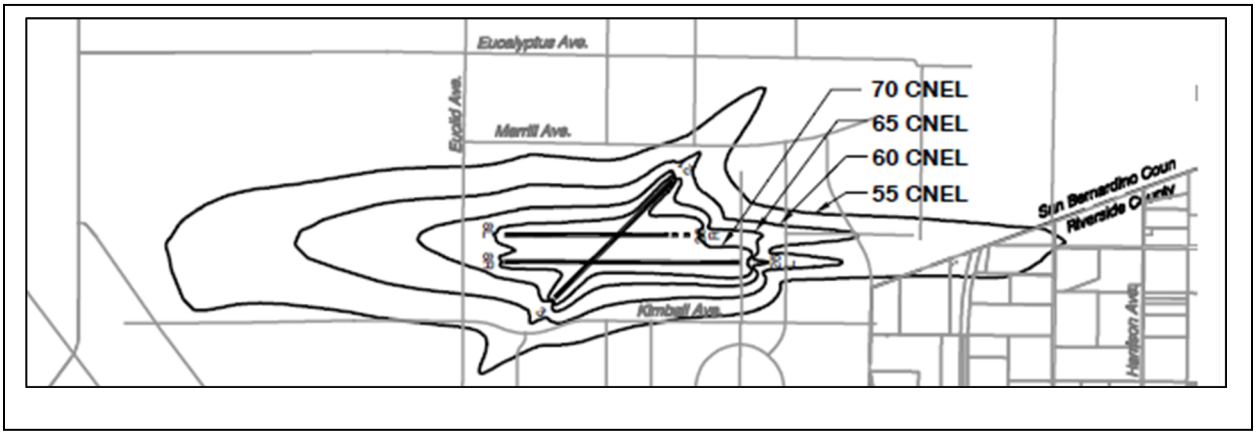


Figure 1: Chino CNEL Contours (2025)

with the elevation of the controlling portions of the FAR Part 77 and is depicted in Exhibit C—Chino Airport Airspace Protection Zones.

(d) Overflight — Noise from individual aircraft operations, can be intrusive and annoying in locations beyond the limits of the noise impacts zones. Sensitivity to aircraft overflights varies from one person to another. The purpose of overflight compatibility policies is to help notify people about the presence of overflights near airports so that they can make informed decisions regarding acquisition or lease of property in the affected areas. Overflight compatibility is particularly important with regard to residential land uses. The boundaries of the overflight notification zones around CNO are depicted in Exhibit D—Chino Airport Overflight Notification Zones.

(3) ALUCP and General Plan Land Use Consistency — State Law requires General Plans and Specific Plans must be made consistent with adopted airport compatibility plans. Government Code Section 65302.3 requires that General Plans and any applicable Specific Plans "shall be consistent with" the Compatibility Plan and is reiterated in local agencies' obligations under the Alternative Process (Public Utilities Code Section 21670.1(c)(2)(D)). General Plans do not need to be identical with the ALUCP in order to achieve consistency. Affected jurisdictions' General Plans must do the following: (1) address compatibility planning issues, either directly or through reference to a zoning ordinance or other policy document; and (2) must avoid direct conflicts with the (ALUCP) development policies and criteria.

The consistency requirement pertains only to future land use development. Nothing in state law or the ALUCP requires that already existing development be removed or modified to eliminate incompatibilities that may already exist. Furthermore, General Plans and Specific Plans can show such land uses as continuing even though they would be nonconforming with the ALUCP criteria. Conflicts of this type do not constitute inconsistencies between a General Plan or Specific Plan and the ALUCP.

(4) Development Code Amendment — The proposed Development Code Amendment consists of the following:

(a) Chapter 5 — Provisions to establish the Chino Airport Overlay zoning district within Chapter 5 Development Code Section 5.01.005.F.6 (see Attachment A of the Planning Commission Resolution); and

(b) Reference – Provisions to establish Reference L the Chino Airport Land Use Compatibility Plan within the Reference section of the Development Code (see Attachment B of the Planning Commission Resolution).

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan ("TOP"). More

specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

(1) City Council Goals.

- Maintain the Current High Level of Public Safety
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

(2) Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

  - G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision

(3) Policy Plan (General Plan)

Land Use Element:

- Goal LU5: Integrated airport systems and facilities that minimize negative impacts to the community and maximize economic benefits.

  - LU5-3 Airport Impacts: We work with agencies to maximize resources to mitigate the impacts and hazards related to airport operations.

  - LU5-6 Alternative Process: We fulfill our responsibilities and comply with state law with regard to the Alternative Process for proper airport land use compatibility planning.

  - LU5-7 ALUCP Consistency with Land Use Regulations: We comply with state law that requires general plans, specific plans and all new development be consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan for any public use airport.

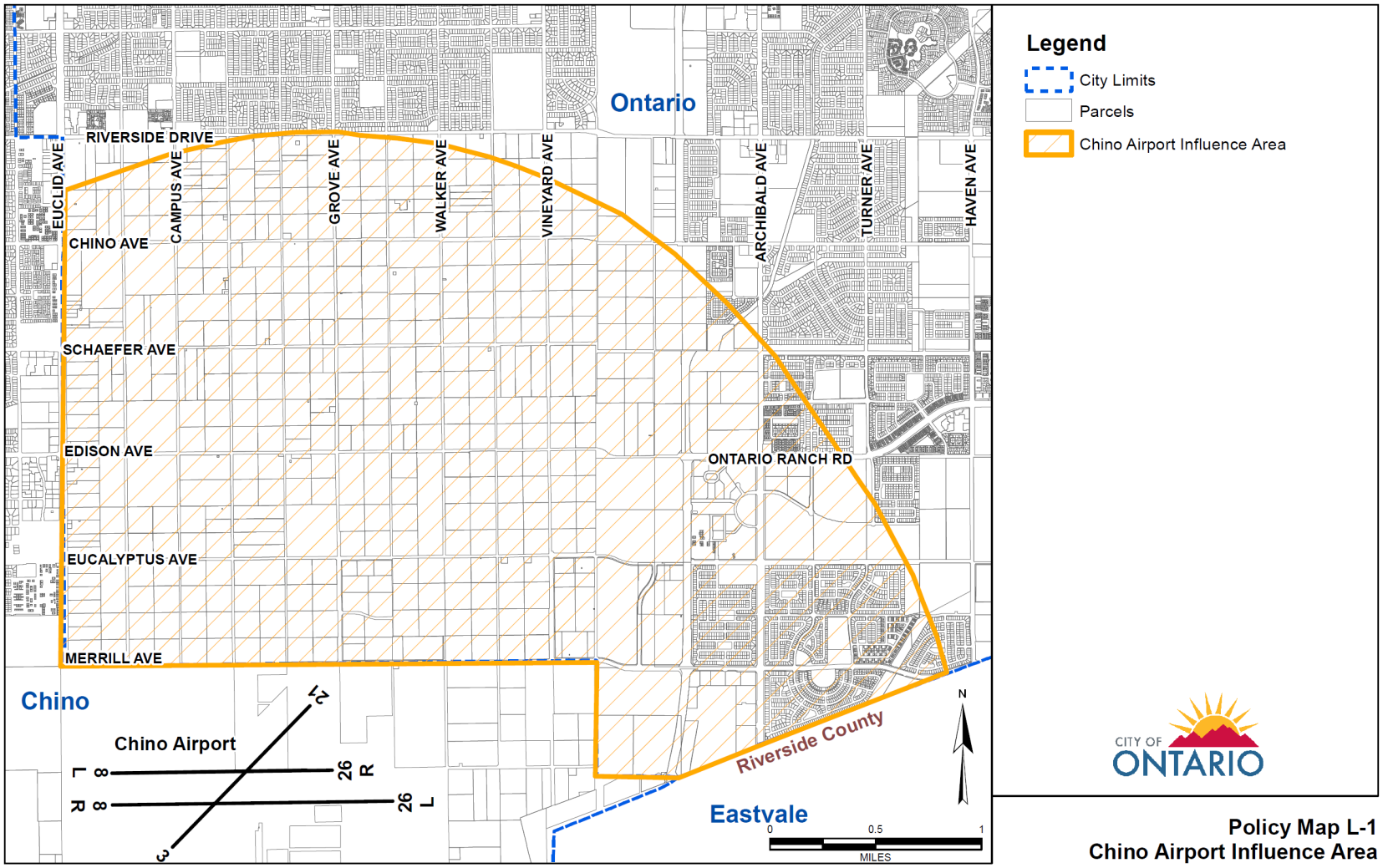
  - LU5-8 Chino Airport: We will support the creation and implementation of the Airport Land Use Compatibility Plan for Chino Airport.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with

the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Chino ALUCP does not create any conflicting policies or inconsistencies with the ONT ALUCP.

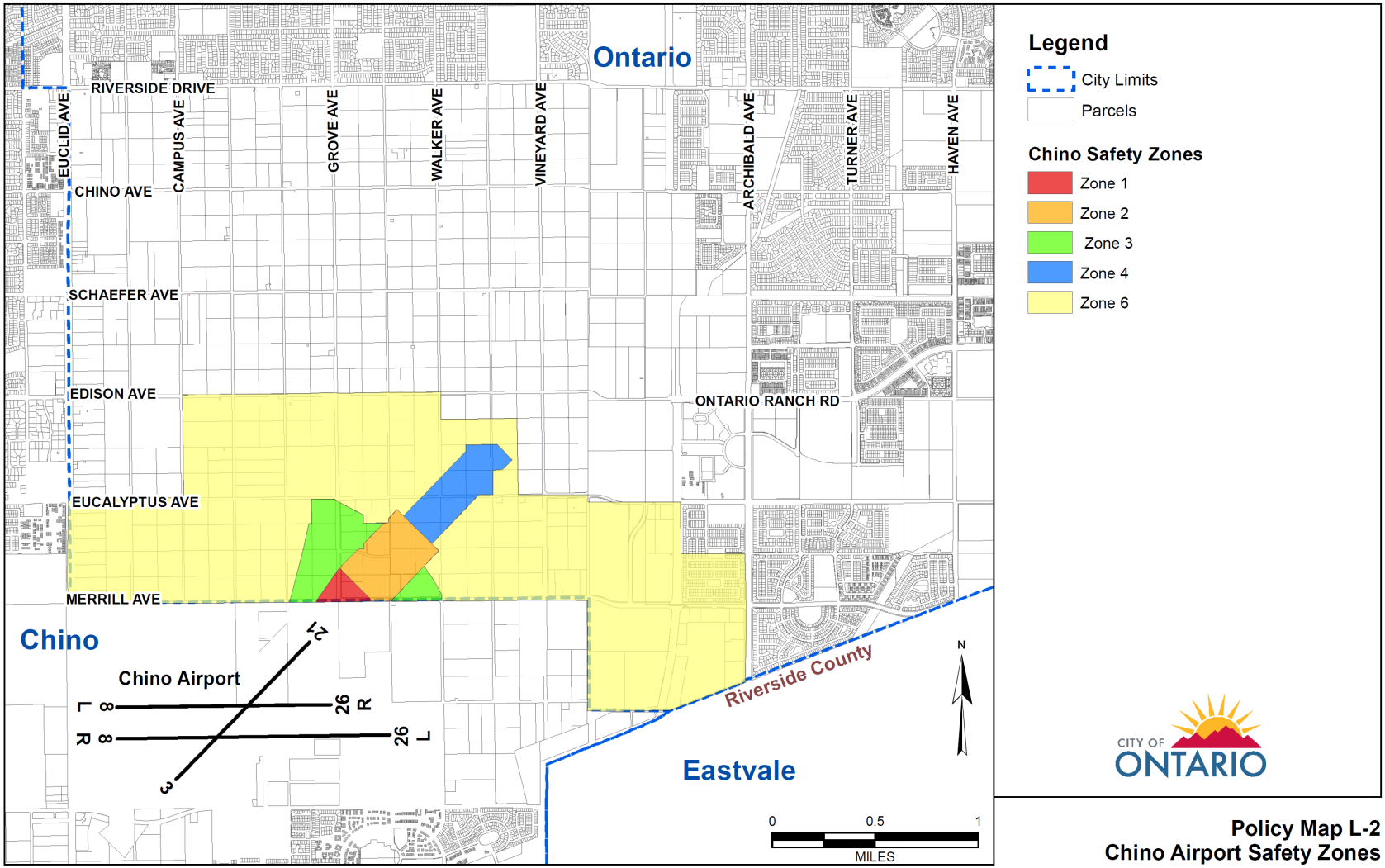
ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

EXHIBIT A— CHINO AIRPORT INFLUENCE AREA



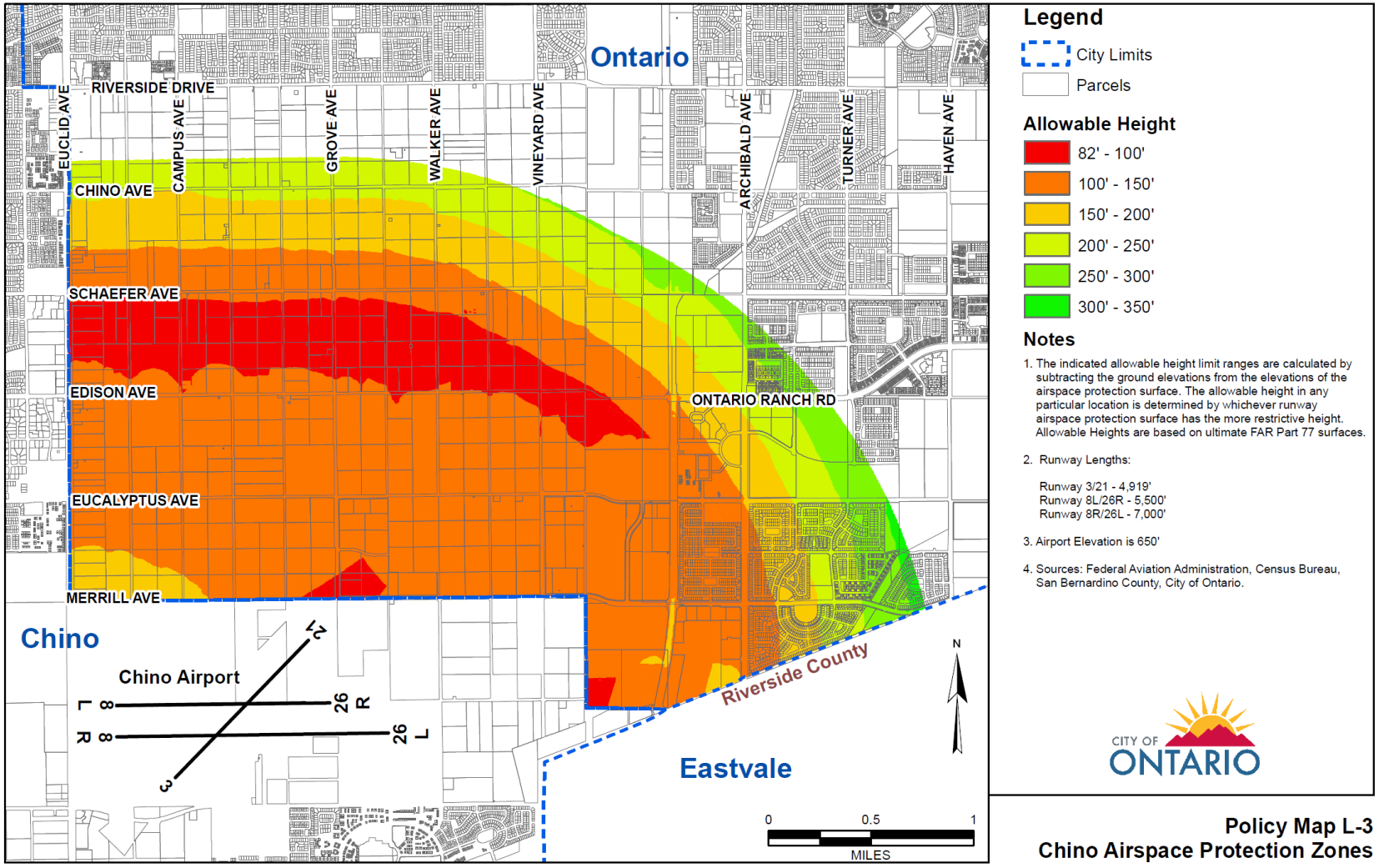
Policy Map L-1
Chino Airport Influence Area

EXHIBIT B— CHINO AIRPORT SAFETY ZONES



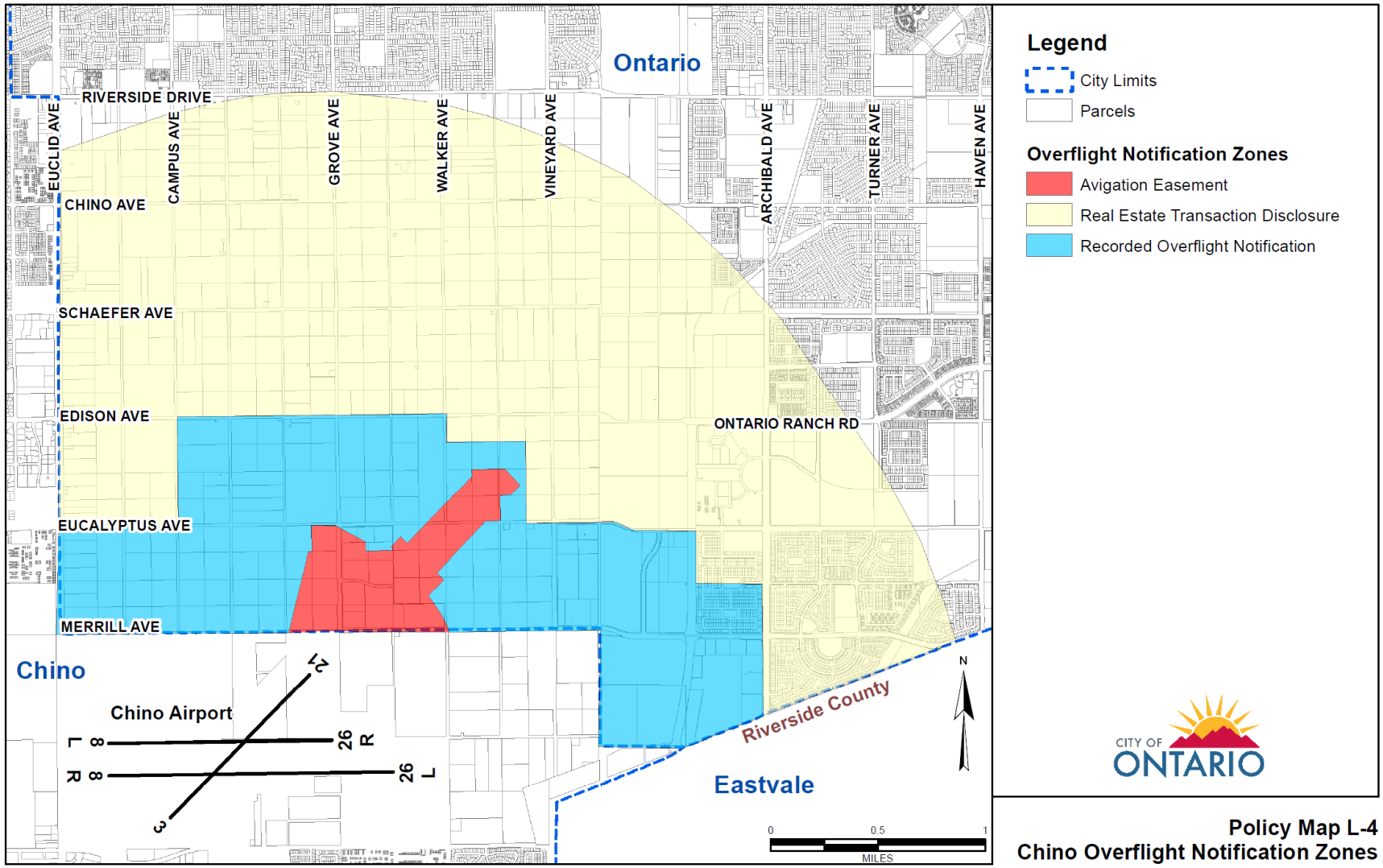
Policy Map L-2
Chino Airport Safety Zones

EXHIBIT C— CHINO AIRPORT AIRSPACE PROTECTION ZONES



Policy Map L-3
Chino Airspace Protection Zones

EXHIBIT D— CHINO AIRPORT OVERFLIGHT NOTIFICATION ZONES



Policy Map L-4
Chino Overflight Notification Zones

RESOLUTION NO. PC22-032

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDCA22-004, A DEVELOPMENT CODE AMENDMENT FOR CERTAIN REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE, ESTABLISHING THE CHINO AIRPORT OVERLAY ZONING DISTRICT AND REFERENCE L, CHINO AIRPORT LAND USE COMPATIBILITY PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, The City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA22-004, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the Chino Airport is a general aviation airport located within the City of Chino, immediately adjacent to the southwestern boundary of the City of Ontario. The geographic scope of the Chino Airport Land Use Compatibility Plan (“ALUCP”) is the Airport Influence Area (“AIA”). The portion of the AIA within the City of Ontario is generally bounded by Riverside Drive to the north, Merrill Avenue/southern boundary City limits to the south, Euclid Avenue to the west and Haven Avenue to the east; and

WHEREAS, certain revisions to the City of Ontario Development Code are proposed, as follows:

(1) Provisions to establish the Chino Airport Overlay zoning district within Chapter 5 Development Code Section 5.01.005.F.6.

(2) Provisions to establish Reference L the Chino Airport Land Use Compatibility Plan within the Reference section of the Development Code; and

WHEREAS, the California State Aeronautics Act (Public Utilities Code, Section 21670 et seq.) requires that an ALUCP be prepared for all public-use airports in the state to “protect the public health, safety, and welfare by ensuring orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible land uses”; and

WHEREAS, State law requires that local jurisdictions preparing Compatibility Plans “rely upon” the compatibility guidance provided by the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation (“Caltrans”), Division of Aeronautics; and

WHEREAS, the responsibility for the preparation and adoption of compatibility plans falls to the county Airport Land Use Commission (“ALUC”). However, State law also provides for what is generally referred to as an “Alternative Process” wherein a county does not have to form an ALUC and the required compatibility planning responsibilities fall to local jurisdictions; and

WHEREAS, the use of the Alternative Process within San Bernardino County was established in 1995 by resolutions of the County Board of Supervisors and the city councils of cities affected by airports. The California Division of Aeronautics approved the San Bernardino County Alternative Process in 1996. The approval of the Alternative Process designated the City of Chino as the local jurisdiction responsible for leading the compatibility planning process for Chino Airport; and

WHEREAS, the current ALUCP does not reflect the guidance set forth in the 2011 Caltrans Airport Land Use Planning Handbook (“Handbook”). Although, the City of Ontario does not have the formal responsibility under the “alternative process” to prepare a compatibility plan for Chino Airport, the City of Ontario has prepared an airport land compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario’s boundaries; and

WHEREAS, the basic function of the ALUCP for Chino Airport (“CNO”) is to promote compatibility between CNO and the land uses that surround it. The main objective of the ALUCP is to avoid future compatibility conflicts rather than to remedy existing incompatibilities; and

WHEREAS, the ALUCP addresses four compatibility factors which include safety, noise, airspace protection, and overflight impacts. The compatibility plan includes policies to evaluate, land use plans and new development proposals for consistency with CNO. Each compatibility factor takes into consideration present and future aircraft operations or land uses that could negatively affect airport operations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Chino ALUCP does not create any conflicting policies or inconsistencies with the ONT ALUCP; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the "common sense exemption" (also known as the "general rule exemption") that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 3: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 2, above, the Planning Commission hereby concludes as follows:

(1) The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan. The Development Code Amendment will support the creation and implementation of the Airport Land Use Compatibility Plan for Chino Airport as promoted by Land Use Element Policy LU5-8 Chino Airport.

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The Development Code Amendment incorporates safeguards intended to ensure that the purposes of the Development Code are preserved; the project will not be contrary to or damage the public health, safety, convenience, or general welfare; the project will not result in any significant environmental impacts; and the project will be in full conformity with the Vision, City Council Priorities, and Policy Plan components of The Ontario Plan.

SECTION 4: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVES the herein described Application, subject to each and every condition set forth in the Department reports attached hereto as "Attachment A" and "Attachment B," incorporated herein by this reference.

SECTION 5: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 6: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 7: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of June 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Planning Commission Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-032, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on June 28, 2022, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Gage, Lampkin, Ricci, Willoughby

NOES: None

ABSENT: Dean

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Add Development Code Section 5.01.005.F.6 to read as follows:

"**6.** CNO (Chino Airport) Overlay Zoning District. The Chino Airport Overlay zoning district is hereby established to: **[i]** delineate the Airport Influence Area (AIA) for Chino Airport as the boundary of the CNO Overlay zoning district; **[ii]** adopt an airport land use compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries; and **[iii]** promote compatibility between CNO and the land uses that surround it. Property in the CNO Overlay zoning district shall be subject to Reference L - Chino Airport Land Use Compatibility Plan, that includes maps, criteria, and policy language to guide development within the Chino AIA."

ATTACHMENT B:

Add Development Code Reference L to read as follows:

L.01.001: Introduction

The California State Aeronautics Act (Public Utilities Code, Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan (Compatibility Plan) be prepared for all public-use airports in the state to:

"protect the public health, safety, and welfare by ensuring orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible land uses."

State law also requires local land use plans and individual development proposals to be consistent with policies set forth in Compatibility Plans. The statutes also require that local jurisdictions preparing Compatibility Plans "rely upon" the compatibility guidance provided by the California *Airport Land Use Planning Handbook* published by the California Department of Transportation (Caltrans), Division of Aeronautics in January 2011.

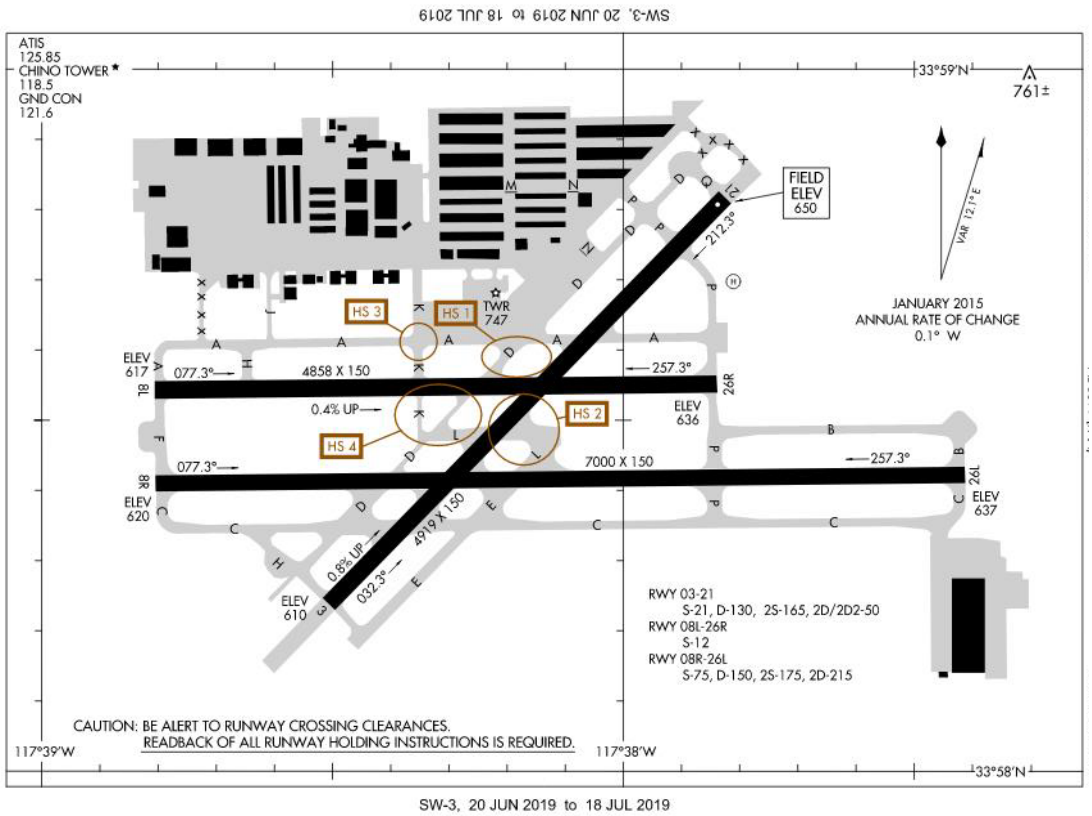
The responsibility for the preparation and adoption of compatibility plans falls to the county airport land use commission (ALUC). However, State law also provides for what is generally referred to as an "Alternative Process" wherein a county does not have to form an ALUC and the required compatibility planning responsibilities fall to local jurisdictions. San Bernardino County and its cities elected to follow the Alternative Process when this option became available as a result of the 1994 legislation (Assembly Bill 2831). Specific requirements for implementation of the Alternative Process are set forth in Public Utilities Code Section 21670.1(c)(2).

Use of the Alternative Process within San Bernardino County was established in 1995 by resolutions of the County Board of Supervisors and the city councils of cities affected by airports. The California Division of Aeronautics approved the San Bernardino County Alternative Process in 1996. The approval of the Alternative Process designated the City of Chino as the local jurisdiction responsible for leading the compatibility planning process for Chino Airport.

The current Chino Airport Land Use Compatibility Plan (ALUCP) does not reflect the guidance set forth in the 2011 Caltrans Airport Land Use Planning Handbook. Although, the City of Ontario does not have the formal responsibility under the "alternative process" to prepare a compatibility plan for Chino Airport, the City of Ontario has prepared an airport land compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries.

Chino Airport is owned and operated by the County of San Bernardino and is situated within the boundaries of the City of Chino, immediately south of Ontario. Chino Airport (CNO) is the busiest non-commercial airport within a 20-mile radius of the City of Ontario, making it a leading general aviation airport of choice for independent pilots, students and trainers, and corporate users. CNO occupies 1,097 acres, has three runways and provides full precision instrument approach capabilities. The airport reported nearly 165,000 annual operations for the 12-month period ending in September 2019. Aircraft operations on Runway 3-21 (northeast/southwest crosswind runway) and Runway 8L-26R (northern east/west parallel runway) have the greatest effect on the City of Ontario. A brief summary of airport facilities is provided below and shown in **Figure L-1: Chino Airport Diagram**.

Figure L-1: Chino Airport Runway Diagram



Chino Airport Facilities

- **Runway 3-21**

  - Airport Reference Code: C-II
  - Existing Runway Dimensions: 4,919 feet x 150 feet
  - Runway is lighted for nighttime operations
  - Approach Visibility Minimums (lowest): Visual (>1-mile)
  - Title 14 Code of Federal Regulation (CFR), Part 77 category and approach slope: B(V), 20:1
  - Traffic Pattern: Runway 3 (right), Runway 21 (left)

- **Runway 8L-26R**

  - Airport Reference Code: C-III
  - Runway Dimensions:
  - Existing: 4,858 feet x 150 feet
  - Future: 5,500 feet x 150 feet
  - Existing Approach Visibility Minimums (lowest) and Part 77 category and approach slope:
  - Runway 8L: Visual (>1 mile); B(V), 20:1
  - Runway 26R: Precision (<3/4 mile); 50:1
  - Traffic Pattern: Runway 8L (right), Runway 26R (left)

- **Runway 8R-26L**

  - Airport Reference Code: D-III
  - Existing Runway Dimensions: 7,000 feet x 150 feet
  - Runway is lighted for nighttime operations
  - Approach Visibility Minimums (lowest):
    - Existing Runway 8R and 26L: Visual, >1-mile
    - Future Runway 26L: Precision (3/4 mile)
  - Part 77 category and approach slope:
    - Existing: B(V), 20:1
    - Future Runway 26L: Precision, 50:1
  - Traffic Pattern: Runway 8R (right), Runway 26L (left)

L.01.002: Purpose

The purpose of the “Airport Land Use Compatibility Plan” (ALUCP) for Chino Airport (CNO) is to promote compatibility between CNO and the land uses that surround it. The City’s general plan, specific plans, and zoning ordinances shall be made consistent with the CNO ALUCP through incorporation of the compatibility policies into their land use policy documents.

The main objective of the ALUCP is to avoid future compatibility conflicts rather than to remedy existing incompatibilities. Also, the ALUCP is aimed at addressing future land uses and development, not airport activity. The ALUCP does not place any restrictions on the present and future role, configuration, or use of the airport.

L.01.003: Definitions

A. Purpose. The purpose of this section is to establish definitions for terms and phrases used in this CNO ALUCP that are technical or specialized, or that may not reflect common usage.

B. Terms and Phrases. Definitions of Words Beginning with the Letter "A."

Above Ground Level (AGL): An elevation datum given in feet above ground level.

Accident Potential Zones (APZs): A set of safety-related zones defined by AICUZ studies for areas beyond the ends of military airport runways. Typically, three types of zones are established: a clear zone closest to the runway end, then APZ I and APZ II. The potential for aircraft accidents and the corresponding need for land use restrictions is greatest with the clear zone and diminishes with increased distance from the runway.

Air Carriers: The commercial system of air transportation, consisting of the certificated air carriers, air taxis (including commuters), supplemental air carriers, commercial operators of large aircraft, and air travel clubs.

Aircraft Accident: An occurrence incident to flight in which, as a result of the operation of an aircraft, a person (occupant or nonoccupant) receives fatal or serious injury or an aircraft receives substantial damage.

- Except as provided below, *substantial damage* means damage or structural failure that adversely affects the structural strength, performance, or flight characteristics of the aircraft, and that would normally require major repair or replacement of the affected component.

- Engine failure, damage limited to an engine, bent fairings or cowling, dented skin, small puncture holes in the skin or fabric, ground damage to rotor or propeller blades, damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered substantial damage.

Aircraft Incident: A mishap associated with the operation of an aircraft in which neither fatal or serious injuries nor substantial damage to the aircraft occur.

Aircraft Mishap: The collective term for an aircraft accident or an incident.

Aircraft Operation: The airborne movement of aircraft at an airport or about an en route fix or at other point where counts can be made. There are two types of operations: local and itinerant. An operation is counted for each landing and each departure, such that a touch-and-go flight is counted as two operations.

Airport: An area of land or water that is used or intended to be used for the landing and taking off of aircraft and includes its buildings and facilities if any.

Airport Elevation: The highest point of an airport's useable runways, measured in feet above mean sea level.

Airport Land Use Compatibility Plan (ALUCP): A planning document that contains policies for promoting safety and compatibility between public use airports and the communities that surround them. The ALUCP is the foundation of the airport land use compatibility planning process.

Airport Layout Plan (ALP): A scale drawing of existing and proposed airport facilities, their location on an airport, and the pertinent clearance and dimensional information required to demonstrate conformance with applicable standards.

Airport Master Plan (AMP): A long-range plan for development of an airport, including descriptions of the data and analyses on which the plan is based.

Airport Reference Code (ARC): A coding system used to relate airport design criteria to the operation and physical characteristics of the airplanes intended to operate at an airport.

Airports, Classes of: For the purposes of issuing a Site Approval Permit, The California Department of Transportation, Division of Aeronautics classifies airports into the following categories:

- Agricultural Airport or Heliport: An airport restricted to use only be agricultural aerial applicator aircraft (FAR Part 137 operators).

- Emergency Medical Services (EMS) Landing Site: A site used for the landing and taking off of EMS helicopters that is located at or as near as practical to a medical emergency or at or near an medical facility and: 1)has been designated an EMS landing site by an officer authorized by a public safety agency, as defined in PUC Section 21662.1, using criteria that the public safety agency has determined is reasonable and prudent for the safe operation of EMS helicopters; 2) is used, over any twelve month period, for no more than an average of six landings per month with a patient or patients on the helicopter, except to allow for adequate medical

response to a mass casualty event even if that response causes the site to be used beyond these limits; 3)is not marked as a permitted heliport as described in Section 3554 of these regulations; and 4)is used only for emergency medical purposes.

- Heliport on Offshore Oil Platform: A heliport located on a structure in the ocean, not connected to the shore by pier, bridge, wharf, dock or breakwater, used in the support of petroleum exploration or production.

- Personal-Use Airport: An airport limited to the non-commercial use of an individual owner or family and occasional invited guests.

- Public-Use Airport: An airport that is open for aircraft operations to the general public and is listed in the current edition of the Airport/Facility Directory that is published by the National Ocean Service of the U.S. Department of Commerce.

- Seaplane Landing Site: An area of water used, or intended for use, for landing and takeoff of seaplanes.

- Special-Use Airport or Heliport: An airport not open to the general public, access to which is controlled by the owner in support of commercial activities, public service operations, and/or personal use.

- Temporary Helicopter Landing Site: A site, other than an emergency medical service landing site at or near a medical facility, which is used for landing and taking off of helicopters and is used or intended to be used for less than one year, except for recurrent annual events and is not marked or lighted to be distinguishable as a heliport and is not used exclusively for helicopter operations.

Ambient Noise Level: The level of noise that is all encompassing within a given environment for which a single source cannot be determined. It is usually a composite of sounds from many and varied sources near to and far from the receiver.

Approach Protection Easement: A form of easement that both conveys all of the rights of an avigation easement and sets specified limitations on the type of land uses allowed to be developed on the property.

Approach Speed: The recommended speed contained in aircraft manuals used by pilots when making an approach to landing. This speed will vary for different segments of an approach as well as for aircraft weight and configuration.

Aviation-Related Use: Any facility or activity directly associated with the air transportation of persons or cargo or the operation, storage, or maintenance of aircraft at an airport or heliport. Such uses specifically include runways, taxiways, and their

associated protected areas defined by the Federal Aviation Administration, together with aircraft aprons, hangars, fixed base operations, terminal buildings, etc.

Avigation Easement: A type of easement that typically conveys the following rights:

- A right-of-way for free and unobstructed passage of aircraft through the airspace over the property at any altitude above a surface specified in the easement (usually set in accordance with FAR Part 77 criteria).

- A right to subject the property to noise, vibrations, fumes, dust, and fuel particle emissions associated with normal airport activity.

- A right to prohibit the erection or growth of any structure, tree, or other object that would enter the acquired airspace.

- A right-of-entry onto the property, with proper advance notice, for the purpose of removing, marking, or lighting any structure or other object that enters the acquired airspace.

- A right to prohibit electrical interference, glare, misleading lights, visual impairments, and other hazards to aircraft flight from being created on the property.

Based Aircraft: Aircraft stationed at an airport on a long-term basis.

Ceiling: Height above the earth's surface to the lowest layer of clouds or obscuring phenomena.

Circling Approach/Circle-to-Land Maneuver: A maneuver initiated by the pilot to align the aircraft with a runway for landing when a straight-in landing from an instrument approach is not possible or not desirable.

Commercial Activities: Airport-related activities that may offer a facility, service or commodity for sale, hire or profit. Examples of commodities for sale are: food, lodging, entertainment, real estate, petroleum products, parts and equipment. Examples of services are: flight training, charter flights, maintenance, aircraft storage, and tiedown.

Commercial Operator: A person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier.

Community Noise Equivalent Level (CNEL): The noise metric adopted by the State of California for evaluating airport noise. It represents the average daytime noise level during a 24-hour day, adjusted to an equivalent level to account for the lower

tolerance of people to noise during evening and nighttime periods relative to the daytime period.

Compatibility Plan: As used herein, a plan, that sets forth policies for promoting compatibility between airports and the land uses that surround them.

Controlled Airspace: Any of several types of airspace within which some or all aircraft may be subject to air traffic control.

Day-Night Average Sound Level (DNL): The noise metric adopted by the U.S. Environmental Protection Agency for measurement of environmental noise. It represents the average daytime noise level during a 24-hour day, measured in decibels and adjusted to account for the lower tolerance of people to noise during nighttime periods. The mathematical symbol is L_{dn}.

Decibel (dB): A unit measuring the magnitude of a sound, equal to the logarithm of the ratio of the intensity of the sound to the intensity of an arbitrarily chosen standard sound, specifically a sound just barely audible to an unimpaired human ear. For environmental noise from aircraft and other transportation sources, an *A-weighted sound level* (abbreviated dBA) is normally used. The A-weighting scale adjusts the values of different sound frequencies to approximate the auditory sensitivity of the human ear.

Deed Notice: A formal statement added to the legal description of a deed to a property and on any subdivision map. As used in airport land use planning, a deed notice would state that the property is subject to aircraft overflights. Deed notices are used as a form of buyer notification as a means of ensuring that those who are particularly sensitive to aircraft overflights can avoid moving to the affected areas.

Displaced Threshold: A landing threshold that is located at a point on the runway other than the designated beginning of the runway (see *Threshold*).

Equivalent Sound Level (L_{eq}): The level of constant sound that, in the given situation and time period, has the same average sound energy as does a time-varying sound.

FAR Part 77: The part of the Federal Aviation Regulations that deals with objects affecting navigable airspace.

FAR Part 77 Surfaces: Imaginary airspace surfaces established with relation to each runway of an airport. There are five types of surfaces: (1) primary; (2) approach; (3) transitional; (4) horizontal; and (5) conical.

Federal Aviation Administration (FAA): The U.S. government agency that is responsible for ensuring the safe and efficient use of the nation's airports and airspace.

Federal Aviation Regulations (FAR): Regulations formally issued by the FAA to regulate air commerce.

Fixed Base Operator (FBO): A business that operates at an airport and provides aircraft services to the general public including, but not limited to, sale of fuel and oil; aircraft sales, rental, maintenance, and repair; parking and tiedown or storage of aircraft; flight training; air taxi/charter operations; and specialty services, such as instrument and avionics maintenance, painting, overhaul, aerial application, aerial photography, aerial hoists, or pipeline patrol.

Fleet Mix: The composition of aircraft that operate at a particular airport.

Flight Tracks: Routes aircraft routinely use when arriving and departing from an airport.

Forecasts: A projection of the amount and type of aircraft operations at an airport.

General Aviation: That portion of civil aviation that encompasses all facets of aviation except air carriers.

General Aviation Airport: Airports that do not receive scheduled commercial service, or do not meet the criteria for classification as a commercial service airport. General aviation airports have at least 10 locally based aircraft, are at least twenty miles from the nearest NPIAS airports.

Glide Slope: An electronic signal radiated by a component of an ILS to provide vertical guidance for aircraft during approach and landing.

Helipad: A small, designated area, usually with a prepared surface, on a heliport, airport, landing/takeoff area, apron/ramp, or movement area used for takeoff, landing, or parking of helicopters.

Heliport: A facility used for operating, basing, housing, and maintaining helicopters. (HAI)

Infill: Development that takes place on vacant property largely surrounded by existing development, especially development that is similar in character.

Inner Approach/Departure Zone: A rectangular area extending beyond the RPZ. If the RPZ widths approximately equal the runway widths, the Inner Approach/Departure Zoned extends along the sides of the RPZ from the end of the runway.

Inner Turning Zone: A triangular area over which aircraft are turning from the base to final approach legs of the standard traffic pattern. It also includes the area where departing aircraft normally complete the transition from takeoff to climb mode and begin to turn on their en route headings.

Instrument Approach Procedure: A series of predetermined maneuvers for the orderly transfer of an aircraft under instrument flight conditions from the beginning of the initial approach to a landing or to a point from which a landing may be made visually. It is prescribed and approved for a specific airport by competent authority (refer to Nonprecision Approach Procedure and Precision Approach Procedure).

Instrument Flight Rules (IFR): Rules governing the procedures for conducting instrument flight. Generally, IFR applies when meteorological conditions with a ceiling below 1,000 feet and visibility less than 3 miles prevail.

Instrument Landing System (ILS): A precision instrument approach system that normally consists of the following electronic components and visual aids: (1) Localizer; (2) Glide Slope; (3) Outer Marker; (4) Middle Marker; (5) Approach Lights.

Instrument Operation: An aircraft operation in accordance with an IFR flight plan or an operation where IFR separation between aircraft is provided by a terminal control facility.

Instrument Runway: A runway equipped with electronic and visual navigation aids for which a precision or nonprecision approach procedure having straight-in landing minimums has been approved.

Inverse Condemnation: An action brought by a property owner seeking just compensation for land taken for a public use against a government or private entity having the power of eminent domain. It is a remedy peculiar to the property owner and is exercisable by that party where it appears that the taker of the property does not intend to bring eminent domain proceedings.

Land Use Density: A measure of the concentration of land use development in an area. Mostly the term is used with respect to residential development and refers to the number of dwelling units per acre. Unless otherwise noted, policies in this compatibility plan refer to *gross* rather than *net* acreage.

Land Use Intensity: A measure of the concentration of nonresidential land use development in an area. For the purposes of airport land use planning, the term indicates the number of people per acre attracted by the land use. Unless otherwise noted, policies in this compatibility plan refer to gross rather than net acreage.

Large Airplane: An airplane of more than 12,500 pounds maximum certificated takeoff weight.

Localizer (LOC): The component of an ILS that provides course guidance to the runway.

Mean Sea Level (MSL): An elevation datum given in feet from mean sea level.

Minimum Descent Altitude (MDA): The lowest altitude, expressed in feet above mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering in execution of a standard instrument approach procedure where no electronic glide slope is provided.

Missed Approach: A maneuver conducted by a pilot when an instrument approach cannot be completed to a landing.

National Transportation Safety Board (NTSB): The U.S. government agency responsible for investigating transportation accidents and incidents.

Navigational Aid (Navaid): Any visual or electronic device airborne or on the surface that provides point-to-point guidance information or position data to aircraft in flight.

Noise Contours: Continuous lines of equal noise level usually drawn around a noise source, such as an airport or highway. The lines are generally drawn in 5-decibel increments so that they resemble elevation contours in topographic maps.

Noise Level Reduction (NLR): A measure used to describe the reduction in sound level from environmental noise sources occurring between the outside and the inside of a structure.

Nonconforming Use: An existing land use that does not conform to subsequently adopted or amended zoning or other land use development standards.

Nonprecision Approach Procedure: A standard instrument approach procedure in which no electronic glide slope is provided.

Nonprecision Instrument Runway: A runway with an approved or planned straight-in instrument approach procedure that has no existing or planned precision instrument approach procedure.

Obstruction: Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used therein, the height of

which exceeds the standards established in Subpart C of Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace.

One-Engine Inoperative (OEI) Obstacle Identification Surface: For airports with runways that support air carrier operations, this surface begins at the same elevation of the end of the departure runway and slopes upward at 1 foot vertically to 62.5 feet horizontally. The inner width of the OEI surface is 600 feet while the outer width is 12,000 feet. The surface extends for a distance of 50,000 feet along the runway centerline.

Outer Approach/Departure Zone: A rectangular area located along the extended centerline beyond the Inner Approach/Departure Zone.

Overflight: Any distinctly visible and/or audible passage of an aircraft in flight, not necessarily directly overhead.

Overflight Easement: An easement that describes the right to overfly the property above a specified surface and includes the right to subject the property to noise, vibrations, fumes, and emissions. An overflight easement is used primarily as a form of buyer notification.

Overflight Zone: The area(s) where aircraft maneuver to enter or leave the traffic pattern, typically defined by the FAR Part 77 horizontal surface.

Precision Approach Procedure: A standard instrument approach procedure where an electronic glide slope is provided.

Precision Instrument Runway: A runway with an existing or planned precision instrument approach procedure.

Qualified Airport Wildlife Biologist: A biologist who has received specific training to identify hazards to aircraft operations pursuant to FAA criteria set forth at Advisory Circular 150/5200-36A, Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards on Airports.

Referral Area: The area around an airport defined by the planning area boundary adopted by an airport land use commission within which certain land use proposals are to be referred to the commission for review.

Runway Protection Zone (RPZ): An area (formerly called a *clear zone*) off the end of a runway used to enhance the protection of people and property on the ground.

Safety Zone: For the purpose of airport land use planning, an area near an airport in which land use restrictions are established to protect the safety of the public from potential aircraft accidents.

Sideline Zone: A rectangular area in close proximity and parallel to the runway.

Single-Event Noise: As used in herein, the noise from an individual aircraft operation or overflight.

Single Event Noise Exposure Level (SENEL): A measure, in decibels, of the noise exposure level of a single event, such as an aircraft flyby, measured over the time interval between the initial and final times for which the noise level of the event exceeds a threshold noise level and normalized to a reference duration of one second. SENEL is a noise metric established for use in California by the state Airport Noise Standards and is essentially identical to *Sound Exposure Level (SEL)*.

Site Approval Permit: A written approval issued by the California Department of Transportation authorizing construction of an airport in accordance with approved plans, specifications, and conditions. Both public-use and special-use airports require a site approval permit. (CCR)

Small Airplane: An airplane of 12,500 pounds or less maximum certificated takeoff weight. (Airport Design AC)

Sound Exposure Level (SEL): A time-integrated metric (i.e., continuously summed over a time period) that quantifies the total energy in the A-weighted sound level measured during a transient noise event. The time period for this measurement is generally taken to be that between the moments when the A-weighted sound level is 10 dB below the maximum.

Straight-In Instrument Approach: An instrument approach wherein a final approach is begun without first having executed a procedure turn; it is not necessarily completed with a straight-in landing or made to straight-in landing weather minimums. (AIM)

Taking: Government appropriation of private land for which compensation must be paid as required by the Fifth Amendment of the U.S. Constitution. It is not essential that there be physical seizure or appropriation for a *taking* to occur, only that the government action directly interferes with or substantially disturbs the owner's right to use and enjoyment of the property.

Terminal Instrument Procedures (TERPS): Procedures for instrument approach and departure of aircraft to and from civil and military airports. There are four types of

terminal instrument procedures: precision approach, nonprecision approach, circling, and departure.

Threshold: The beginning of that portion of the runway usable for landing (also see Displaced Threshold).

Touch-and-Go: An operation by an aircraft that lands and departs on a runway without stopping or exiting the runway.

Traffic Pattern: The traffic flow that is prescribed for aircraft landing at, taxiing on, or taking off from an airport. The components of a typical traffic pattern are upwind leg, crosswind leg, downwind leg, base leg, and final approach.

Traffic Pattern Zone: An elliptical area that includes the majority of other portions of regular air traffic patterns and pattern entry routes, and generally extends to the farthest point of 6,000 foot radius arcs from the centers of each of the primary surfaces and connecting lines tangent to those arcs.

Visual Approach: An approach where the pilot must use visual reference to the runway for landing under VFR conditions.

Visual Flight Rules (VFR): Rules that govern the procedures for conducting flight under visual conditions. VFR applies when meteorological conditions are equal to or greater than the specified minimum-generally, a 1,000-foot ceiling and 3-mile visibility.

Visual Runway: A runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA-approved airport layout plan.

L.01.004: Compatibility Factors

In accordance with guidance set forth the by 2011 Airport Land Use Planning Handbook (Handbook) published by the California Department of Transportation (Caltrans), Division of Aeronautics, the CNO Airport Influence Area (AIA) encompasses all lands that could be negatively impacted by CNO's present, or future aircraft operations or land uses that could negatively affect airport operations. The AIA is depicted in **Policy Map L-1 (Chino Airport Influence Area)** and encompasses the geographic extent of four types of compatibility impacts, referred to as compatibility factors, listed below:

- Safety: Areas where the risk of an aircraft accident poses heightened safety concerns for people and property on the ground.

- Noise: Locations exposed to potentially disruptive levels of aircraft noise.

- Airspace Protection: Places where height and certain other land use characteristics, particularly uses that attract birds, need to be restricted in order to protect the airspace required for operation of aircraft to and from the airport.

- Overflight: Locations where aircraft overflights can be intrusive and annoying to many people.

The potential impact of each compatibility factor on land within the City of Ontario were evaluated and maps, criteria, and policy language have been created to guide development within the Chino AIA. The compatibility policies and criteria to evaluate future development proposals are consistent with the 2011 Caltrans Airport Land Use Planning Handbook.

A. Safety. The intent of the safety compatibility policies is to minimize the risks associated with an off-airport aircraft accident or emergency landing. The policies focus on reducing the potential consequences of such events when they occur. The potential risks to people and property within the CNO AIA and to people on board the aircraft are considered.

The Handbook provides sets of generic zones for different types of general aviation runways and the shapes and sizes of the zones were established based upon mathematical analyses of the accident location data and flight parameters. The Handbook safety zones and criteria serve as the basis for this CNO ALUCP and are described below:

- The generic Handbook safety zones for a Medium General Aviation Runway Group were applied for the approach end of Runway 21 (northeast) and Runway 26R (east).

- The generic Handbook safety zones for a Long General Aviation Runway Group were applied for the approach end of Runway 26L (east).

For implementation purposes, the generic Handbook Safety Zone boundaries were adjusted to follow parcel lines, roads, and other geographic features. The reconfiguration of the safety zones did not result in a substantial net acreage reduction of the safety zones. For consistency, the CNO Safety Zones maintain the same numbering system used in the Handbook. Portions of Safety Zones 1, 2, 3, 4 and 6 are located within Ontario city limits and are depicted in **Policy Map L-2 (Chino Airport Safety Zones)**. Safety Zone 5 is located outside of the Ontario city limits and not included in the CNO ALUCP.

1. Safety Zone 1. Zone 1 reflects the airport's established Runway Protection Zone (RPZ). Portions of the RPZ are located off airport within the City of Ontario and shall be maintained as undeveloped land, clear of objects in accordance with FAA standards. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Aircraft on very close final approach or departure – very high risk	Normally Allowed Uses: ▪ None
Altitude: ▪ Less than 200 feet above runway	Uses to Avoid: ▪ Nonresidential uses except if very low intensity in character and confined to the outer sides such as parking lots, streets, roads
Common Accident Types: ▪ Arrival: Downdrafts and wind gusts. Low glide paths ▪ Departure: Runway overruns, aborted takeoffs, and engine failures	Prohibit: ▪ All new structures and residential land uses
Risk Level: ▪ Very high ▪ Percentage of near-runway accidents in this zone: 20% - 21%	Other Factors: ▪ Airport ownership of property encouraged

2. Safety Zone 2. Zone 2 reflects the Inner Approach/Departure Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Aircraft overflying at low altitudes on final approach and straight-out departures	Normally Allowed Uses: ▪ Agriculture; non-group recreational uses ▪ Low-hazard materials storage, warehouses ▪ Low-intensity light industrial uses; auto, aircraft, marine repair services
Altitude: ▪ Between 200 and 400 feet above runway	Uses to Limit: ▪ All residential uses except as infill in developed areas ▪ Multi-story uses; uses with high density or intensity Shopping centers, most eating establishments
Common Accident Types: ▪ Arrival: Similar to Zone 1, aircraft under-shooting approaches, forced short landings ▪ Departure: Similar to Zone 1, emergency landing on straight-out departure	Uses to Avoid: ▪ All residential uses except as infill in developed areas ▪ Multi-story uses; uses with high density or intensity ▪ Shopping centers, most eating establishments
Risk Level: ▪ High ▪ Percentage of near-runway accidents in this zone: 8% to 22% Aircraft on very close final approach or departure – very high risk	Uses Prohibit: ▪ Theaters, meeting halls and other assembly uses ▪ Office buildings greater than 3 stories ▪ Labor-intensive industrial use Nonresidential uses except if very low intensity in character and confined to the outer sides Parking lots, streets, roads

3. Safety Zone 3. Zone 3 reflects the Inner Turning Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Aircraft—especially smaller, piston-powered aircraft— turning base to final on landing approach or initiating turn to en route direction on departure	Normally Allowed Uses: ▪ Uses allowed in Zone 2 ▪ Greenhouses, low-hazard materials storage, mini-storage, warehouses ▪ Light industrial, vehicle repair services
Altitude: ▪ Less than 500 feet above runway, particularly on landing	Uses to Limit: ▪ Residential uses to very low densities ▪ Office and other commercial uses to low intensities
Common Accident Types: ▪ Arrival: Pilot overshoots turn to final and inappropriately cross controls the airplane rudder and ailerons while attempting to return to the runway alignment causing stall, spin, and uncontrolled crash ▪ Departure: Mechanical failure on takeoff; low altitude gives pilot few options on emergency landing site; or, pilot attempts to return to airport and loses control during tight turn	Uses to Avoid: ▪ Commercial and other nonresidential uses having higher usage intensities ▪ Building with more than 3 aboveground habitable floors ▪ Hazardous uses (e.g., aboveground bulk fuel storage)
Risk Level: ▪ Moderate to high ▪ Percentage of near-runway accidents in this zone: 4% to 8%	Uses to Prohibit: ▪ Major shopping centers, theaters, meeting halls and other assembly facilities ▪ Children's schools, large daycare centers, hospitals, nursing homes ▪ Stadiums, group recreational uses

4. Safety Zone 4. Zone 4 reflects the Outer Approach/Departure Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Approaching aircraft usually at less than traffic pattern altitude	Normally Allowed Uses: ▪ Uses allowed in Zone 3 ▪ Restaurants, retail, industrial
Altitude: ▪ Less than 1,000 feet above runway	Uses to Limit: ▪ Residential uses to low density
Common Accident Types: ▪ Arrival: Pilot undershoots runway during an instrument approach, aircraft loses engine on approach, forced landing ▪ Departure: Mechanical failure on takeoff	Uses to Avoid: ▪ High-intensity retail or office buildings
Risk Level: ▪ Moderate ▪ Percentage of near-runway accidents in this zone: 2% to 6%	Uses to Prohibit: ▪ Children's schools, large daycare centers, hospitals, nursing homes ▪ Stadiums, group recreational uses

5. Safety Zone 6. Zone 6 reflects the Traffic Pattern Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Aircraft within a regular traffic pattern and pattern entry routes	Normally Allowed Uses: ▪ Residential uses
Altitude: ▪ Less than 1,000 to 1,500 feet above runway	Uses to Limit: ▪ Children's schools, large day care centers, hospitals, and nursing homes ▪ Processing and storage of bulk quantities of highly hazardous
Common Accident Types: ▪ Arrival: Pattern accidents in proximity of airport ▪ Departure: Emergency landings	Uses to Avoid: ▪ Outdoor stadiums and similar uses with very high intensities
Risk Level: ▪ Low ▪ Percentage of near-runway accidents in this zone: 18% to 29% (percentage is high because of large area encompassed)	

6. Factors in establishing Safety Zone Policies. To minimize risks to people and property on the ground, the safety compatibility criteria in **Table L-2: Safety Zones Compatibility Criteria** set limits on:

a. *Residential Uses.* The density of residential development is measured by the number of dwelling units per acre. Consistent with the California Airport Land Use Planning Handbook (2011) guidelines, a greater degree of protection is warranted for residential uses.

b. *Nonresidential Uses.* The intensity of nonresidential development is measured by the number of people per acre concentrated in areas most susceptible to aircraft accidents.

7. Safety Zone Standards for New Development. To minimize risk-sensitive development in high-risk areas around CNO, the safety compatibility of new development shall be evaluated in accordance with the safety policies set forth in this section, including the criteria listed in **Table L-1: CNO ALUCP Compatibility Criteria Matrix, Table L-2: Safety Zones Compatibility Criteria** and the safety zones depicted on **Policy Map L-2: Chino Airport Safety Zones.**

8. Safety Zone Policies.

Policy No.	*Safety Zone Policies*
S1	**Residential Development:** New residential development is incompatible within all Safety Zones (1 through 4). Policies S1a and S1b are exceptions to this policy, if applicable.
S1a	**Single-Family Home:** The construction of a single-family home on a legal lot of record is allowed in Safety Zones 2, 3, and 4 if the use is permitted by the City of Ontario's land use regulations. See Policy SP2 with regard to development by right.
S1b	**Second-Unit:** A second-unit as defined by state law is allowed within Safety Zones 2, 3 and 4 if the use is permitted by the City of Ontario's land use regulations.
S1c	**Family Day Care:** In accordance with state law, a family day care home serving 14 or fewer children may be established in any dwelling by the policies of this ALUCP.
S1d	**Residential Mixed-Use Developments:** New mixed-use developments will locate the residential component outside of all safety zones.

Policy No.	Safety Zone Policies
S2	**Occupancy Limits For Nonresidential Development: Table L-2: Safety Zones Compatibility Criteria** indicates the usage intensity (number of people per acre) limit for each safety zone. The usage intensity limits represent the safety criteria for new nonresidential development. The usage intensity limits measure intensity in two forms: 1. **Sitewide average intensity** which sets intensity limits for the entire project site; and 2. **Single-acre intensity** which sets intensity limits on any single acre within the project site **(see Figure L2: Land Use Intensity Calculation example)**. As a condition of approval, all new nonresidential development within the Safety Zones shall comply with both forms of intensity limits as described further below.
S2a	**Sitewide Average Intensity** is calculated by determining the total number of people expected to be on the site at any given time under normal operating conditions and dividing by the total number of acres of the project site.
S2b	**Single-acre Intensity** of a proposed development is calculated by determining the total number of people expected to be within any one-acre portion of the site, typically the most intensively used building or part of a building. The 1.0-acre area calculations represent building footprints that are generally rectangular and not elongated in shape or, for buildings larger than 1.0 acre, represent a portion of the building.

Figure L2: Land Use Intensity Calculation Example

In this example, both the sitewide and single-acre intensity of a proposed Research & Development (R&D) / warehouse facility is calculated using the common occupancy load factors [number of square feet per person] information in **Table L-2** together with project-specific data. The results are then compared with the maximum sitewide and single-acre intensity limits to determine consistency of the project with the safety criteria.

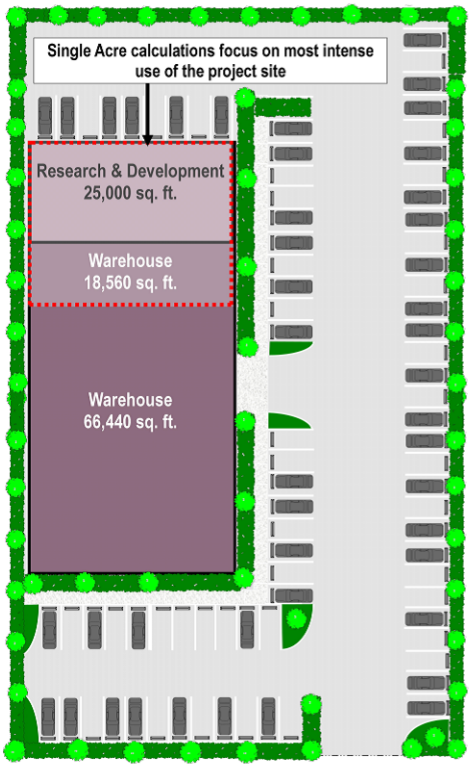


Table 1: Safety Criteria

Safety Zone 3 Intensity Limitations
Max. Sitewide Average intensity: 100 people/acre
Max. Single-Acre intensity: 250 people/acre

Common Occupancy Load Factors
Warehouse: 1,000 sq. ft./per person
Research & Development: 300 sq. ft./per person

Project Information
Land Use = Warehouse 85,000 sq. ft.
Research & Development 25,000 sq. ft.
Total Bldg. sq. ft. = 110,000 sq. ft.
Site Acreage = 3 acres
Safety Zone = 3

Calculations
Warehouse = 18,560 sq. ft. / 1,000 sq. ft. per person = 19 people

Warehouse = 66,440 sq. ft. / 1,000 sq. ft. per person = 65 people

Research & Development = 25,000 sq. ft. / 300 sq. ft. per person = 83 people

Site Wide Average
Total # of people / site acreage = 167 / 3 ac = 56 people per acre
Below the maximum Average Intensity

Single Acre Average
Total # of people / Single acre = 102 / 1 ac = 102 people per acre
Below the maximum Single-Acre Intensity

Policy No.	Safety Zone Policies
S2c	**Usage Intensity calculations** includes all people (e.g., employees, customers/visitors) who may be on the property at any single point in time during normal operating conditions, whether indoors or outdoors. **Table L-2: Safety Zones Compatibility Criteria** indicates the normal occupancy load factor (number of square feet per person) and Floor Area Ratio (FAR) for many nonresidential uses. These numbers are interrelated with the intensity limits (number of people per acre) and can be used to calculate the usage intensity of a proposed project **(see Figure L-3: Intensity Limits)**. Note that the safety criteria are the sitewide and single-acre intensity limits (number of people per acre). The occupancy load factors and FARs are provided as methods for calculating the intensity of a proposed project. 1. **Occupancy Load Factors:** The occupancy load factors (minimum number of square feet per person) provided in **Table L-2: Safety Zones Compatibility Criteria** vary from one land use to another. As shown in **Figure L-4**, the sitewide average usage intensity of a project having multiple uses can be calculated by: ▪ Dividing the number of square feet of each component use by the number of square feet per person (occupancy load) for that use as indicated in **Table L-2**; ▪ Adding together the number of people for each component use; and ▪ Dividing the total number of people by the total number of acres of the project site to get the sitewide average intensity. ▪ Where occupancy load factors are not indicated in the table or if the assumed occupancy load factor for a particular proposal or component thereof is not applicable to the project, then the number of occupants is estimated in another manner – for example, the number of seats and employees at a restaurant or the number of parking places times the vehicle occupancy for an industrial plant. **Figure L-3: Intensity Limits** The interrelationship between Intensity limit, normal occupancy load factor and Floor Area Ratio (FAR) is indicated in the two examples below. The examples reflect Zone 3 criteria: intensity limit of 100 people per acre, occupancy load factor of 200 square feet per person, and 0.46 FAR. ***Example 1*** 200 square feet per person (occupancy load factor) x 100 people per acre (intensity limit) 20,000 square foot building ÷ 43,560 square feet per acre 0.46 FAR ***Example 2*** 43,560 square feet per acre x 0.46 FAR 20,000 square foot building ÷ 200 square feet per person (occupancy load factor) 100 people per acre (intensity limit)

Policy No.	Safety Zone Policies
S2C	2. **Floor Area Ratios (FARs):** The allowable FAR is indicated in **Table L-2: Safety Zones Compatibility Criteria** for a particular safety zone and vary from one land use to another. Each component use is calculated as occupying a share of the total project site equal to its percentage of the total floor area in the project. Mathematically, this means that the FAR for each component use will be the same as the FAR for the entire building. 3. **Alternative Intensity Calculations:** An alternative method for measuring compliance with the usage intensity limits is acceptable. For example, a method based upon the City's parking space requirements may be used together with an assumed number of people per vehicle as a means of determining the number of occupants for uses that are vehicle oriented (this method would not be suitable for land uses where many users arrive by transit, bicycle, or other means of transportation). 4. **Mixed-Use Development:** Each component use within a nonresidential mixed-use development shall comply with **Table L-2: Safety Zones Compatibility Criteria** unless the use is ancillary (less than 10% of total building floor area). 5. **Ancillary Uses:** Up to 10% of the total floor area of a building may be devoted to an ancillary use of another type, including a use with a higher occupancy load factor that is shown as incompatible in **Table L-2: Safety Zones Compatibility Criteria**. Ancillary uses may be excluded from the single-acre intensity calculations (but not the sitewide average intensity limits) provided that the ancillary use is neither: ▪ An assembly room having more than 750 square feet of floor area (this criterion is intended to parallel Building Code standards) and a capacity of more than 50 people; nor ▪ A children's school (grades K–12), day care center or other risk-sensitive use that is "incompatible" within the safety zone where the primary use is to be located. 6. **Uncommon Land Use Considerations:** If a particular development proposal is uncommon—that is, there would be more floor area per person and lower usage intensity—the local agency may consider that information in determining the safety compatibility of the proposal. In considering any such exceptions, the local agency shall also take into account the potential for the use of a building to change over time. A building could have planned low-intensity use initially, but later be converted to a higher-intensity use. Local agency permit language or other mechanisms to ensure continued compliance with the usage intensity criteria must be put in place. 7. **Parcels within Multiple Safety Zones:** For the purposes of evaluating consistency with the usage intensity criteria set forth in **Table L-2: Safety Zones Compatibility Criteria**, any parcel that is split by safety zone boundaries shall be considered as if it were multiple parcels divided at the safety zone boundary line. However, the intensity of nonresidential development allowed within the more restricted portion of the parcel can (and is encouraged to) be transferred to the less restricted portion. This full or partial reallocation of intensity is permitted even if the resulting intensity in the less restricted area would then exceed the limits which would otherwise apply within that safety zone **(see Figure L-4)**. **Figure L-4: Transferring Usage Intensity** An example of transferring usage intensity to the less restrictive safety zone is provided below. ***Zone 3 intensity limit***: 100 people per acre ***Zone 4 intensity limit***: 160 people per acre ***Proposed intensity in Zone 3***: 80 people per acre ***Proposed intensity in Zone 4***: 100 people per acre * The proposed intensity for Zone 3 (80 people per acre) is encouraged to be transferred to Zone 4 for a total of 180 people per acre, even if it exceeds the Zone 4 intensity limit of 160 people per acre.

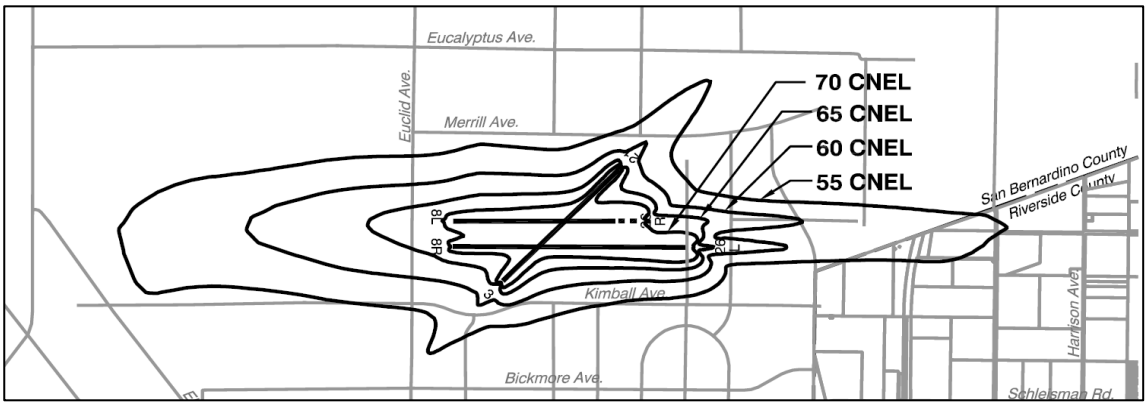
Policy No.	*Safety Zone Policies*
S3	**Land Use Event Exceptions:** The City of Ontario may make exceptions for "conditional" or "incompatible" land uses associated with rare special events (e.g., an air show at the airport) for which a facility is not designed and normally not used and for which extra safety precautions can be taken as appropriate.
S4	**Land Uses of Special Concern:** Certain types of land uses represent special safety concerns irrespective of the number of people associated with those uses. **Table L-2: Safety Zones Compatibility Criteria** indicates the criteria applicable to these uses. In some cases, these uses are not allowed in portions of the safety zones regardless of the number of occupants associated with the use. In other instances, these uses should be avoided—i.e., allowed only if an alternate site outside of the safety zone would not work. When allowed, special measures should be taken to minimize hazards to the facility and occupants if the facility were to be struck by an aircraft. Land uses of particular concern and the nature of the concern are listed policies S4a through S4c.
S4a	**Land Uses Having Vulnerable Occupants:** These land uses are ones in which the majority of occupants are children, elderly, and/or disabled—people who have reduced effective mobility or may be unable to respond to emergency situations. These uses include: ▪ Children's schools (grades K–12). ▪ Day care centers (facilities with 15 or more children, as defined in the California Health and Safety Code). ▪ Hospitals, health care centers, and similar facilities, especially where patients remain overnight, nursing homes and inmate facilities.
S4b	**Hazardous Materials Storage:** Materials that are flammable, explosive, corrosive, or toxic constitute special safety compatibility concerns to the extent that an aircraft accident could cause release of the materials and thereby pose dangers to people and property in the vicinity. Facilities in this category include: ▪ Facilities such as oil refineries and chemical plants that manufacture, process, and/or store bulk quantities (tank capacities greater than 6,000 gallons) of hazardous materials generally for shipment elsewhere. ▪ Facilities associated with otherwise compatible land uses where hazardous materials are stored in smaller quantities primarily for on-site use (tank capacities greater than 6,000 gallons).
S4c	**Critical Community Infrastructure:** The damage or destruction of public infrastructure facilities which would cause significant adverse effects to public health and welfare well beyond the immediate vicinity of the facility. Among these facilities are: ▪ Emergency services facilities such as police and fire stations. ▪ Emergency communications facilities, power plants, and other utilities
S5	**Avigation Easements:** The City of Ontario shall require dedication of an avigation easement as a condition for approval of all proposed development situated off-airport within Safety Zones 1 through 4 in accordance with Policy SP1. The Safety Zones and this policy affect only the City of Ontario.

Policy No.	Safety Zone Policies
S6	**Safety Zone 1 (Runway Protection Zone):** 1. The developer and airport owner must coordinate with the FAA for development proposals within the RPZ (either new or reconfigured). Land uses requiring airport/FAA coordination include: ▪ Buildings and structures ▪ Recreational uses (e.g., golf courses, sports fields, amusement parks, other places of public assembly) ▪ Transportation facilities (e.g., rail, public roads/highways, vehicular parking) ▪ Fuel storage facilities (above and below ground) ▪ Hazardous material storage (above and below ground) ▪ Wastewater treatment facilities ▪ Above ground utility infrastructure (e.g., electrical substations), including any type of solar panel installations 2. The following uses shall be prohibited within Safety Zone 1(RPZ): ▪ All structures except ones with location set by aeronautical function ▪ All assemblages of people (more than one) ▪ Hazards to flight such as: o Objects exceeding 14 CFR Part 77 height limits o Visual hazards including but not limited to lights, sources of glare, and sources of dust, steam or smoke o Electronic hazards including but not limited to ones that may cause interference with aircraft communications or navigation o Land uses and features that attract hazardous wildlife (i.e., Birds) including but not limited to aboveground stormwater facilities, open ponds, and landscaping that provides a food source, shelter or roosting
S7	**Open Land:** In the event that a light aircraft is forced to land away from an airport, the risks to the people on board and on the ground can be best minimized by providing as much open land area as possible within the airport vicinity. This concept is based upon the fact that the majority of light aircraft accidents that occur away from an airport runway are controlled emergency landings in which the pilot has reasonable opportunity to guide the aircraft and select the landing site. Open land provides opportunities for a controlled landing in the event of an emergency. A percentage of Open land is required for all Safety Zones and are outlined in **Table L-1: CNO ALUCP Compatibility Criteria Matrix**.
S7a	**Open Land Required Dimensions:** Open land shall have minimum dimension of at least 75 feet wide by 300 feet long (approximately 0.5-acre in size).

Policy No.	Safety Zone Policies
S7b	**Open Land Criteria:** 1. Open land shall be free of most structures and other major obstacles such as walls, large trees, (greater than 4 inches in diameter, measured 4 feet above the ground), poles, and overhead wires. Landscaping plans for open space areas should preclude large trees that would exceed the 4-inch diameter criterion at maturity. However, landscaping plans could allow for trees and shrubs that exceed 4 inches in diameter at a height of 4 feet at maturity for areas along the edge of open space areas where the vegetation abuts a wall or other similar feature, provided that the vegetation is planted within 4 feet of the wall. 2. Roads and automobile parking lots are acceptable as open land areas if the criteria for Policies S7a and S7b are met. **Policy Map L-2a: Chino Airport Open Land Streets** identifies three streets that will be designed to satisfy the Open Land criteria. The streets will be 75 to 84 feet wide with no medians. Light poles and trees will be designed to maintain a clear width of about 75 feet. The light poles will be spaced 250 feet and staggered on the opposite side of the street; therefore, satisfying the 75-foot by 300-foot dimensional requirements for Open Land. A detailed review of proposed landscaping and lighting plans along Merrill Avenue within CNO Safety Zone 1 (RPZ) will be required to ensure that Zone 1 remains clear of permanent aboveground objects. 3. Open land requirements for each Safety Zone shall be applied with respect to the entire zone. Individual parcels may be too small to accommodate the minimum size open area requirement. Consequently, the identification of open land areas shall be initially accomplished at the general plan or specific plan level or as part of large (10 acres or more) development projects. 4. Clustering of development and providing contiguous landscaped (e.g., low-growing ground cover) and parking areas is encouraged as a means of increasing the size of open land areas. Clustering of development should be located a maximum distance from the extended runway centerline.

B. Noise. The purpose of noise compatibility policies is to avoid the establishment of noise-sensitive land uses in the portions of the CNO AIA that are exposed to significant levels of aircraft noise. For compatibility planning purposes, the noise contours reflect the County's aircraft activity forecast of 209,400 annual operations for 2025 is considered to be representative of the likely maximum number of aircraft operations that could be realized over the 20-year forecast period (2039) and are shown in **Figure L-5: Chino CNEL Contours (2025)**.

Figure L-5: Chino CNEL Contours (2025)



For purposes of airport land use compatibility planning, Caltrans advises that 60 dB CNEL is suitable for new residential development and other noise sensitive land uses around most airports.

Figure L-5: Chino CNEL Contours (2025) shows that only the 55 dB CNEL contour affects lands within the City of Ontario. Since the 60 dB CNEL does not extend into the City of Ontario no significant impacts are anticipated and therefore no noise policies and criteria are included within the CNO ALUCP.

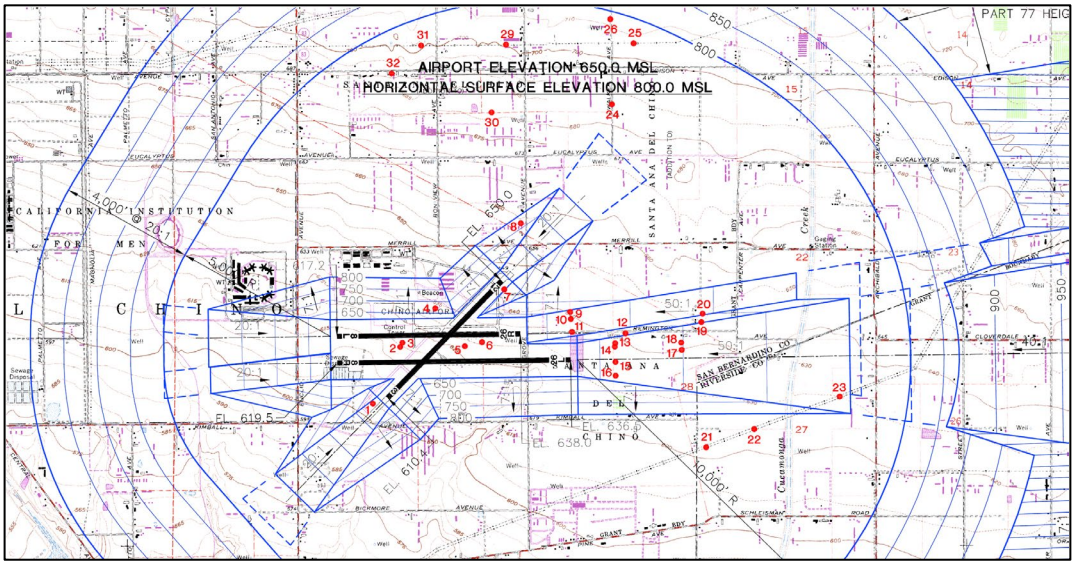
C. Airspace Protection. Airspace protection compatibility policies seek to prevent creation of land use features that can be hazards to aircraft in flight and have the potential for causing an aircraft accident to occur. Such hazards may be physical, visual, or electronic.

1. Factors in establishing Airspace Protection Zones. The principal factors considered in setting the airspace protection zones are:

a. *Federal Regulations.* Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, set the requirements for notice to the Federal Aviation Administration (FAA) of certain proposed construction or alteration projects (Subpart B, Notice of Construction or Alteration) and establish standards for determining obstructions to navigable airspace (Subpart C, Obstruction Standards).

b. *CNO Part 77.* The 14 CFR Part 77 airspace surfaces included in the 2003 Chino Airport Layout Plan was utilized to establish the allowable heights of future uses within the vicinity of Chino airport **(see, Figure L-6: Chino Part 77 Airspace Surfaces (2003))**.

Figure L-6: Chino Part 77 Airspace Surfaces (2003)



2. Factors in establishing Airspace Protection Policies. The factors considered in setting the airspace protection policies in this section are described below.

a. *Federal and State Regulations.* The airspace protection policies outlined in this section are based upon and intended to help implement the regulations enacted by the FAA and the State of California. State airspace protection standards mostly mirror those of the FAA. A key difference is that state law gives the California Department of Transportation, Division of Aeronautics and local agencies the authority to enforce the standards.

b. *Flight Hazards.* The FAA has well-defined standards by which potential hazards to flight, especially airspace obstructions, can be assessed. However, the FAA has no authority to prevent creation of such hazards. That authority rests with state and local governments. There are three categories of flight hazards: physical, visual, and electronic.

(1) Structure Heights — Height of structures and other objects situated near the airport are a primary determinant of physical hazards to the airport airspace.

(2) Land Use — Land use features that have the potential to attract birds and certain other wildlife to the airport area also need to be evaluated as a form of physical hazard.

(3) Visual Hazards — Visual hazards of concern include certain types of lights, sources of glare, and sources of dust, steam, thermal plumes, or smoke.

(4) Electrical Hazards — Electronic hazards are ones that may cause interference with aircraft communications or navigation

c. *Airspace Obstructions.* The criteria for determining the acceptability of a project with respect to height are based upon the standards set forth in: Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, Subpart C, Obstruction Standards; the United States Standard for Terminal Instrument Procedures (TERPS); the One-Engine Inoperative (OEI) obstacle identification surface and other applicable airport design standards published by the FAA.

d. *Local Topography.* The topography underlying the airport's airspace surfaces is a significant factor in determining the allowable height of a structure. The terrain north of CNO slopes upwards towards the San Gabriel Mountains, thereby reducing the allowable heights of objects in those areas.

3. Airspace Protection Zones for CNO. The airspace protection zones depicted in **Policy Map L-3: Chino Airspace Protection Zones** were prepared for CNO in accordance with Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace.

a. *FAA Height Notification Surface.* Established in accordance with FAR Part 77, Subpart B, this airspace surface extends outward and upward at a slope of 100 to 1 for a horizontal distance of 20,000 feet from the airport runways.

b. *Airspace Obstruction Surfaces.* Includes the controlling portions of the FAR Part 77, Subpart C, extending out to a point where these surfaces terminate at the outer limits of the FAA Height Notification Surface. Objects which penetrate these surfaces are subject to airspace evaluation by the FAA. Objects which penetrate the Approach/Departure Surfaces which extend beyond the FAA Height Notification Surface require evaluation by the FAA.

c. *Allowable Heights.* To determine the allowable heights of future objects, the underlying ground elevation is compared with the elevation of the controlling portions of the FAR Part 77, TERPS, and OEI surfaces. These are depicted as color bands in **Policy Map L-3: Chino Airspace Protection Zones**, each color band represents a range of distance, measured in vertical feet, between the ground and overlying surface.

4. Airspace Protection Standards for New Development. The airspace protection compatibility of proposed land uses within the AIA of CNO shall be evaluated in accordance with the policies in this section, including the existing airspace protection surfaces depicted in **Policy Map L-3: Chino Airspace Protection Zones**.

5. Airspace Protection Policies.

Policy No.	***Airspace Protection Policies***
A1	**FAA Height Notification Surface:** Except as provided in Policy A2b, if a project contains proposed structures or other objects that would penetrate the FAA Height Notification Surface for CNO, the project proponent should submit notification of the proposal to the FAA, as required by the provisions of FAR Part 77, Subpart B, and by the California Public Utilities Code, Sections 21658 and 21659. The FAA will conduct an "aeronautical study" of the object(s) and determine whether the object(s) would be of a height that would constitute a hazard to air navigation. A copy of the completed FAR Part 77 notification form submitted to the FAA and the resulting FAA aeronautical study findings should be supplied to the City by the project proponent. The results of the FAA aeronautical study shall be utilized when conducting compatibility reviews of the proposed project. The FAA notification requirements apply to the following:
A1a	**Penetrations to the FAA Height Notification Surface:** With limited exceptions, the FAA requires notification for all objects which penetrate the FAA Height Notification Surface, including structures, antennas, trees, mobile objects, and temporary objects such as construction cranes.

Policy No.	Airspace Protection Policies
A1b	**Structures in Excess of 200 feet:** The FAA requires that it be notified about any proposal to construct or alter a structure that would be taller than 200 feet above the ground level regardless of the structure's proximity to CNO or any other airport.
A1c	**FAR Part 77 Notification:** FAA requires project proponents to submit notification of the proposal where required by the provisions of FAR Part 77, and by the California Public Utilities Code, Sections 21658 and 21659. Refer to the FAA notification requirements and online submittal process of Form 7460-1, Notice of Proposed Construction or Alteration.
A2	**Airspace Obstruction Surfaces:** Except as provided in Policy A2a, no object should have a height that would result in a penetration of the Airspace Obstruction Surface depicted for CNO. Any object that penetrates the Airspace Obstruction Surface shall satisfy the conditions set forth in Policy A2a. These requirements apply to all objects including structures, antennas, trees, mobile objects, and temporary objects such as construction cranes.
A2a	**Airspace Obstacle Criteria and Review Process:** Except as indicated in Policy A2b, a proposed object having a height that penetrates CNO's airspace obstruction surfaces should be allowed only if all of the following apply: 1. The FAA conducts an aeronautical study of the proposed object and determines that the object would not be a hazard to air navigation. 2. FAA or other expert analysis conducted under the auspices of the airport owner, concludes that, despite being an airspace obstruction, the object would not cause any of the following: ▪ An increase in the ceiling or visibility minimums of the airport for an existing or planned instrument procedure (a planned procedure is one that is formally on file with the FAA); ▪ A reduction of the established operational efficiency and capacity of the airport, such as by causing the usable length of the runway to be reduced; or ▪ A conflict with the visual flight rules (VFR) airspace used for the airport traffic pattern or en route navigation to and from the airport. 3. Marking and lighting of the object will be installed as directed by the FAA aeronautical study or the California Division of Aeronautics and in a manner consistent with FAA standards in effect at the time the construction is proposed (Advisory Circular 70/7460-1J, Obstruction Marking and Lighting, or any later guidance). 4. An avigation easement is dedicated to the owner of the airport. 5. The proposed project complies with all policies of the CNO ALUCP.

Policy No.	Airspace Protection Policies
A3	**Flight Hazards:** Land uses that may cause visual, electronic, or wildlife hazards, particularly bird strike hazards, to aircraft in flight or taking off or landing at the airport should be prohibited within the AIA consistent with FAA rules and regulations. To resolve any uncertainties with regard to the significance of flight hazards, local agencies should consult with the FAA, California Division of Aeronautics, and/or CNO officials. Specific characteristics to be avoided include: 1. Sources of glare (such as from mirrored or other highly reflective buildings or building features) or bright lights (including search lights and laser light displays). 2. Distracting lights that could be mistaken for airport lights. 3. Sources of dust, steam, or smoke that may impair pilots' vision. 4. Sources of steam or other emissions that cause thermal plumes or other forms of unstable air. 5. Sources of electrical interference with aircraft communications or navigation. 6. Any proposed use that creates an increased attraction for wildlife and that is inconsistent with FAA rules and regulations including, but not limited to FAA Advisory Circulars 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports and 150/5200-34A, Construction or Establishment of Landfills near Public Airports. Of particular concern are landfills and certain recreational or agricultural uses that attract large flocks of birds which pose bird strike hazards to aircraft in flight.
A4	**Avigation Easements:** An avigation easement shall be required as a condition of approval for proposed development that penetrates the Airspace Obstruction Surfaces (see Policy A2a).
A5	**Hazardous Wildlife Attractants on or Near Airports:** Wildlife can pose hazards to aircraft operations; collisions or "strikes" with wildlife can cause damage to or destroy aircraft and result in injuries or fatalities to air travelers and those on the ground. FAA strike records indicate that most wildlife strikes occur in the immediate airport vicinity during aircraft approach or departure at altitudes of less than 3,500 feet above ground level (AGL).
A5a	**Caltrans Guidance:** Caltrans completed a Wildlife Hazard Assessment at CNO in 2014. Wildlife attractants identified in the airport vicinity included open water basins, golf courses, and agricultural operations Hazardous wildlife identified on and near the airport included: raptors, ground squirrels (because they attract raptors), gulls, blackbirds and starlings, coyotes, crows, doves and pigeons, waterfowl, and shorebirds. To prevent the creation of new habitat within on or near CNO, new development shall be subject to the following: 1. A Qualified Airport Wildlife Biologist (QAWB) shall review landscaping plans to ensure that the proposed materials will not provide food, nesting opportunities, shelter, or roosting opportunities for potentially hazardous wildlife. 2. A QAWB shall review proposed construction plans for their potential to create temporary or permanent wildlife attractants.

Policy No.	Airspace Protection Policies
A5b	**Federal Guidance:** Consistent with state and federal guidance, any proposed land use that creates an increased attraction for wildlife and that is inconsistent with FAA rules and regulations, including but not limited to FAA AC 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports, and 150/5200-34A, Construction or Establishment of Landfills near Public Airports, should be avoided within the "critical zones". For CNO, the critical zone extends 10,000 feet beyond aircraft movement areas and 5 miles from the approach/departure surfaces. The following is list of land uses known to attract potentially hazardous wildlife within critical zones and should be avoided: ▪ Landfills and waste management facilities (see also AC 150/5200-34A, Construction or Establishment of Landfills near Public Airports) ▪ Stormwater management facilities that create open water ▪ Wastewater treatment facilities ▪ Wetlands and wetland mitigation sites ▪ Agricultural/aquacultural operations ▪ Parks and golf courses ▪ Resource mitigation sites If land uses that are known to attract potentially hazardous wildlife are allowed within the airport influence area by right, the land use and its features should be modified to reduce wildlife hazards or mitigate known hazards. Sample mitigation/design measures include those associated with stormwater management facilities and landscape design.
A5c	**Stormwater Management Facilities:** The FAA identifies stormwater management facilities as one of the greatest attractants to hazardous wildlife. Many species are attracted to open water features and associated vegetation that offers water, food, and shelter. New stormwater management facilities located within the AIA should be designed to avoid the creation of open water and habitat and incorporate the following criteria: 1. New detention basins should be designed to drain completely within a maximum 48-hour period following design storm event and remain totally dry between storm events. 2. Exposed surface water features should include one of the recommended design measures: ▪ Floating covers, bird balls, netting, or overhead wires should be installed to deter wildlife. The deterrent should be selected based on pond size and the type of species to be discouraged; ▪ Steep-sided, rip-rap lined, narrow, linearly shaped water detention basin (i.e., 1:1 slopes) should be provided; and ▪ Vegetation should not be provided because it can provide food or cover for hazardous wildlife. 3. Stormwater management plans located within the CNO AIA shall be reviewed by an FAA-qualified Airport Wildlife Biologist. 4. Landscape designs for proposed projects located in the CNO AIA should be reviewed by an FAA-qualified Airport Wildlife Biologist.

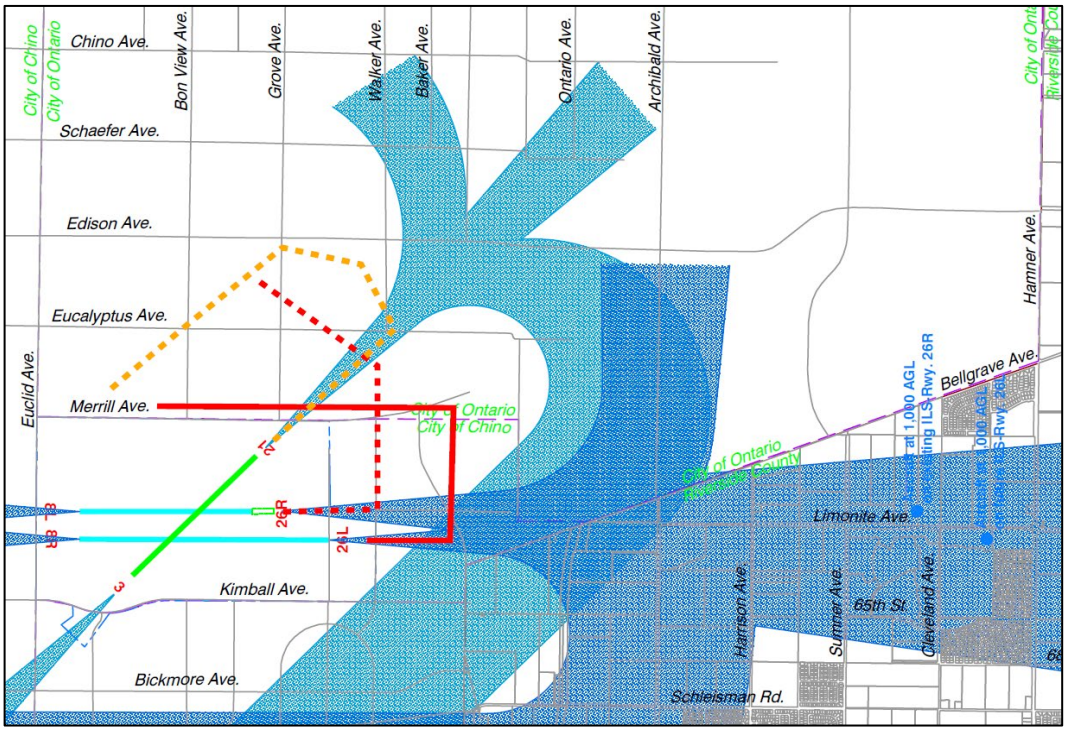
D. Overflight. Noise from individual aircraft operations, especially by comparatively loud aircraft, can be intrusive and annoying in locations beyond the limits of the noise impacts. Sensitivity to aircraft overflights varies from one person to another. The purpose of overflight compatibility policies is to help notify people about the presence of overflights near airports so that they can make more informed decisions regarding acquisition or lease of property in the affected areas.

1. Factors Considered in Establishing Overflight Zones.

a. *State Law.* State statutes (BPC Section 11010 and CC Sections 1102.6, 1103.4, and 1353) define an AIA as "the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission."

b. *Measures of Overflight Exposure.* The loudness of individual aircraft noise events is a key determinant of where airport proximity and aircraft overflight notification are warranted. The FAA has determined that overflight exposure is not significant where aircraft are flying at an altitude of 3,000 feet or more above ground level. **Figure L-7** presents the primary aircraft traffic patterns in blue, based on published airport information. The red and orange lines represent flight patterns captured by radar data from November 2015. On this particular day, aircraft were practicing touch-and-goes (closed loop patterns) from Runway 26R, 26L and Runway 21. Safety Zone 4 encompasses areas where aircraft make a turn from base to final when landing on Runway 21. Also, Safety Zone 6 is routinely overflown by aircraft.

Figure L-7: Radar Flight Track Sample (2015)



2. Factors Considered in Setting Overflight Compatibility Criteria.

a. *Limitations of Local Agency Authority over Existing Uses.* To be most effective, overflight policies should apply to transactions involving existing land uses, not just future development. However, local agencies have little authority to set requirements for existing development. The intent of this policy is to define, on an advisory basis, the boundaries within which required real estate transfer disclosure under state law is appropriate. Implementing the real estate transaction disclosure requirement is the responsibility of the property owner and real estate agent. The local agency is responsible only for providing a map to a property owner or real estate agent that defines the areas within which the real estate disclosure requirement should be applied.

b. *Limitations of California Real Estate Transaction Disclosure Law.* State law applies to existing development, but not to all transactions. Specifically, California state statutes (BPC Section11010 and CC Sections 1102.6, 1103.4, and 1353) require that, as part of many residential real estate transactions, information be disclosed regarding whether the property is situated within an AIA. The Business and Professions Code applies the disclosure requirement to the sale or lease of newly subdivided lands and condominium conversions and to the sale of certain existing residential property. The Civil Code applies the disclosure requirement to existing residential property transfers only when certain natural conditions (earthquake, fire, or flood hazards) warrant disclosure.

c. *Need for Continuity of Notification to Future Property Owners and Tenants.* To the extent that this Compatibility Plan sets notification requirements for new development, the policy should ensure that the notification runs with the land and is provided to prospective future owners and tenants.

d. *Inappropriateness of Avigation Easement Dedication Solely for Buyer Awareness Purposes.* Avigation easements involve conveyance of property rights from the property owner to the party owning the easement and are thus best suited to locations where land use restrictions for safety or airspace protection purposes are necessary.

3. Overflight Notification Zones for CNO. The boundaries of the overflight notification zones around CNO are shown on **Policy Map L-4: Chino Overflight Notification Zones** and include:

a. *Avigation Easement Dedication.* The boundary identifies the high-risk, and critical airspace protection areas of CNO. Although not strictly an overflight notification boundary, the Avigation Easement Dedication boundary is established in accordance with Policy SP1 and reflected on **Policy Map L-4**.

b. *Recorded Overflight Notification.* The boundary identifies the primary

overflight area for the airport. The policy boundary matches Safety Zone 6 depicted on Policy Map L-4.

c. *Real Estate Transaction Disclosure.* The boundary reflects the CNO AIA and matches the outer boundary of the FAR Part 77 conical surface of the airport.

4. Overflight Policies. Unlike the function of safety and airspace protection compatibility policies, the overflight compatibility policies set forth in this section do not restrict the manner in which land can be developed or used. The policies in this section serve only to establish the language and recommended geographic coverage for notification about airport proximity and aircraft overflights for new development and with certain real estate transactions involving existing development.

Policy No.	*Airspace Protection Policies*
O1	**Recorded Overflight Notification:** The City of Ontario shall require the recording of an overflight notification running with the land as a condition for approval of new residential development that falls within Safety Zone 6, as depicted in Policy Map L-4. Other conditions include:
O1a	**Notification Language:** The overflight notification should contain language dictated by state law with regard to real estate transaction disclosure (see Policy O2a).
O1b	**Property Deed Recording:** The overflight notification should be evident to future purchasers of the property by appearing on the property deed.
O1c	**Avigation Easement Exception:** A separate recorded overflight notification is not required where an avigation easement is provided in accordance with Policy SP1.
O1d	**Nonresidential Exception:** Recording of an overflight notification is not required for nonresidential development unless the project is a mixed-use development containing residential uses on the same property.
O2	**Real Estate Transaction Disclosure:** Airport proximity disclosure information should be provided in accordance with state law (Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353. See Section 6.4.4 (b) and Appendix A for information on these laws.
O2a	**Disclosure Language:** State Law provides the following disclosure language: **NOTICE OF AIRPORT IN VICINITY:** This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.
O2b	**Airport Influence Area:** The airport proximity disclosure is required within AIA as identified on Policy Map L-4.

E. Special Compatibility Policies. These policies are intended to address unique land use concerns.

Policy No.	*Special Compatibility Policies*
SP1	**Avigation Easement Dedication:** An avigation easement should be dedicated to the owner/operator of CNO for new development as specified in Policies SP1a and SP1b.
SP1a	**Avigation Easement Dedication Requirements:** Within portions of the AIA inside the City of Ontario, avigation easement dedication shall be required for new development requiring discretionary as described below. Policy Map L-4 depicts the locations where an avigation easement dedication would be appropriate. 1. **Safety Zones:** All new development within Safety Zones 1, through 4 as depicted on Policy Map L-2.
SP1b	**Avigation Easement Purpose:** The avigation easement should do the following: 1. **Right of Flight:** Provide the right of flight in the airspace above the property. 2. **Noise Impacts:** Allow the generation of noise and other impacts associated with aircraft overflight. 3. **Physical Hazards:** Restrict the height of structures, trees and other objects in accordance with the policies in Section L.01.003.C and the airspace protection surfaces depicted on Policy Map L-2. 4. **Obstruction Marking:** Permit access to the property, with appropriate advance notice, for the removal or aeronautical marking of objects exceeding the established height limit. 5. **Other Airspace Hazards:** Prohibit electrical interference, glare, and other potential hazards to flight from being created on the property.
SP2	**Nonconforming Uses:** The policies within the CNO ALUCP do not apply to existing land uses even if those uses are not in conformance with the compatibility criteria set forth in this Compatibility Plan. However, proposed changes to existing uses that would change or result in increased nonconformity with the compatibility criteria are subject to the provisions of the ALUCP. Specifically, proposed changes to existing nonconforming uses (including a parcel or building) are limited as follows:
SP2a	**Residential uses:** A nonconforming residential land use may be continued, sold, leased, or rented without restriction or review.
SP2b	**Nonconforming Single-family:** A nonconforming single-family dwelling may be maintained, remodeled, reconstructed or expanded in size. The lot line of an existing single-family residential parcel may be adjusted. Also, a new single-family residence may be constructed on an existing lot. The above noted property improvements may occur if improvements do not increase the number of units and lot line adjustments do not result in allowing for additional dwelling units. Examples include: 1. Any remodeling, reconstruction, or expansion must not increase the number of dwelling units. For example, a bedroom could be added to an existing residence, but an additional dwelling unit could not be built on the parcel unless that unit is a secondary dwelling unit as defined by state and local laws. 2. A single-family residential parcel may not be divided for the purpose of allowing additional dwellings to be constructed.
SP2c	**Nonconforming Multi-family (> 8 du/ac):** Nonconforming multi-family residential dwelling units may be maintained, remodeled, or reconstructed. The size of individual dwelling units may be increased, but additional dwelling units may not be added.

Policy No.	*Special Compatibility Policies*
SP2d	**Nonresidential uses:** A nonconforming, nonresidential use may be continued, sold, leased, or rented without restriction or review. Nonconforming, nonresidential facilities may be maintained, altered, or, if required by state law, reconstructed. However, any such work: 1. Should not result in expansion of either the portion of the site devoted to the nonconforming use or the floor area of the buildings; and 2. Should not result in an increase in the usage intensity (the number of people per acre) above the levels existing at the time of approval of the CNO ALUCP.
SP2e	**Schools:** Children's schools (including grades K-12, day care centers with more than 14 children, and school libraries) may be continued, reconstructed (see Policy SP5), expanded with the following restrictions per State Law: 1. Land acquisition for new schools or expansion of existing schools is not permitted in any safety zone. 2. Replacement or expansion of buildings at existing schools is also not allowed in any safety zone. This limitation does not preclude work required for normal maintenance or repair.
SP3	**Reconstruction of Nonconforming Uses:** An existing nonconforming building, structure, or use that has been partially or completely destroyed as the result of a fire, flood or natural disaster may be rebuilt under the conditions listed in Policies SP3a through SP3c so long as it does not violate local ordinances. The requirements listed in this policy do not restrict normal maintenance and repairs.
SP3a	**Residential:** Nonconforming residential uses may be rebuilt provided that the reconstruction does not result in more dwelling units than existed on the parcel at the time of the damage. Addition of a secondary dwelling unit to a single-family residence is permitted if in accordance with state law and local zoning regulations.
SP3b	**Nonresidential:** A nonconforming nonresidential development may be rebuilt provided that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre).
SP3c	**Reconstruction Requirements:** The reconstruction of nonconforming uses listed in Policies SP3a and SP3b should comply with the following requirements: 1. A permit to rebuild the structure should be obtained by the local agency within twenty-four (24) months of the date the damage occurred. 2. The property should be required to dedicate an avigation easement to the airport owner, if required under Policy SP1. 3. The new structure should comply with FAR Part 77, TERPS, and applicable airport obstruction clearance standards published by the FAA.

L.01.005: Evaluating Land Use Consistency

A. Evaluating Compatibility of Proposed Development. The compatibility of proposed projects within the CNO AIA shall be evaluated in accordance with the specific safety, airspace protection, overflight policies, and special compatibility policies set forth in Section L.01.003 including the criteria listed in **Table L-1: CNO ALUCP Compatibility Criteria Matrix** and T**able L-2: Safety Zones Compatibility Criteria**, and **Policy Maps L-1 through L-4**.

B. Evaluation Tools.

1. Safety Zone Criteria Table. **Table L-2** list general land use categories and indicate each use as being either "normally compatible," "conditionally compatible," or "incompatible" depending upon the safety zone in which it is located. When evaluating a proposed development, each land use component of a project shall be evaluated as separate developments and must meet the criteria for the respective land use category.

2. Evaluation Considerations.

a. Land uses not specifically listed in **Table L-2** shall be evaluated using the criteria for similar listed uses.

b. Multiple land use categories and the compatibility criteria associated with them may apply to a single project (e.g., mixed-use developments). Each land use component shall individually satisfy the criteria for the respective land use category in Table L-2.

3. Land Use Compatibility Determinations.

a. *Normally Compatible.* Normally Compatible means that common examples of the use are compatible with the airport; uncommon examples of the use may require review to ensure compliance with compatibility criteria.

b. *Conditionally Compatible.* Conditionally Compatible means that the use is compatible if the listed conditions are met.

c. *Incompatible.* Incompatible means that the use should not be permitted under any circumstances.

L.01.006: Criteria Tables and Policy Maps

A. Criteria Tables. The compatibility tables at the end of this chapter provide the following information:

1. Table L-1: CNO ALUCP Compatibility Criteria Matrix. The Compatibility Criteria table provides a comprehensive list of open land percentages, people per acre limits and other relevant criteria summarized for each safety zone.

2. Table L-2: Safety Zones Compatibility Criteria. The safety criteria table provides a list of land use categories and identifies the acceptability of specific land uses within each of the five safety zones. Intensity limits for nonresidential uses (i.e., maximum number of people per acre) and other safety considerations within each safety zone are also noted.

B. Policy Map L-1 (Chino Airport Influence Area). The AIA boundary encompasses the geographic extents of all the compatibility factors: safety, noise, airspace protection, and overflight.

C. Policy Map L-2 (Chino Airport Safety Zones). This policy map displays a single set of safety zones reflecting the existing runway configurations. The safety zones for are based upon the generic safety zones provided in the California Airport Land Use Planning Handbook.

D. Policy Map L-2a (Chino Airport Open Land Streets). This policy map identifies three streets that will be designed to satisfy the Open Land criteria.

E. Policy Map L-3 (Chino Airspace Protection Zones). The airspace protection zones are prepared in accordance with Federal Aviation Regulation Part 77, the United States Standard for Terminal Instrument Procedures (TERPS), and applicable obstruction clearance standards published by the Federal Aviation Administration. The airspace surfaces reflect the existing runway configurations.

F. Policy Map L-4 (Chino Overflight Notification Zones). This policy map identifies the overflight notification zones. The overflight notification zones also encompass the areas underlying the airport's critical airspace surfaces.

Table L-1: CNO ALUCP Compatibility Criteria Matrix					
Safety Zones	***Residential Density Limits***	***Non-Residential Intensity Limits (People per acre)***	***Open Land Requirement for Entire Zone***	***Other Criteria***	***Boundary Determinations***
Zone 1 Runway Protection Zone	0	0	All Remaining	Avigation Easement and Airspace Review Required	RPZ
Zone 2 Inner Approach/ Departure Zone	0	60 (avg.) 120 (single acre)	25%; preserve open land nearest runway end	Avigation Easement and Airspace Review Required	Safety Zone 2
Zone 3 Inner Turning Zone	1 dwelling unit per 2-acre lot	100 (avg.) 300 (single acre)	15%; preserve open land along extended runway centerline	Avigation Easement and Airspace Review Required	Safety Zone 3
Zone 4 Outer Approach/ Departure Zone	2 dwelling units per 2-acre lot	150 (avg.) 450 (single acre)	15%; preserve open land along extended runway centerline	Avigation Easement and Airspace Review Required	Safety Zone 4
Zone 6 Traffic Pattern Zone	No Limit	300 (avg.) 1,200 (single acre)	10%; preserve open land every 1/4 to 1/2 mile	Deed Notice and Airspace Review Required	Safety Zone 6

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Outdoor Uses (limited or no activities in buildings)						
Natural Land Areas: desert, brush lands [3]						1: Avoid new features that attract birds; vegetation must be clear of airspace surfaces
Water: flood plains, stormwater facilities, wetlands, lakes, reservoirs [3]						1-6: Avoid new features that attract birds
Agriculture (except residences and livestock): crops, orchards, vineyards, pasture, range land [3]						1-6: Avoid new features that attract birds
Livestock Uses: feed lots, stockyards, breeding, fish hatcheries, horse stables [3]						2-6: Avoid new features that attract birds
Outdoor Major/Large Assembly Facilities: [4] spectator-oriented outdoor stadiums, amphitheaters, fairgrounds, race tracks, water parks, zoos						6: Allowed if intensity criteria met
Outdoor Group Recreation (limited spectator stands): athletic fields, water recreation facilities, picnic areas						4, 6: Allowed only if site outside zone would not serve intended function
Outdoor Small/Non-Group Recreation: golf courses, tennis courts, shooting ranges [3]						3-6: Allowed if intensity criteria met
Local Parks: children-oriented neighborhood parks, playgrounds						6: Allowed if intensity criteria met
Camping: campgrounds, recreational vehicle/ motor home parks						3-6: Allowed only if intensity criteria met
Cemeteries (except chapels)						

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Residential and Lodging Uses						
Residential: individual dwellings, townhouses, mobile homes, apartments, condominiums, bed & breakfast inns [5]						3, 4: 1 du/2-acre lots (avg. density); 4 du/single- acre; locate dwelling max. distance from extended runway centerline where feasible
Long-Term Lodging (>30 nights): extended-stay hotels, dormitories						
Short-Term Lodging (≤ 30 nights): hotels, motels, other transient lodging (except conference/assembly facilities) [approx. 200 s.f./person]				0.69		4: FAR limits as indicated
Congregate Care: retirement homes, assisted living, nursing homes, intermediate care facilities						6: Allowed only if site outside zone would not serve intended function
Educational and Institutional Uses						
Family day care homes (≤14 children) [5]						
Children's Schools: K-12, day care centers (>14 children); school libraries						6: Subject to approval by Caltrans Division of Aeronautics
Adult Education classroom space: adult schools, colleges, universities [approx. 40 s.f./person]			0.09	0.14	0.28	3-6: FAR limits as indicated; also see individual components of campus facilities (e.g., assembly facilities, offices, gymnasiums)
Community Libraries [approx. 100 s.f./person]			0.23	0.34	0.69	3-6: FAR limits as indicated
Major Indoor Assembly Facilities [4]: auditoriums, conference centers, concert halls, arenas						

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Large Indoor Assembly Facilities [4]: movie theaters, places of worship, cemetery chapels, mortuaries [approx. 15 s.f./person]			0.03	0.05	0.10	3-6: FAR limits as indicated
Indoor Recreation: gymnasiums, club houses, athletic clubs, dance studios [approx. 60 s.f./person]			0.14	0.21	0.41	3-6: FAR limits as indicated
In-Patient Medical: hospitals, mental hospitals						6: Allowed only if site outside zone would not serve intended function
Out-Patient Medical: health care centers, clinics [approx. 240 s.f./person]			0.55	0.83		3, 4: FAR limits as indicated
Penal Institutions: prisons, reformatories						6: Allowed only if site outside zone would not serve intended function
Public Safety Facilities: police, fire stations						3, 4: Allowed only if site outside zone would not serve intended public function
Commercial, Office, and Service Uses						
Major Retail: regional shopping centers, 'big box' retail [approx. 110 s.f./person]			0.25	0.38	0.76	3-6: FAR limits as indicated; evaluate eating/ drinking areas separately if >10% of total floor area
Local Retail: community/neighborhood shopping centers, grocery stores [approx. 170 s.f./person]			0.39	0.59		3, 4: FAR limits as indicated; evaluate eating/ drinking areas separately if >10% of total floor area
Eating/Drinking Establishments: restaurants, fast-food dining, bars [approx. 60 s.f./person]			0.14	0.21	0.41	3-5: FAR limits as indicated
Limited Retail/Wholesale: furniture, automobiles, heavy equipment, lumber yards, nurseries [approx. 250 s.f./person]		0.34	0.57			2, 3: FAR limits as indicated; design site to place parking inside and buildings outside of zone if possible

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Offices: professional services, doctors, finance, civic; radio, television & recording studios, office space associated with other listed uses [approx. 215 s.f./person]		0.30	0.49	0.74		2-4: FAR limits as indicated
Personal & Miscellaneous Services: barbers, car washes, print shops [approx. 200 s.f./person]		0.28	0.46	0.69		2-4: FAR limits as indicated
Vehicle Fueling: gas stations, trucking & transportation terminals						
Industrial, Manufacturing, and Storage Uses						
Hazardous Materials Production: oil refineries, chemical plants (≥ 6,000 gallons)						
Heavy Industrial						4: Avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Light Industrial, High Intensity: food products preparation, electronic equipment [approx. 200 s.f./person]		0.28	0.46	0.69		2-4: FAR limits as indicated; avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Light Industrial, Low Intensity: machine shops, wood products, auto repair [approx. 350 s.f./person]		0.48	0.80	1.21		2-4: FAR limits as indicated; avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Research & Development [approx. 300 s.f./person]			0.69	1.03		3-4: FAR limits as indicated; avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Indoor Storage: wholesale sales, warehouses, mini/other indoor storage, barns, greenhouses [approx. 1,000 s.f./person]						2: Single story only; max. 10% in mezzanine
Outdoor Storage: public works yards, automobile dismantling						
Mining & Extraction [6]						
Transportation, Communication, and Utilities						
Airport Terminals: airline, general aviation						
Rail & Bus Stations						2: Allowed only if site outside zone would not serve intended public function
Transportation Routes: road & rail rights-of-way, bus stops [3]						1: Avoid new features that create airspace obstructions
Auto Parking: surface lots, structures [3]						1: Avoid new features that create airspace obstructions
Communications Facilities: emergency communications, broadcast & cell towers [7]						4, 6: Allowed only if site outside zone would not serve intended public function; not allowed within ½ mile of runway
Power Plants [7]						4, 6: Primary plants not allowed; peaker plants only

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

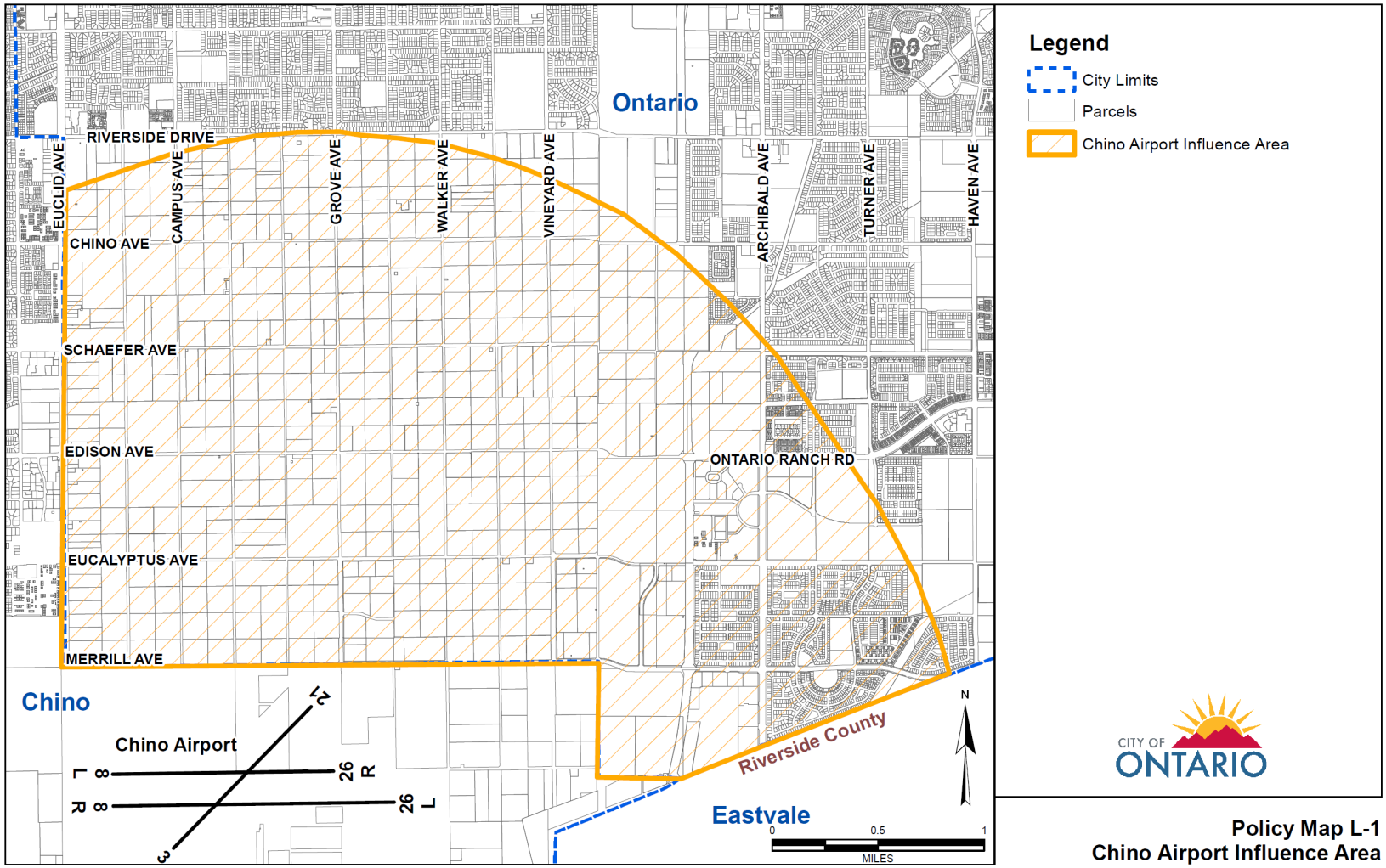
Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Electrical Substations [7]						4, 6: Allowed only if site outside zone would not serve intended public function; avoid features that create flight hazards
Wastewater Facilities: treatment, disposal [3]						6: Allowed only if site outside zone would not serve intended public function; avoid new features that attract birds
Solid Waste Disposal Facilities: landfill, incineration [3]						6: Allowed only if site outside zone would not serve intended public function; avoid new features that attract birds
Solid Waste Transfer Facilities, Recycle Centers [3]						6: Allowed only if site outside zone would not serve intended public function; avoid new features that attract birds

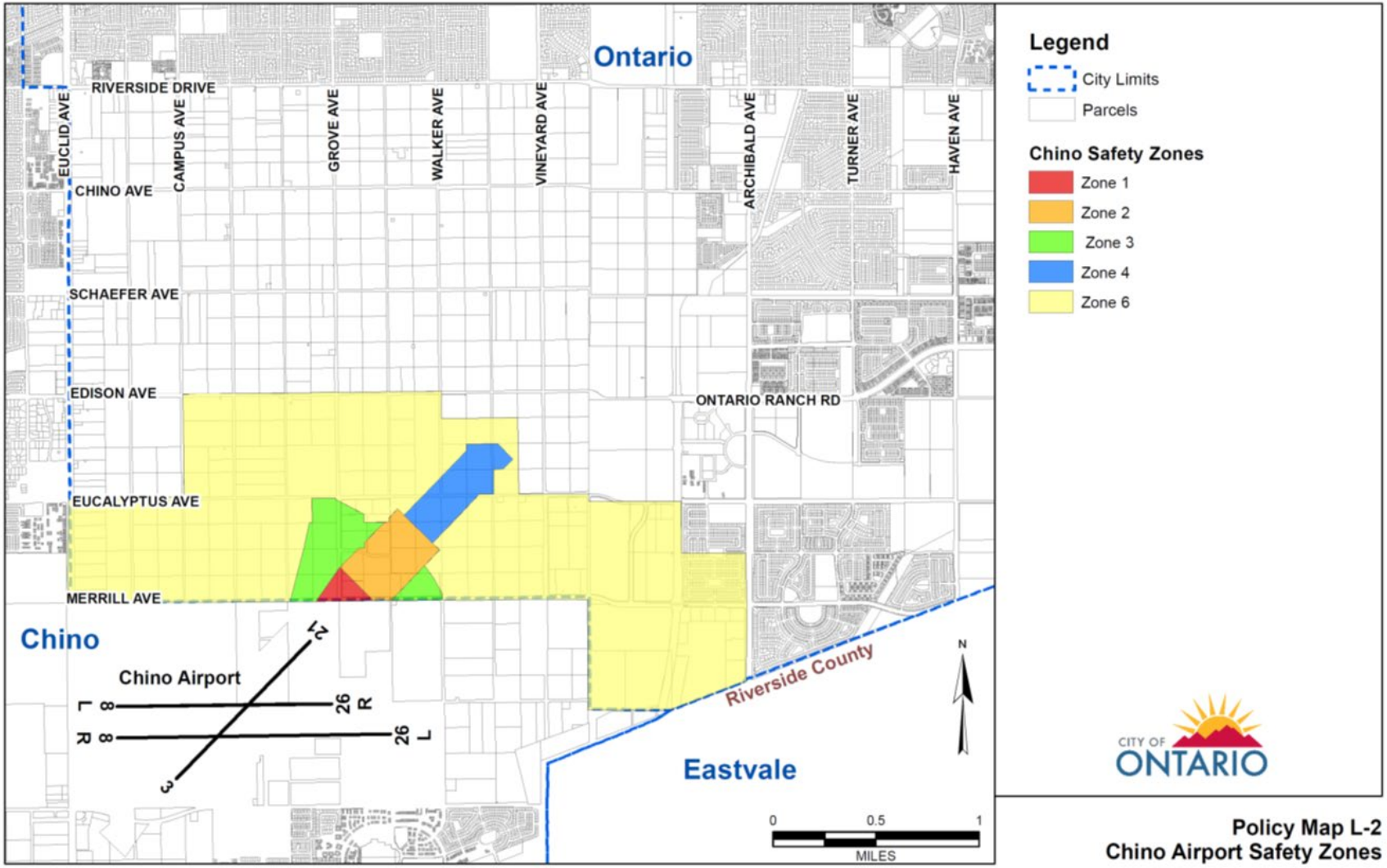
1. Land uses not specifically listed shall be evaluated using the criteria for similar uses.
2. Sample safety zones from the 2011 California Airport Land Use Planning Handbook (Handbook), as applied to Chino Airport, extend into the limits of the City of Ontario, except for Safety Zone 5. For numerical consistency, the Compatibility Zones for Chino Airport maintain the same numbering system used in the Handbook despite omission of Safety Zone 5. Avigation easement dedication required as condition of approval for all properties within Compatibility Zones 1-4.
3. Although these uses may satisfy the Safety criteria, they may be inconsistent with the Airspace Protection criteria as these uses may attract birds or other wildlife that could pose hazards to flight (see **Airspace Protection Policies**) or create obstructions to navigable airspace.
4. A *Major Assembly Facility* is defined as having a capacity of ≥1,000 people, while a *Large Assembly Facility* has a capacity of 300 to 999 people. Source: International Building Code.
5. Construction of a single-family home, including a second dwelling unit as defined by state law, allowed on a legal lot of record if such use is permitted by local land use regulations. A family day care home (serving ≤14 children) may be established in any dwelling.
6. These uses may generate dust or other hazards to flight.
7. Power lines or other tall objects associated with these uses may be hazards to flight.

Policy Map L-1 (Chino Airport Influence Area)

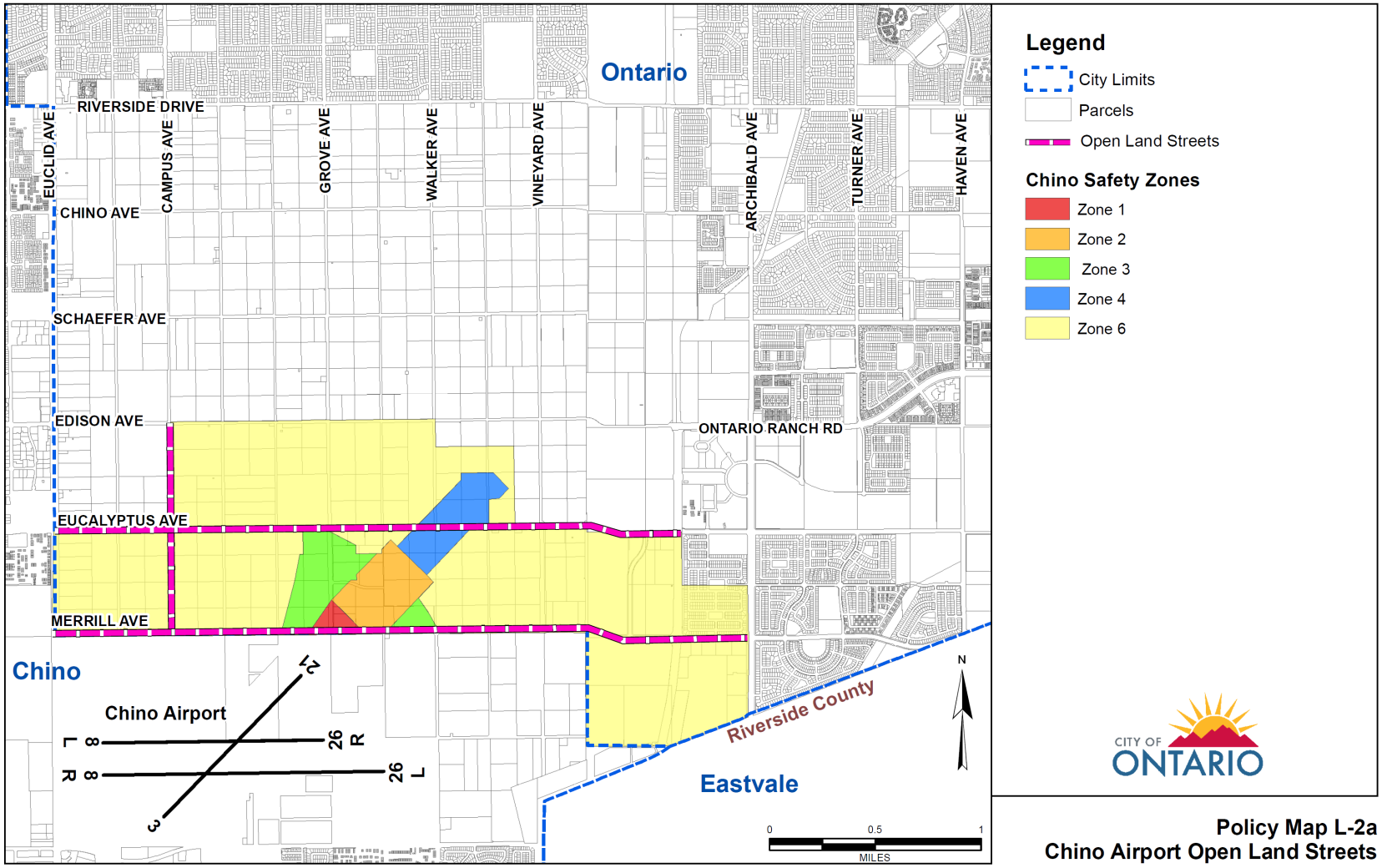


Policy Map L-1
Chino Airport Influence Area

Policy Map L-2 (Chino Airport Safety Zones)

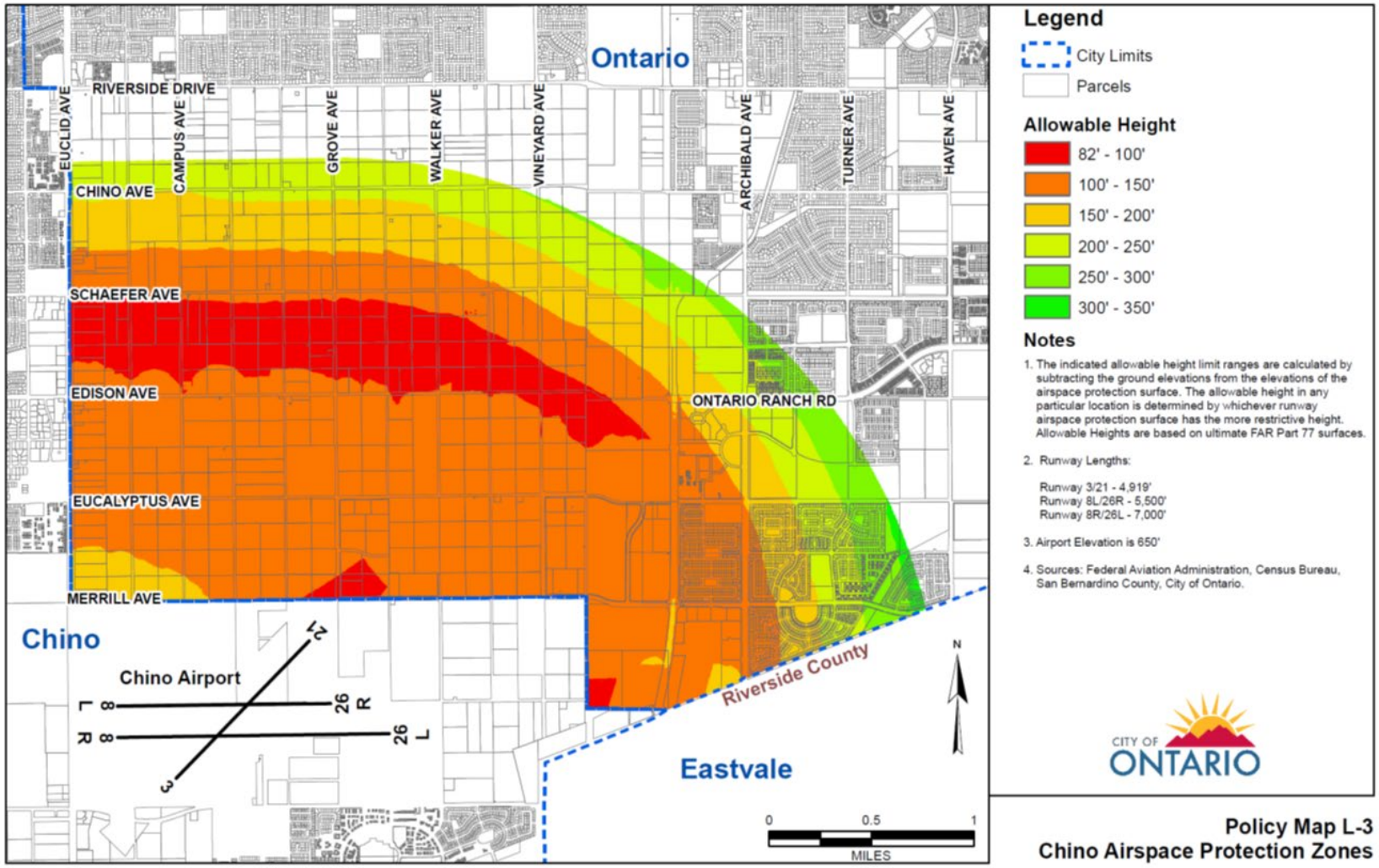


Policy Map L-2a: Chino Airport Open Land Streets

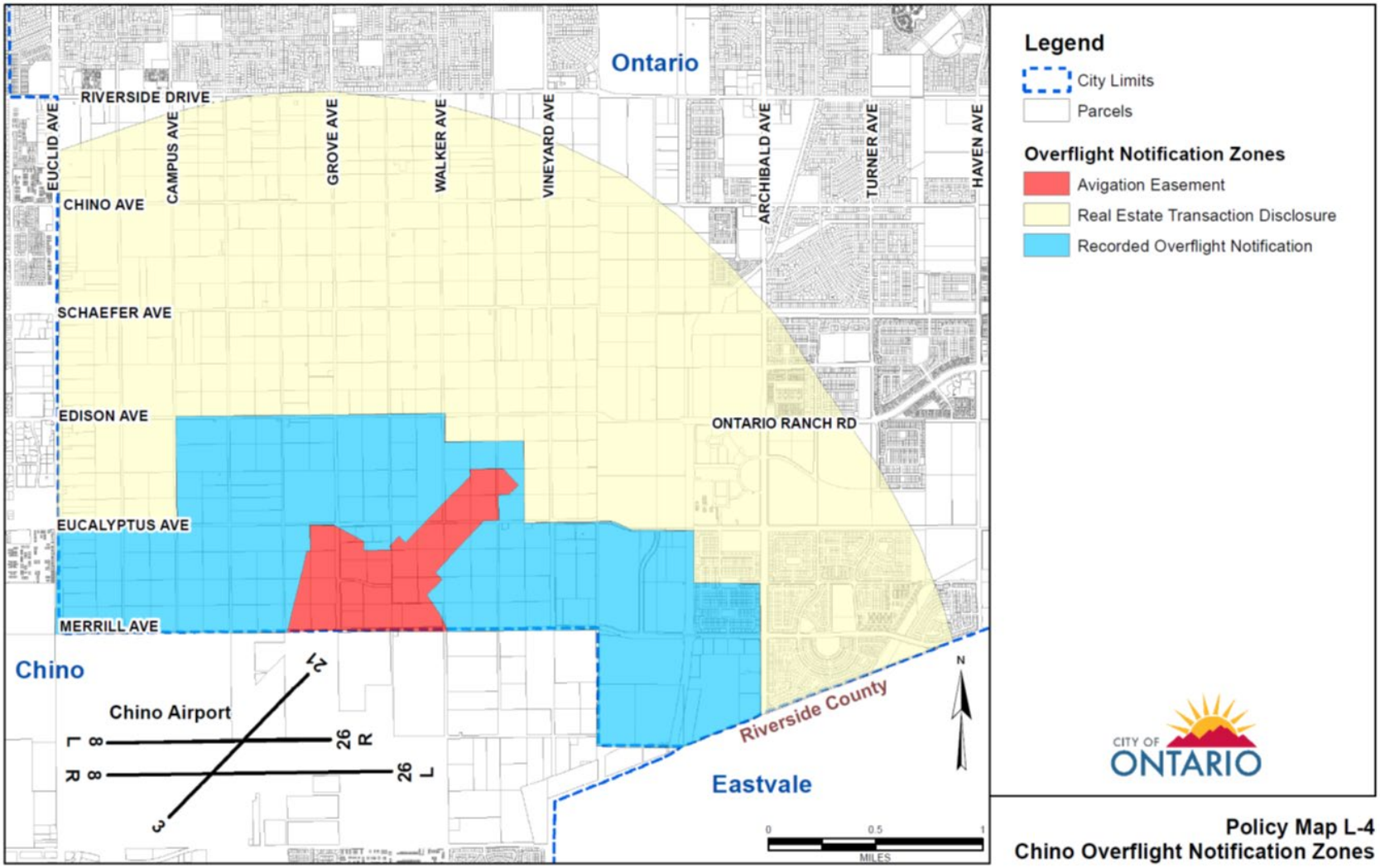


Policy Map L-2a
Chino Airport Open Land Streets

Policy Map L-3: Chino Airspace Protection Zones



Policy Map L-4: Chino Overflight Notification Zones



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA22-004, A DEVELOPMENT CODE AMENDMENT FOR CERTAIN REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE, ESTABLISHING THE CHINO AIRPORT OVERLAY ZONING DISTRICT AND REFERENCE L, CHINO AIRPORT LAND USE COMPATIBILITY PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA22-004, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the Chino Airport is a general aviation airport located within the City of Chino, immediately adjacent to the southwestern boundary of the City of Ontario. The geographic scope of the Chino Airport Land Use Compatibility Plan (“ALUCP”) is the Airport Influence Area (“AIA”). The portion of the AIA within the City of Ontario is generally bounded by Riverside Drive to the north, Merrill Avenue/southern boundary City limits to the south, Euclid Avenue to the west and Haven Avenue to the east; and

WHEREAS, certain revisions to the City of Ontario Development Code are proposed, as follows:

(1) Provisions to establish the Chino Airport Overlay zoning district within Chapter 5 Development Code Section 5.01.005.F.6; and

(2) Provisions to establish Reference L, the Chino Airport Land Use Compatibility Plan within the Reference section of the Development Code; and

WHEREAS, the California State Aeronautics Act (Public Utilities Code, Section 21670 et seq.) requires that an ALUCP be prepared for all public-use airports in the state to “protect the public health, safety, and welfare by ensuring orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible land uses”; and

WHEREAS, State law requires that local jurisdictions preparing Compatibility Plans “rely upon” the compatibility guidance provided by the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation (“Caltrans”), Division of Aeronautics; and

WHEREAS, the responsibility for the preparation and adoption of compatibility plans falls to the county Airport Land Use Commission ("ALUC"). However, State law also provides for what is generally referred to as an "Alternative Process" wherein a county does not have to form an ALUC and the required compatibility planning responsibilities fall to local jurisdictions; and

WHEREAS, the use of the Alternative Process within San Bernardino County was established in 1995 by resolutions of the County Board of Supervisors and the city councils of cities affected by airports. The California Division of Aeronautics approved the San Bernardino County Alternative Process in 1996. The approval of the Alternative Process designated the City of Chino as the local jurisdiction responsible for leading the compatibility planning process for Chino Airport; and

WHEREAS, the current ALUCP does not reflect the guidance set forth in the 2011 Caltrans Airport Land Use Planning Handbook ("Handbook"). Although, the City of Ontario does not have the formal responsibility under the "alternative process" to prepare a compatibility plan for Chino Airport, the City of Ontario has prepared an airport land compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries; and

WHEREAS, the basic function of the ALUCP for Chino Airport ("CNO") is to promote compatibility between CNO and the land uses that surround it. The main objective of the ALUCP is to avoid future compatibility conflicts rather than to remedy existing incompatibilities; and

WHEREAS, the ALUCP addresses four compatibility factors which include safety, noise, airspace protection, and overflight impacts. The compatibility plan includes policies to evaluate, land use plans and new development proposals for consistency with CNO. Each compatibility factor takes into consideration present and future aircraft operations or land uses that could negatively affect airport operations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility

Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Chino ALUCP does not create any conflicting policies or inconsistencies with the ONT ALUCP; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on June 28, 2022, as the first action on the Application, the Planning Commission of the City of Ontario conducted a public hearing to consider the Project and concluded said hearing on that date, voting (6-0) to issue Resolution No. PC22-032, recommending the City Council approve the proposed Development Code Amendment; and

WHEREAS, on July 19, 2022, the City Council of the City of Ontario conducted a public hearing to consider the introduction of this Ordinance, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the "common sense exemption" (also known as the "general rule exemption") that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual

development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 3. *Concluding Facts and Reasons.* Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 2, above, the City Council hereby concludes as follows:

(1) The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan. The Development Code Amendment will support the creation and implementation of the Airport Land Use Compatibility Plan for Chino Airport as promoted by Land Use Element Policy LU5-8 Chino Airport.

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The Development Code Amendment incorporates safeguards intended to ensure that the purposes of the Development Code are preserved; the project will not be contrary to or damage the public health, safety, convenience, or general welfare; the project will not result in any significant environmental impacts; and the project will be in full conformity with the Vision, City Council Priorities, and Policy Plan components of The Ontario Plan.

SECTION 4. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Development Code Amendment, File No. PDCA22-004, amending the City of Ontario Development Code as stipulated in "Attachment A and B", incorporated herein by this reference.

SECTION 5. *Custodian of Records.* The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 6. *Severability.* If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 8. ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3222 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 19, 2022 and adopted at the regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3222 duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022 and that Summaries of the Ordinance were published on July 26, 2022 and August 9, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

Add Development Code Section 5.01.005.F.6 to read as follows:

"**6.** CNO (Chino Airport) Overlay Zoning District. The Chino Airport Overlay zoning district is hereby established to: **[i]** delineate the Airport Influence Area (AIA) for Chino Airport as the boundary of the CNO Overlay zoning district; **[ii]** adopt an airport land use compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries; and **[iii]** promote compatibility between CNO and the land uses that surround it. Property in the CNO Overlay zoning district shall be subject to Reference L - Chino Airport Land Use Compatibility Plan, that includes maps, criteria, and policy language to guide development within the Chino AIA."

ATTACHMENT B:

Add Development Code Reference L to read as follows:

L.01.001: Introduction

The California State Aeronautics Act (Public Utilities Code, Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan (Compatibility Plan) be prepared for all public-use airports in the state to:

"protect the public health, safety, and welfare by ensuring orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible land uses."

State law also requires local land use plans and individual development proposals to be consistent with policies set forth in Compatibility Plans. The statutes also require that local jurisdictions preparing Compatibility Plans "rely upon" the compatibility guidance provided by the California *Airport Land Use Planning Handbook* published by the California Department of Transportation (Caltrans), Division of Aeronautics in January 2011.

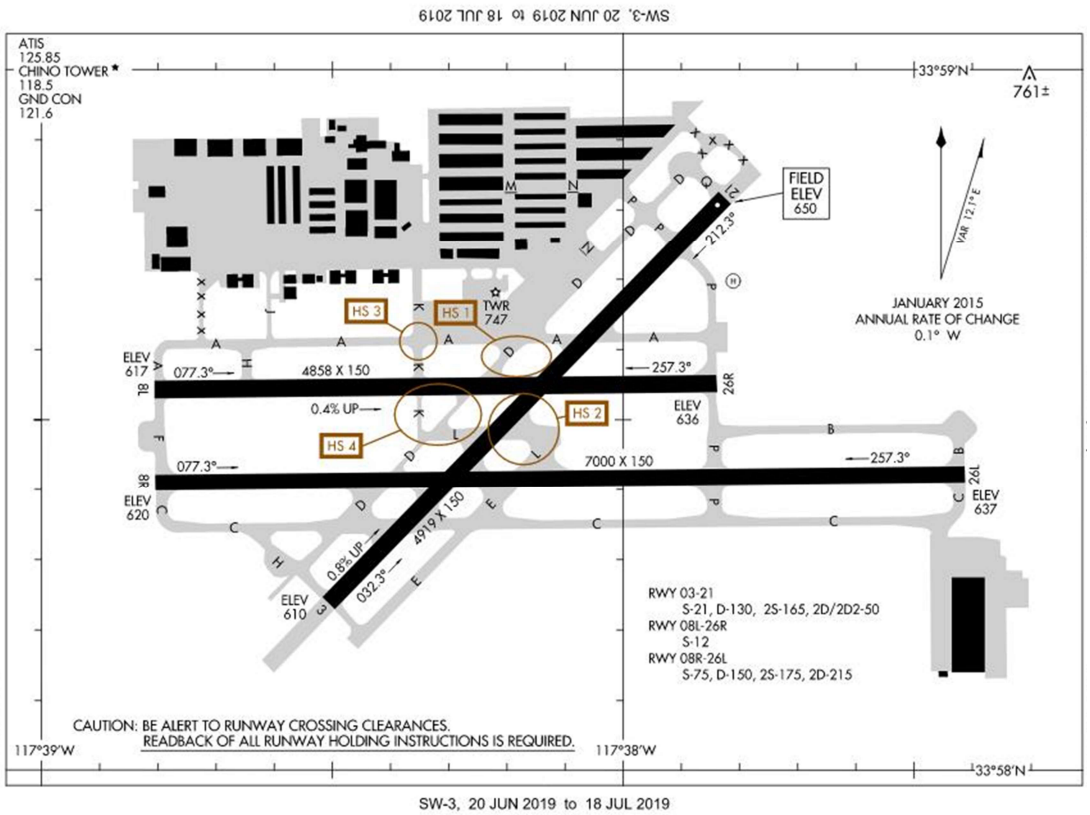
The responsibility for the preparation and adoption of compatibility plans falls to the county airport land use commission (ALUC). However, State law also provides for what is generally referred to as an "Alternative Process" wherein a county does not have to form an ALUC and the required compatibility planning responsibilities fall to local jurisdictions. San Bernardino County and its cities elected to follow the Alternative Process when this option became available as a result of the 1994 legislation (Assembly Bill 2831). Specific requirements for implementation of the Alternative Process are set forth in Public Utilities Code Section 21670.1(c)(2).

Use of the Alternative Process within San Bernardino County was established in 1995 by resolutions of the County Board of Supervisors and the city councils of cities affected by airports. The California Division of Aeronautics approved the San Bernardino County Alternative Process in 1996. The approval of the Alternative Process designated the City of Chino as the local jurisdiction responsible for leading the compatibility planning process for Chino Airport.

The current Chino Airport Land Use Compatibility Plan (ALUCP) does not reflect the guidance set forth in the 2011 Caltrans Airport Land Use Planning Handbook. Although, the City of Ontario does not have the formal responsibility under the "alternative process" to prepare a compatibility plan for Chino Airport, the City of Ontario has prepared an airport land compatibility plan for Chino Airport consistent with the 2011 Caltrans Airport Land Use Planning Handbook solely to address impacts within Ontario's boundaries.

Chino Airport is owned and operated by the County of San Bernardino and is situated within the boundaries of the City of Chino, immediately south of Ontario. Chino Airport (CNO) is the busiest non-commercial airport within a 20-mile radius of the City of Ontario, making it a leading general aviation airport of choice for independent pilots, students and trainers, and corporate users. CNO occupies 1,097 acres, has three runways and provides full precision instrument approach capabilities. The airport reported nearly 165,000 annual operations for the 12-month period ending in September 2019. Aircraft operations on Runway 3-21 (northeast/southwest crosswind runway) and Runway 8L-26R (northern east/west parallel runway) have the greatest effect on the City of Ontario. A brief summary of airport facilities is provided below and shown in **Figure L-1: Chino Airport Diagram**.

Figure L-1: Chino Airport Runway Diagram



Chino Airport Facilities

- **Runway 3-21**

  - Airport Reference Code: C-II
  - Existing Runway Dimensions: 4,919 feet x 150 feet
  - Runway is lighted for nighttime operations
  - Approach Visibility Minimums (lowest): Visual (>1-mile)
  - Title 14 Code of Federal Regulation (CFR), Part 77 category and approach slope: B(V), 20:1
  - Traffic Pattern: Runway 3 (right), Runway 21 (left)

- **Runway 8L-26R**

  - Airport Reference Code: C-III
  - Runway Dimensions:
  - Existing: 4,858 feet x 150 feet
  - Future: 5,500 feet x 150 feet
  - Existing Approach Visibility Minimums (lowest) and Part 77 category and approach slope:
  - Runway 8L: Visual (>1 mile); B(V), 20:1
  - Runway 26R: Precision (<3/4 mile); 50:1
  - Traffic Pattern: Runway 8L (right), Runway 26R (left)

- **Runway 8R-26L**

  - Airport Reference Code: D-III
  - Existing Runway Dimensions: 7,000 feet x 150 feet
  - Runway is lighted for nighttime operations
  - Approach Visibility Minimums (lowest):
    - Existing Runway 8R and 26L: Visual, >1-mile
    - Future Runway 26L: Precision (3/4 mile)
  - Part 77 category and approach slope:
    - Existing: B(V), 20:1
    - Future Runway 26L: Precision, 50:1
  - Traffic Pattern: Runway 8R (right), Runway 26L (left)

L.01.002: Purpose

The purpose of the “Airport Land Use Compatibility Plan” (ALUCP) for Chino Airport (CNO) is to promote compatibility between CNO and the land uses that surround it. The City’s general plan, specific plans, and zoning ordinances shall be made consistent with the CNO ALUCP through incorporation of the compatibility policies into their land use policy documents.

The main objective of the ALUCP is to avoid future compatibility conflicts rather than to remedy existing incompatibilities. Also, the ALUCP is aimed at addressing future land uses and development, not airport activity. The ALUCP does not place any restrictions on the present and future role, configuration, or use of the airport.

L.01.003: Definitions

A. Purpose. The purpose of this section is to establish definitions for terms and phrases used in this CNO ALUCP that are technical or specialized, or that may not reflect common usage.

B. Terms and Phrases. Definitions of Words Beginning with the Letter "A."

Above Ground Level (AGL): An elevation datum given in feet above ground level.

Accident Potential Zones (APZs): A set of safety-related zones defined by AICUZ studies for areas beyond the ends of military airport runways. Typically, three types of zones are established: a clear zone closest to the runway end, then APZ I and APZ II. The potential for aircraft accidents and the corresponding need for land use restrictions is greatest with the clear zone and diminishes with increased distance from the runway.

Air Carriers: The commercial system of air transportation, consisting of the certificated air carriers, air taxis (including commuters), supplemental air carriers, commercial operators of large aircraft, and air travel clubs.

Aircraft Accident: An occurrence incident to flight in which, as a result of the operation of an aircraft, a person (occupant or nonoccupant) receives fatal or serious injury or an aircraft receives substantial damage.

- Except as provided below, *substantial damage* means damage or structural failure that adversely affects the structural strength, performance, or flight characteristics of the aircraft, and that would normally require major repair or replacement of the affected component.

- Engine failure, damage limited to an engine, bent fairings or cowling, dented skin, small puncture holes in the skin or fabric, ground damage to rotor or propeller blades, damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered substantial damage.

Aircraft Incident: A mishap associated with the operation of an aircraft in which neither fatal or serious injuries nor substantial damage to the aircraft occur.

Aircraft Mishap: The collective term for an aircraft accident or an incident.

Aircraft Operation: The airborne movement of aircraft at an airport or about an en route fix or at other point where counts can be made. There are two types of operations: local and itinerant. An operation is counted for each landing and each departure, such that a touch-and-go flight is counted as two operations.

Airport: An area of land or water that is used or intended to be used for the landing and taking off of aircraft and includes its buildings and facilities if any.

Airport Elevation: The highest point of an airport's useable runways, measured in feet above mean sea level.

Airport Land Use Compatibility Plan (ALUCP): A planning document that contains policies for promoting safety and compatibility between public use airports and the communities that surround them. The ALUCP is the foundation of the airport land use compatibility planning process.

Airport Layout Plan (ALP): A scale drawing of existing and proposed airport facilities, their location on an airport, and the pertinent clearance and dimensional information required to demonstrate conformance with applicable standards.

Airport Master Plan (AMP): A long-range plan for development of an airport, including descriptions of the data and analyses on which the plan is based.

Airport Reference Code (ARC): A coding system used to relate airport design criteria to the operation and physical characteristics of the airplanes intended to operate at an airport.

Airports, Classes of: For the purposes of issuing a Site Approval Permit, The California Department of Transportation, Division of Aeronautics classifies airports into the following categories:

- Agricultural Airport or Heliport: An airport restricted to use only be agricultural aerial applicator aircraft (FAR Part 137 operators).

- Emergency Medical Services (EMS) Landing Site: A site used for the landing and taking off of EMS helicopters that is located at or as near as practical to a medical emergency or at or near an medical facility and: 1)has been designated an EMS landing site by an officer authorized by a public safety agency, as defined in PUC Section 21662.1, using criteria that the public safety agency has determined is reasonable and prudent for the safe operation of EMS helicopters; 2) is used, over any twelve month period, for no more than an average of six landings per month with a patient or patients on the helicopter, except to allow for adequate medical response to a mass casualty event even if that response causes the site to be used beyond these limits; 3)is not marked as a permitted heliport as described in Section 3554 of these regulations; and 4)is used only for emergency medical purposes.

- Heliport on Offshore Oil Platform: A heliport located on a structure in the ocean, not connected to the shore by pier, bridge, wharf, dock or breakwater, used in the support of petroleum exploration or production.

- Personal-Use Airport: An airport limited to the non-commercial use of an individual owner or family and occasional invited guests.

- Public-Use Airport: An airport that is open for aircraft operations to the general public and is listed in the current edition of the Airport/Facility Directory that is published by the National Ocean Service of the U.S. Department of Commerce.

- Seaplane Landing Site: An area of water used, or intended for use, for landing and takeoff of seaplanes.

- Special-Use Airport or Heliport: An airport not open to the general public, access to which is controlled by the owner in support of commercial activities, public service operations, and/or personal use.

- Temporary Helicopter Landing Site: A site, other than an emergency medical service landing site at or near a medical facility, which is used for landing and taking off of helicopters and is used or intended to be used for less than one year, except for recurrent annual events and is not marked or lighted to be distinguishable as a heliport and is not used exclusively for helicopter operations.

Ambient Noise Level: The level of noise that is all encompassing within a given environment for which a single source cannot be determined. It is usually a composite of sounds from many and varied sources near to and far from the receiver.

Approach Protection Easement: A form of easement that both conveys all of the rights of an avigation easement and sets specified limitations on the type of land uses allowed to be developed on the property.

Approach Speed: The recommended speed contained in aircraft manuals used by pilots when making an approach to landing. This speed will vary for different segments of an approach as well as for aircraft weight and configuration.

Aviation-Related Use: Any facility or activity directly associated with the air transportation of persons or cargo or the operation, storage, or maintenance of aircraft at an airport or heliport. Such uses specifically include runways, taxiways, and their associated protected areas defined by the Federal Aviation Administration, together with aircraft aprons, hangars, fixed base operations, terminal buildings, etc.

Avigation Easement: A type of easement that typically conveys the following rights:

- A right-of-way for free and unobstructed passage of aircraft through the airspace over the property at any altitude above a surface specified in the easement (usually set in accordance with FAR Part 77 criteria).

- A right to subject the property to noise, vibrations, fumes, dust, and fuel particle emissions associated with normal airport activity.

- A right to prohibit the erection or growth of any structure, tree, or other object that would enter the acquired airspace.

- A right-of-entry onto the property, with proper advance notice, for the purpose of removing, marking, or lighting any structure or other object that enters the acquired airspace.

- A right to prohibit electrical interference, glare, misleading lights, visual impairments, and other hazards to aircraft flight from being created on the property.

Based Aircraft: Aircraft stationed at an airport on a long-term basis.

Ceiling: Height above the earth's surface to the lowest layer of clouds or obscuring phenomena.

Circling Approach/Circle-to-Land Maneuver: A maneuver initiated by the pilot to align the aircraft with a runway for landing when a straight-in landing from an instrument approach is not possible or not desirable.

Commercial Activities: Airport-related activities that may offer a facility, service or commodity for sale, hire or profit. Examples of commodities for sale are: food, lodging, entertainment, real estate, petroleum products, parts and equipment. Examples of services are: flight training, charter flights, maintenance, aircraft storage, and tiedown.

Commercial Operator: A person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier.

Community Noise Equivalent Level (CNEL): The noise metric adopted by the State of California for evaluating airport noise. It represents the average daytime noise level during a 24-hour day, adjusted to an equivalent level to account for the lower tolerance of people to noise during evening and nighttime periods relative to the daytime period.

Compatibility Plan: As used herein, a plan, that sets forth policies for promoting compatibility between airports and the land uses that surround them.

Controlled Airspace: Any of several types of airspace within which some or all aircraft may be subject to air traffic control.

Day-Night Average Sound Level (DNL): The noise metric adopted by the U.S. Environmental Protection Agency for measurement of environmental noise. It represents the average daytime noise level during a 24-hour day, measured in decibels and adjusted to account for the lower tolerance of people to noise during nighttime periods. The mathematical symbol is L_{dn}.

Decibel (dB): A unit measuring the magnitude of a sound, equal to the logarithm of the ratio of the intensity of the sound to the intensity of an arbitrarily chosen standard sound, specifically a sound just barely audible to an unimpaired human ear. For environmental noise from aircraft and other transportation sources, an *A-weighted sound*

level (abbreviated dBA) is normally used. The A-weighting scale adjusts the values of different sound frequencies to approximate the auditory sensitivity of the human ear.

Deed Notice: A formal statement added to the legal description of a deed to a property and on any subdivision map. As used in airport land use planning, a deed notice would state that the property is subject to aircraft overflights. Deed notices are used as a form of buyer notification as a means of ensuring that those who are particularly sensitive to aircraft overflights can avoid moving to the affected areas.

Displaced Threshold: A landing threshold that is located at a point on the runway other than the designated beginning of the runway (see *Threshold*).

Equivalent Sound Level (L_{eq}): The level of constant sound that, in the given situation and time period, has the same average sound energy as does a time-varying sound.

FAR Part 77: The part of the Federal Aviation Regulations that deals with objects affecting navigable airspace.

FAR Part 77 Surfaces: Imaginary airspace surfaces established with relation to each runway of an airport. There are five types of surfaces: (1) primary; (2) approach; (3) transitional; (4) horizontal; and (5) conical.

Federal Aviation Administration (FAA): The U.S. government agency that is responsible for ensuring the safe and efficient use of the nation's airports and airspace.

Federal Aviation Regulations (FAR): Regulations formally issued by the FAA to regulate air commerce.

Fixed Base Operator (FBO): A business that operates at an airport and provides aircraft services to the general public including, but not limited to, sale of fuel and oil; aircraft sales, rental, maintenance, and repair; parking and tiedown or storage of aircraft; flight training; air taxi/charter operations; and specialty services, such as instrument and avionics maintenance, painting, overhaul, aerial application, aerial photography, aerial hoists, or pipeline patrol.

Fleet Mix: The composition of aircraft that operate at a particular airport.

Flight Tracks: Routes aircraft routinely use when arriving and departing from an airport.

Forecasts: A projection of the amount and type of aircraft operations at an airport.

General Aviation: That portion of civil aviation that encompasses all facets of aviation except air carriers.

General Aviation Airport: Airports that do not receive scheduled commercial service, or do not meet the criteria for classification as a commercial service airport.

General aviation airports have at least 10 locally based aircraft, are at least twenty miles from the nearest NPIAS airports.

Glide Slope: An electronic signal radiated by a component of an ILS to provide vertical guidance for aircraft during approach and landing.

Helipad: A small, designated area, usually with a prepared surface, on a heliport, airport, landing/takeoff area, apron/ramp, or movement area used for takeoff, landing, or parking of helicopters.

Heliport: A facility used for operating, basing, housing, and maintaining helicopters. (HAI)

Infill: Development that takes place on vacant property largely surrounded by existing development, especially development that is similar in character.

Inner Approach/Departure Zone: A rectangular area extending beyond the RPZ. If the RPZ widths approximately equal the runway widths, the Inner Approach/Departure Zoned extends along the sides of the RPZ from the end of the runway.

Inner Turning Zone: A triangular area over which aircraft are turning from the base to final approach legs of the standard traffic pattern. It also includes the area where departing aircraft normally complete the transition from takeoff to climb mode and begin to turn on their en route headings.

Instrument Approach Procedure: A series of predetermined maneuvers for the orderly transfer of an aircraft under instrument flight conditions from the beginning of the initial approach to a landing or to a point from which a landing may be made visually. It is prescribed and approved for a specific airport by competent authority (refer to Nonprecision Approach Procedure and Precision Approach Procedure).

Instrument Flight Rules (IFR): Rules governing the procedures for conducting instrument flight. Generally, IFR applies when meteorological conditions with a ceiling below 1,000 feet and visibility less than 3 miles prevail.

Instrument Landing System (ILS): A precision instrument approach system that normally consists of the following electronic components and visual aids: (1) Localizer; (2) Glide Slope; (3) Outer Marker; (4) Middle Marker; (5) Approach Lights.

Instrument Operation: An aircraft operation in accordance with an IFR flight plan or an operation where IFR separation between aircraft is provided by a terminal control facility.

Instrument Runway: A runway equipped with electronic and visual navigation aids for which a precision or nonprecision approach procedure having straight-in landing minimums has been approved.

Inverse Condemnation: An action brought by a property owner seeking just compensation for land taken for a public use against a government or private entity having the power of eminent domain. It is a remedy peculiar to the property owner and is exercisable by that party where it appears that the taker of the property does not intend to bring eminent domain proceedings.

Land Use Density: A measure of the concentration of land use development in an area. Mostly the term is used with respect to residential development and refers to the number of dwelling units per acre. Unless otherwise noted, policies in this compatibility plan refer to *gross* rather than *net* acreage.

Land Use Intensity: A measure of the concentration of nonresidential land use development in an area. For the purposes of airport land use planning, the term indicates the number of people per acre attracted by the land use. Unless otherwise noted, policies in this compatibility plan refer to gross rather than net acreage.

Large Airplane: An airplane of more than 12,500 pounds maximum certificated takeoff weight.

Localizer (LOC): The component of an ILS that provides course guidance to the runway.

Mean Sea Level (MSL): An elevation datum given in feet from mean sea level.

Minimum Descent Altitude (MDA): The lowest altitude, expressed in feet above mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering in execution of a standard instrument approach procedure where no electronic glide slope is provided.

Missed Approach: A maneuver conducted by a pilot when an instrument approach cannot be completed to a landing.

National Transportation Safety Board (NTSB): The U.S. government agency responsible for investigating transportation accidents and incidents.

Navigational Aid (Navaid): Any visual or electronic device airborne or on the surface that provides point-to-point guidance information or position data to aircraft in flight.

Noise Contours: Continuous lines of equal noise level usually drawn around a noise source, such as an airport or highway. The lines are generally drawn in 5-decibel increments so that they resemble elevation contours in topographic maps.

Noise Level Reduction (NLR): A measure used to describe the reduction in sound level from environmental noise sources occurring between the outside and the inside of a structure.

Nonconforming Use: An existing land use that does not conform to subsequently adopted or amended zoning or other land use development standards.

Nonprecision Approach Procedure: A standard instrument approach procedure in which no electronic glide slope is provided.

Nonprecision Instrument Runway: A runway with an approved or planned straight-in instrument approach procedure that has no existing or planned precision instrument approach procedure.

Obstruction: Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used therein, the height of which exceeds the standards established in Subpart C of Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace.

One-Engine Inoperative (OEI) Obstacle Identification Surface: For airports with runways that support air carrier operations, this surface begins at the same elevation of the end of the departure runway and slopes upward at 1 foot vertically to 62.5 feet horizontally. The inner width of the OEI surface is 600 feet while the outer width is 12,000 feet. The surface extends for a distance of 50,000 feet along the runway centerline.

Outer Approach/Departure Zone: A rectangular area located along the extended centerline beyond the Inner Approach/Departure Zone.

Overflight: Any distinctly visible and/or audible passage of an aircraft in flight, not necessarily directly overhead.

Overflight Easement: An easement that describes the right to overfly the property above a specified surface and includes the right to subject the property to noise, vibrations, fumes, and emissions. An overflight easement is used primarily as a form of buyer notification.

Overflight Zone: The area(s) where aircraft maneuver to enter or leave the traffic pattern, typically defined by the FAR Part 77 horizontal surface.

Precision Approach Procedure: A standard instrument approach procedure where an electronic glide slope is provided.

Precision Instrument Runway: A runway with an existing or planned precision instrument approach procedure.

Qualified Airport Wildlife Biologist: A biologist who has received specific training to identify hazards to aircraft operations pursuant to FAA criteria set forth at Advisory Circular 150/5200-36A, Qualifications for Wildlife Biologist Conducting Wildlife Hazard Assessments and Training Curriculums for Airport Personnel Involved in Controlling Wildlife Hazards on Airports.

Referral Area: The area around an airport defined by the planning area boundary adopted by an airport land use commission within which certain land use proposals are to be referred to the commission for review.

Runway Protection Zone (RPZ): An area (formerly called a *clear zone*) off the end of a runway used to enhance the protection of people and property on the ground.

Safety Zone: For the purpose of airport land use planning, an area near an airport in which land use restrictions are established to protect the safety of the public from potential aircraft accidents.

Sideline Zone: A rectangular area in close proximity and parallel to the runway.

Single-Event Noise: As used in herein, the noise from an individual aircraft operation or overflight.

Single Event Noise Exposure Level (SENEL): A measure, in decibels, of the noise exposure level of a single event, such as an aircraft flyby, measured over the time interval between the initial and final times for which the noise level of the event exceeds a threshold noise level and normalized to a reference duration of one second. SENEL is a noise metric established for use in California by the state Airport Noise Standards and is essentially identical to *Sound Exposure Level (SEL)*.

Site Approval Permit: A written approval issued by the California Department of Transportation authorizing construction of an airport in accordance with approved plans, specifications, and conditions. Both public-use and special-use airports require a site approval permit. (CCR)

Small Airplane: An airplane of 12,500 pounds or less maximum certificated takeoff weight. (Airport Design AC)

Sound Exposure Level (SEL): A time-integrated metric (i.e., continuously summed over a time period) that quantifies the total energy in the A-weighted sound level measured during a transient noise event. The time period for this measurement is generally taken to be that between the moments when the A-weighted sound level is 10 dB below the maximum.

Straight-In Instrument Approach: An instrument approach wherein a final approach is begun without first having executed a procedure turn; it is not necessarily completed with a straight-in landing or made to straight-in landing weather minimums. (AIM)

Taking: Government appropriation of private land for which compensation must be paid as required by the Fifth Amendment of the U.S. Constitution. It is not essential that there be physical seizure or appropriation for a *taking* to occur, only that the government action directly interferes with or substantially disturbs the owner's right to use and enjoyment of the property.

Terminal Instrument Procedures (TERPS): Procedures for instrument approach and departure of aircraft to and from civil and military airports. There are four types of terminal instrument procedures: precision approach, nonprecision approach, circling, and departure.

Threshold: The beginning of that portion of the runway usable for landing (also see Displaced Threshold).

Touch-and-Go: An operation by an aircraft that lands and departs on a runway without stopping or exiting the runway.

Traffic Pattern: The traffic flow that is prescribed for aircraft landing at, taxiing on, or taking off from an airport. The components of a typical traffic pattern are upwind leg, crosswind leg, downwind leg, base leg, and final approach.

Traffic Pattern Zone: An elliptical area that includes the majority of other portions of regular air traffic patterns and pattern entry routes, and generally extends to the farthest point of 6,000 foot radius arcs from the centers of each of the primary surfaces and connecting lines tangent to those arcs.

Visual Approach: An approach where the pilot must use visual reference to the runway for landing under VFR conditions.

Visual Flight Rules (VFR): Rules that govern the procedures for conducting flight under visual conditions. VFR applies when meteorological conditions are equal to or greater than the specified minimum-generally, a 1,000-foot ceiling and 3-mile visibility.

Visual Runway: A runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA-approved airport layout plan.

L.01.004: Compatibility Factors

In accordance with guidance set forth the by 2011 Airport Land Use Planning Handbook (Handbook) published by the California Department of Transportation (Caltrans), Division of Aeronautics, the CNO Airport Influence Area (AIA) encompasses all lands that could be negatively impacted by CNO's present, or future aircraft operations or land uses that could negatively affect airport operations. The AIA is depicted in **Policy Map L-1 (Chino Airport Influence Area)** and encompasses the geographic extent of four types of compatibility impacts, referred to as compatibility factors, listed below:

- Safety: Areas where the risk of an aircraft accident poses heightened safety concerns for people and property on the ground.

- Noise: Locations exposed to potentially disruptive levels of aircraft noise.

- Airspace Protection: Places where height and certain other land use characteristics, particularly uses that attract birds, need to be restricted in order to protect the airspace required for operation of aircraft to and from the airport.

- Overflight: Locations where aircraft overflights can be intrusive and annoying to many people.

The potential impact of each compatibility factor on land within the City of Ontario were evaluated and maps, criteria, and policy language have been created to guide development within the Chino AIA. The compatibility policies and criteria to evaluate future development proposals are consistent with the 2011 Caltrans Airport Land Use Planning Handbook.

A. Safety. The intent of the safety compatibility policies is to minimize the risks associated with an off-airport aircraft accident or emergency landing. The policies focus on reducing the potential consequences of such events when they occur. The potential risks to people and property within the CNO AIA and to people on board the aircraft are considered.

The Handbook provides sets of generic zones for different types of general aviation runways and the shapes and sizes of the zones were established based upon mathematical analyses of the accident location data and flight parameters. The Handbook safety zones and criteria serve as the basis for this CNO ALUCP and are described below:

- The generic Handbook safety zones for a Medium General Aviation Runway Group were applied for the approach end of Runway 21 (northeast) and Runway 26R (east).

- The generic Handbook safety zones for a Long General Aviation Runway Group were applied for the approach end of Runway 26L (east).

For implementation purposes, the generic Handbook Safety Zone boundaries were adjusted to follow parcel lines, roads, and other geographic features. The reconfiguration of the safety zones did not result in a substantial net acreage reduction of the safety zones. For consistency, the CNO Safety Zones maintain the same numbering system used in the Handbook. Portions of Safety Zones 1, 2, 3, 4 and 6 are located within Ontario city limits and are depicted in **Policy Map L-2 (Chino Airport Safety Zones)**. Safety Zone 5 is located outside of the Ontario city limits and not included in the CNO ALUCP.

1. Safety Zone 1. Zone 1 reflects the airport's established Runway Protection Zone (RPZ). Portions of the RPZ are located off airport within the City of Ontario and shall be maintained as undeveloped land, clear of objects in accordance with FAA standards. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Aircraft on very close final approach or departure – very high risk	Normally Allowed Uses: ▪ None

Nature of Risk	Basic Compatibility Policies
Altitude: ▪ Less than 200 feet above runway	Uses to Avoid: ▪ Nonresidential uses except if very low intensity in character and confined to the outer sides such as parking lots, streets, roads
Common Accident Types: ▪ Arrival: Downdrafts and wind gusts. Low glide paths ▪ Departure: Runway overruns, aborted takeoffs, and engine failures	Prohibit: ▪ All new structures and residential land uses
Risk Level: ▪ Very high ▪ Percentage of near-runway accidents in this zone: 20% - 21%	Other Factors: ▪ Airport ownership of property encouraged

2. Safety Zone 2. Zone 2 reflects the Inner Approach/Departure Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	Basic Compatibility Policies
Normal Maneuvers: ▪ Aircraft overflying at low altitudes on final approach and straight-out departures	Normally Allowed Uses: ▪ Agriculture; non-group recreational uses ▪ Low-hazard materials storage, warehouses ▪ Low-intensity light industrial uses; auto, aircraft, marine repair services
Altitude: ▪ Between 200 and 400 feet above runway	Uses to Limit: ▪ All residential uses except as infill in developed areas ▪ Multi-story uses; uses with high density or intensity Shopping centers, most eating establishments
Common Accident Types: ▪ Arrival: Similar to Zone 1, aircraft under-shooting approaches, forced short landings ▪ Departure: Similar to Zone 1, emergency landing on straight-out departure	Uses to Avoid: ▪ All residential uses except as infill in developed areas ▪ Multi-story uses; uses with high density or intensity ▪ Shopping centers, most eating establishments
Risk Level: ▪ High ▪ Percentage of near-runway accidents in this zone: 8% to 22% Aircraft on very close final approach or departure – very high risk	Uses Prohibit: ▪ Theaters, meeting halls and other assembly uses ▪ Office buildings greater than 3 stories ▪ Labor-intensive industrial use Nonresidential uses except if very low intensity in character and confined to the outer sides Parking lots, streets, roads

3. Safety Zone 3. Zone 3 reflects the Inner Turning Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	Basic Compatibility Policies
Normal Maneuvers: ▪ Aircraft—especially smaller, piston-powered aircraft— turning base to final on landing approach or initiating turn to en route direction on departure	Normally Allowed Uses: ▪ Uses allowed in Zone 2 ▪ Greenhouses, low-hazard materials storage, mini-storage, warehouses ▪ Light industrial, vehicle repair services
Altitude: ▪ Less than 500 feet above runway, particularly on landing	Uses to Limit: ▪ Residential uses to very low densities ▪ Office and other commercial uses to low intensities

Nature of Risk	*Basic Compatibility Policies*
Common Accident Types: ▪ Arrival: Pilot overshoots turn to final and inappropriately cross controls the airplane rudder and ailerons while attempting to return to the runway alignment causing stall, spin, and uncontrolled crash ▪ Departure: Mechanical failure on takeoff; low altitude gives pilot few options on emergency landing site; or, pilot attempts to return to airport and loses control during tight turn	Uses to Avoid: ▪ Commercial and other nonresidential uses having higher usage intensities ▪ Building with more than 3 aboveground habitable floors ▪ Hazardous uses (e.g., aboveground bulk fuel storage)
Risk Level: ▪ Moderate to high ▪ Percentage of near-runway accidents in this zone: 4% to 8%	Uses to Prohibit: ▪ Major shopping centers, theaters, meeting halls and other assembly facilities ▪ Children's schools, large daycare centers, hospitals, nursing homes ▪ Stadiums, group recreational uses

4. Safety Zone 4. Zone 4 reflects the Outer Approach/Departure Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Approaching aircraft usually at less than traffic pattern altitude	Normally Allowed Uses: ▪ Uses allowed in Zone 3 ▪ Restaurants, retail, industrial
Altitude: ▪ Less than 1,000 feet above runway	Uses to Limit: ▪ Residential uses to low density
Common Accident Types: ▪ Arrival: Pilot undershoots runway during an instrument approach, aircraft loses engine on approach, forced landing ▪ Departure: Mechanical failure on takeoff	Uses to Avoid: ▪ High-intensity retail or office buildings
Risk Level: ▪ Moderate ▪ Percentage of near-runway accidents in this zone: 2% to 6%	Uses to Prohibit: ▪ Children's schools, large daycare centers, hospitals, nursing homes ▪ Stadiums, group recreational uses

5. Safety Zone 6. Zone 6 reflects the Traffic Pattern Zone. Below is a summary of risk and basic compatibility policies listed in the Handbook.

Nature of Risk	*Basic Compatibility Policies*
Normal Maneuvers: ▪ Aircraft within a regular traffic pattern and pattern entry routes	Normally Allowed Uses: ▪ Residential uses
Altitude: ▪ Less than 1,000 to 1,500 feet above runway	Uses to Limit: ▪ Children's schools, large day care centers, hospitals, and nursing homes ▪ Processing and storage of bulk quantities of highly hazardous
Common Accident Types: ▪ Arrival: Pattern accidents in proximity of airport ▪ Departure: Emergency landings	Uses to Avoid: ▪ Outdoor stadiums and similar uses with very high intensities

Nature of Risk	*Basic Compatibility Policies*
Risk Level: ▪ Low ▪ Percentage of near-runway accidents in this zone: 18% to 29% (percentage is high because of large area encompassed)	

6. Factors in establishing Safety Zone Policies. To minimize risks to people and property on the ground, the safety compatibility criteria in **Table L-2: Safety Zones Compatibility Criteria** set limits on:

a. *Residential Uses.* The density of residential development is measured by the number of dwelling units per acre. Consistent with the California Airport Land Use Planning Handbook (2011) guidelines, a greater degree of protection is warranted for residential uses.

b. *Nonresidential Uses.* The intensity of nonresidential development is measured by the number of people per acre concentrated in areas most susceptible to aircraft accidents.

7. Safety Zone Standards for New Development. To minimize risk-sensitive development in high-risk areas around CNO, the safety compatibility of new development shall be evaluated in accordance with the safety policies set forth in this section, including the criteria listed in **Table L-1: CNO ALUCP Compatibility Criteria Matrix, Table L-2: Safety Zones Compatibility Criteria** and the safety zones depicted on **Policy Map L-2: Chino Airport Safety Zones.**

8. Safety Zone Policies.

Policy No.	*Safety Zone Policies*
S1	**Residential Development:** New residential development is incompatible within all Safety Zones (1 through 4). Policies S1a and S1b are exceptions to this policy, if applicable.
S1a	**Single-Family Home:** The construction of a single-family home on a legal lot of record is allowed in Safety Zones 2, 3, and 4 if the use is permitted by the City of Ontario's land use regulations. See Policy SP2 with regard to development by right.
S1b	**Second-Unit:** A second-unit as defined by state law is allowed within Safety Zones 2, 3 and 4 if the use is permitted by the City of Ontario's land use regulations.
S1c	**Family Day Care:** In accordance with state law, a family day care home serving 14 or fewer children may be established in any dwelling by the policies of this ALUCP.
S1d	**Residential Mixed-Use Developments:** New mixed-use developments will locate the residential component outside of all safety zones.

Policy No.	Safety Zone Policies
S2	**Occupancy Limits For Nonresidential Development: Table L-2: Safety Zones Compatibility Criteria** indicates the usage intensity (number of people per acre) limit for each safety zone. The usage intensity limits represent the safety criteria for new nonresidential development. The usage intensity limits measure intensity in two forms: 1. **Sitewide average intensity** which sets intensity limits for the entire project site; and 2. **Single-acre intensity** which sets intensity limits on any single acre within the project site **(see Figure L2: Land Use Intensity Calculation example)**. As a condition of approval, all new nonresidential development within the Safety Zones shall comply with both forms of intensity limits as described further below.
S2a	**Sitewide Average Intensity** is calculated by determining the total number of people expected to be on the site at any given time under normal operating conditions and dividing by the total number of acres of the project site.
S2b	**Single-acre Intensity** of a proposed development is calculated by determining the total number of people expected to be within any one-acre portion of the site, typically the most intensively used building or part of a building. The 1.0-acre area calculations represent building footprints that are generally rectangular and not elongated in shape or, for buildings larger than 1.0 acre, represent a portion of the building.

Figure L2: Land Use Intensity Calculation Example

In this example, both the sitewide and single-acre intensity of a proposed Research & Development (R&D) / warehouse facility is calculated using the common occupancy load factors [number of square feet per person] information in **Table L-2** together with project-specific data. The results are then compared with the maximum sitewide and single-acre intensity limits to determine consistency of the project with the safety criteria.

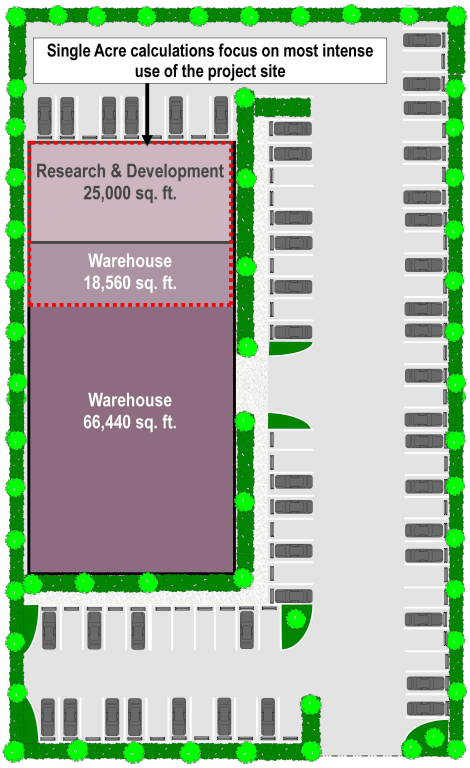


Table 1: Safety Criteria

Safety Zone 3 Intensity Limitations
Max. Sitewide Average intensity: 100 people/acre
Max. Single-Acre intensity: 250 people/acre

Common Occupancy Load Factors
Warehouse: 1,000 sq. ft./per person
Research & Development: 300 sq. ft./per person

Project Information
Land Use = Warehouse 85,000 sq. ft.
Research & Development 25,000 sq. ft.
Total Bldg. sq. ft. = 110,000 sq. ft.
Site Acreage = 3 acres
Safety Zone = 3

Calculations

Warehouse = 18,560 sq. ft. / 1,000 sq. ft. per person = 19 people

Warehouse = 66,440 sq. ft. / 1,000 sq. ft. per person = 65 people

Research & Development = 25,000 sq. ft. / 300 sq. ft. per person = 83 people

Site Wide Average

Total # of people / site acreage = 167 / 3 ac = 56 people per acre — Below the maximum Average Intensity

Single Acre Average

Total # of people / Single acre = 102 / 1 ac = 102 people per acre — Below the maximum Single-Acre Intensity

Policy No.	Safety Zone Policies
S2c	**Usage Intensity calculations** includes all people (e.g., employees, customers/visitors) who may be on the property at any single point in time during normal operating conditions, whether indoors or outdoors. **Table L-2: Safety Zones Compatibility Criteria** indicates the normal occupancy load factor (number of square feet per person) and Floor Area Ratio (FAR) for many nonresidential uses. These numbers are interrelated with the intensity limits (number of people per acre) and can be used to calculate the usage intensity of a proposed project **(see Figure L-3: Intensity Limits)**. Note that the safety criteria are the sitewide and single-acre intensity limits (number of people per acre). The occupancy load factors and FARs are provided as methods for calculating the intensity of a proposed project. 1. **Occupancy Load Factors:** The occupancy load factors (minimum number of square feet per person) provided in **Table L-2: Safety Zones Compatibility Criteria** vary from one land use to another. As shown in **Figure L-4**, the sitewide average usage intensity of a project having multiple uses can be calculated by: ▪ Dividing the number of square feet of each component use by the number of square feet per person (occupancy load) for that use as indicated in **Table L-2**; ▪ Adding together the number of people for each component use; and ▪ Dividing the total number of people by the total number of acres of the project site to get the sitewide average intensity. ▪ Where occupancy load factors are not indicated in the table or if the assumed occupancy load factor for a particular proposal or component thereof is not applicable to the project, then the number of occupants is estimated in another manner – for example, the number of seats and employees at a restaurant or the number of parking places times the vehicle occupancy for an industrial plant. **Figure L-3: Intensity Limits** The interrelationship between Intensity limit, normal occupancy load factor and Floor Area Ratio (FAR) is indicated in the two examples below. The examples reflect Zone 3 criteria: intensity limit of 100 people per acre, occupancy load factor of 200 square feet per person, and 0.46 FAR. ***Example 1*** 200 square feet per person (occupancy load factor) x 100 people per acre (intensity limit) 20,000 square foot building ÷ 43,560 square feet per acre 0.46 FAR ***Example 2*** 43,560 square feet per acre x 0.46 FAR 20,000 square foot building ÷ 200 square feet per person (occupancy load factor) 100 people per acre (intensity limit)

Policy No.	Safety Zone Policies
S2C	2. **Floor Area Ratios (FARs):** The allowable FAR is indicated in **Table L-2: Safety Zones Compatibility Criteria** for a particular safety zone and vary from one land use to another. Each component use is calculated as occupying a share of the total project site equal to its percentage of the total floor area in the project. Mathematically, this means that the FAR for each component use will be the same as the FAR for the entire building. 3. **Alternative Intensity Calculations:** An alternative method for measuring compliance with the usage intensity limits is acceptable. For example, a method based upon the City's parking space requirements may be used together with an assumed number of people per vehicle as a means of determining the number of occupants for uses that are vehicle oriented (this method would not be suitable for land uses where many users arrive by transit, bicycle, or other means of transportation). 4. **Mixed-Use Development:** Each component use within a nonresidential mixed-use development shall comply with **Table L-2: Safety Zones Compatibility Criteria** unless the use is ancillary (less than 10% of total building floor area). 5. **Ancillary Uses:** Up to 10% of the total floor area of a building may be devoted to an ancillary use of another type, including a use with a higher occupancy load factor that is shown as incompatible in **Table L-2: Safety Zones Compatibility Criteria**. Ancillary uses may be excluded from the single-acre intensity calculations (but not the sitewide average intensity limits) provided that the ancillary use is neither: ▪ An assembly room having more than 750 square feet of floor area (this criterion is intended to parallel Building Code standards) and a capacity of more than 50 people; nor ▪ A children's school (grades K–12), day care center or other risk-sensitive use that is "incompatible" within the safety zone where the primary use is to be located. 6. **Uncommon Land Use Considerations:** If a particular development proposal is uncommon—that is, there would be more floor area per person and lower usage intensity—the local agency may consider that information in determining the safety compatibility of the proposal. In considering any such exceptions, the local agency shall also take into account the potential for the use of a building to change over time. A building could have planned low-intensity use initially, but later be converted to a higher-intensity use. Local agency permit language or other mechanisms to ensure continued compliance with the usage intensity criteria must be put in place. 7. **Parcels within Multiple Safety Zones:** For the purposes of evaluating consistency with the usage intensity criteria set forth in **Table L-2: Safety Zones Compatibility Criteria**, any parcel that is split by safety zone boundaries shall be considered as if it were multiple parcels divided at the safety zone boundary line. However, the intensity of nonresidential development allowed within the more restricted portion of the parcel can (and is encouraged to) be transferred to the less restricted portion. This full or partial reallocation of intensity is permitted even if the resulting intensity in the less restricted area would then exceed the limits which would otherwise apply within that safety zone **(see Figure L-4)**. **Figure L-4: Transferring Usage Intensity** An example of transferring usage intensity to the less restrictive safety zone is provided below. ***Zone 3 intensity limit***: 100 people per acre ***Zone 4 intensity limit***: 160 people per acre ***Proposed intensity in Zone 3***: 80 people per acre ***Proposed intensity in Zone 4***: 100 people per acre * The proposed intensity for Zone 3 (80 people per acre) is encouraged to be transferred to Zone 4 for a total of 180 people per acre, even if it exceeds the Zone 4 intensity limit of 160 people per acre.
S3	**Land Use Event Exceptions:** The City of Ontario may make exceptions for "conditional" or "incompatible" land uses associated with rare special events (e.g., an air show at the airport) for which a facility is not designed and normally not used and for which extra safety precautions can be taken as appropriate.

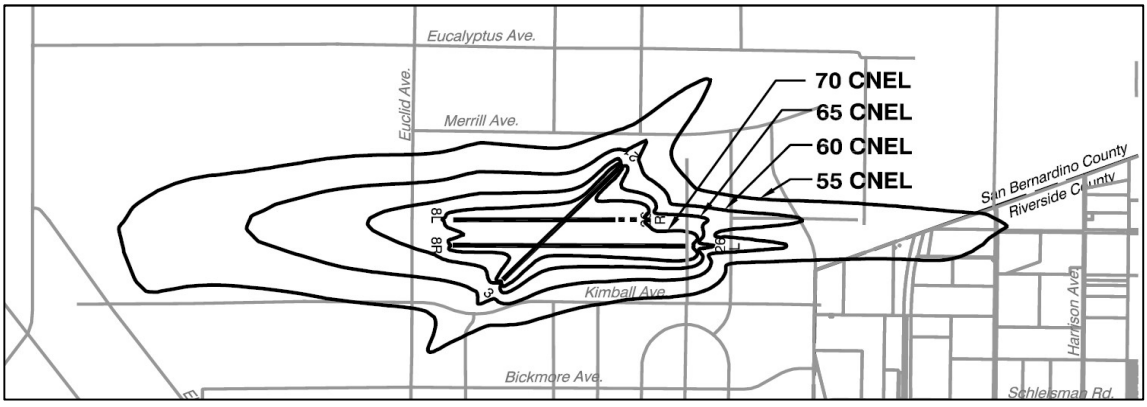
Policy No.	*Safety Zone Policies*
S4	**Land Uses of Special Concern:** Certain types of land uses represent special safety concerns irrespective of the number of people associated with those uses. **Table L-2: Safety Zones Compatibility Criteria** indicates the criteria applicable to these uses. In some cases, these uses are not allowed in portions of the safety zones regardless of the number of occupants associated with the use. In other instances, these uses should be avoided—i.e., allowed only if an alternate site outside of the safety zone would not work. When allowed, special measures should be taken to minimize hazards to the facility and occupants if the facility were to be struck by an aircraft. Land uses of particular concern and the nature of the concern are listed policies S4a through S4c.
S4a	**Land Uses Having Vulnerable Occupants:** These land uses are ones in which the majority of occupants are children, elderly, and/or disabled—people who have reduced effective mobility or may be unable to respond to emergency situations. These uses include: ▪ Children's schools (grades K–12). ▪ Day care centers (facilities with 15 or more children, as defined in the California Health and Safety Code). ▪ Hospitals, health care centers, and similar facilities, especially where patients remain overnight, nursing homes and inmate facilities.
S4b	**Hazardous Materials Storage:** Materials that are flammable, explosive, corrosive, or toxic constitute special safety compatibility concerns to the extent that an aircraft accident could cause release of the materials and thereby pose dangers to people and property in the vicinity. Facilities in this category include: ▪ Facilities such as oil refineries and chemical plants that manufacture, process, and/or store bulk quantities (tank capacities greater than 6,000 gallons) of hazardous materials generally for shipment elsewhere. ▪ Facilities associated with otherwise compatible land uses where hazardous materials are stored in smaller quantities primarily for on-site use (tank capacities greater than 6,000 gallons).
S4c	**Critical Community Infrastructure:** The damage or destruction of public infrastructure facilities which would cause significant adverse effects to public health and welfare well beyond the immediate vicinity of the facility. Among these facilities are: ▪ Emergency services facilities such as police and fire stations. ▪ Emergency communications facilities, power plants, and other utilities
S5	**Avigation Easements:** The City of Ontario shall require dedication of an avigation easement as a condition for approval of all proposed development situated off-airport within Safety Zones 1 through 4 in accordance with Policy SP1. The Safety Zones and this policy affect only the City of Ontario.

Policy No.	Safety Zone Policies
S6	**Safety Zone 1 (Runway Protection Zone):** 1. The developer and airport owner must coordinate with the FAA for development proposals within the RPZ (either new or reconfigured). Land uses requiring airport/FAA coordination include: ▪ Buildings and structures ▪ Recreational uses (e.g., golf courses, sports fields, amusement parks, other places of public assembly) ▪ Transportation facilities (e.g., rail, public roads/highways, vehicular parking) ▪ Fuel storage facilities (above and below ground) ▪ Hazardous material storage (above and below ground) ▪ Wastewater treatment facilities ▪ Above ground utility infrastructure (e.g., electrical substations), including any type of solar panel installations 2. The following uses shall be prohibited within Safety Zone 1(RPZ): ▪ All structures except ones with location set by aeronautical function ▪ All assemblages of people (more than one) ▪ Hazards to flight such as: o Objects exceeding 14 CFR Part 77 height limits o Visual hazards including but not limited to lights, sources of glare, and sources of dust, steam or smoke o Electronic hazards including but not limited to ones that may cause interference with aircraft communications or navigation o Land uses and features that attract hazardous wildlife (i.e., Birds) including but not limited to aboveground stormwater facilities, open ponds, and landscaping that provides a food source, shelter or roosting
S7	**Open Land:** In the event that a light aircraft is forced to land away from an airport, the risks to the people on board and on the ground can be best minimized by providing as much open land area as possible within the airport vicinity. This concept is based upon the fact that the majority of light aircraft accidents that occur away from an airport runway are controlled emergency landings in which the pilot has reasonable opportunity to guide the aircraft and select the landing site. Open land provides opportunities for a controlled landing in the event of an emergency. A percentage of Open land is required for all Safety Zones and are outlined in **Table L-1: CNO ALUCP Compatibility Criteria Matrix**.
S7a	**Open Land Required Dimensions:** Open land shall have minimum dimension of at least 75 feet wide by 300 feet long (approximately 0.5-acre in size).

Policy No.	Safety Zone Policies
S7b	**Open Land Criteria:** 1. Open land shall be free of most structures and other major obstacles such as walls, large trees, (greater than 4 inches in diameter, measured 4 feet above the ground), poles, and overhead wires. Landscaping plans for open space areas should preclude large trees that would exceed the 4-inch diameter criterion at maturity. However, landscaping plans could allow for trees and shrubs that exceed 4 inches in diameter at a height of 4 feet at maturity for areas along the edge of open space areas where the vegetation abuts a wall or other similar feature, provided that the vegetation is planted within 4 feet of the wall. 2. Roads and automobile parking lots are acceptable as open land areas if the criteria for Policies S7a and S7b are met. **Policy Map L-2a: Chino Airport Open Land Streets** identifies three streets that will be designed to satisfy the Open Land criteria. The streets will be 75 to 84 feet wide with no medians. Light poles and trees will be designed to maintain a clear width of about 75 feet. The light poles will be spaced 250 feet and staggered on the opposite side of the street; therefore, satisfying the 75-foot by 300-foot dimensional requirements for Open Land. A detailed review of proposed landscaping and lighting plans along Merrill Avenue within CNO Safety Zone 1 (RPZ) will be required to ensure that Zone 1 remains clear of permanent aboveground objects. 3. Open land requirements for each Safety Zone shall be applied with respect to the entire zone. Individual parcels may be too small to accommodate the minimum size open area requirement. Consequently, the identification of open land areas shall be initially accomplished at the general plan or specific plan level or as part of large (10 acres or more) development projects. 4. Clustering of development and providing contiguous landscaped (e.g., low-growing ground cover) and parking areas is encouraged as a means of increasing the size of open land areas. Clustering of development should be located a maximum distance from the extended runway centerline.

B. Noise. The purpose of noise compatibility policies is to avoid the establishment of noise-sensitive land uses in the portions of the CNO AIA that are exposed to significant levels of aircraft noise. For compatibility planning purposes, the noise contours reflect the County's aircraft activity forecast of 209,400 annual operations for 2025 is considered to be representative of the likely maximum number of aircraft operations that could be realized over the 20-year forecast period (2039) and are shown in **Figure L-5: Chino CNEL Contours (2025)**.

Figure L-5: Chino CNEL Contours (2025)



For purposes of airport land use compatibility planning, Caltrans advises that 60 dB CNEL is suitable for new residential development and other noise sensitive land uses around most airports.

Figure L-5: Chino CNEL Contours (2025) shows that only the 55 dB CNEL contour affects lands within the City of Ontario. Since the 60 dB CNEL does not extend into the City of Ontario no significant impacts are anticipated and therefore no noise policies and criteria are included within the CNO ALUCP.

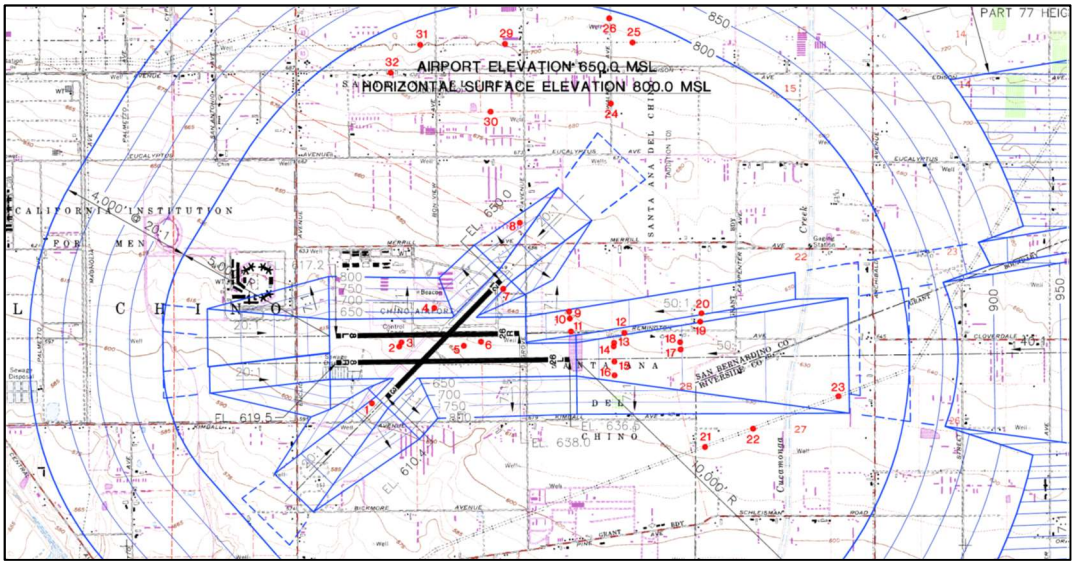
C. Airspace Protection. Airspace protection compatibility policies seek to prevent creation of land use features that can be hazards to aircraft in flight and have the potential for causing an aircraft accident to occur. Such hazards may be physical, visual, or electronic.

1. Factors in establishing Airspace Protection Zones. The principal factors considered in setting the airspace protection zones are:

a. *Federal Regulations.* Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, set the requirements for notice to the Federal Aviation Administration (FAA) of certain proposed construction or alteration projects (Subpart B, Notice of Construction or Alteration) and establish standards for determining obstructions to navigable airspace (Subpart C, Obstruction Standards).

b. *CNO Part 77.* The 14 CFR Part 77 airspace surfaces included in the 2003 Chino Airport Layout Plan was utilized to establish the allowable heights of future uses within the vicinity of Chino airport **(see, Figure L-6: Chino Part 77 Airspace Surfaces (2003))**.

Figure L-6: Chino Part 77 Airspace Surfaces (2003)



2. Factors in establishing Airspace Protection Policies. The factors considered in setting the airspace protection policies in this section are described below.

a. *Federal and State Regulations.* The airspace protection policies outlined in this section are based upon and intended to help implement the regulations enacted by the FAA and the State of California. State airspace protection standards mostly mirror those of the FAA. A key difference is that state law gives the California Department of Transportation, Division of Aeronautics and local agencies the authority to enforce the standards.

b. *Flight Hazards.* The FAA has well-defined standards by which potential hazards to flight, especially airspace obstructions, can be assessed. However, the FAA has no authority to prevent creation of such hazards. That authority rests with state and local governments. There are three categories of flight hazards: physical, visual, and electronic.

(1) Structure Heights — Height of structures and other objects situated near the airport are a primary determinant of physical hazards to the airport airspace.

(2) Land Use — Land use features that have the potential to attract birds and certain other wildlife to the airport area also need to be evaluated as a form of physical hazard.

(3) Visual Hazards — Visual hazards of concern include certain types of lights, sources of glare, and sources of dust, steam, thermal plumes, or smoke.

(4) Electrical Hazards — Electronic hazards are ones that may cause interference with aircraft communications or navigation

c. *Airspace Obstructions.* The criteria for determining the acceptability of a project with respect to height are based upon the standards set forth in: Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, Subpart C, Obstruction Standards; the United States Standard for Terminal Instrument Procedures (TERPS); the One-Engine Inoperative (OEI) obstacle identification surface and other applicable airport design standards published by the FAA.

d. *Local Topography.* The topography underlying the airport's airspace surfaces is a significant factor in determining the allowable height of a structure. The terrain north of CNO slopes upwards towards the San Gabriel Mountains, thereby reducing the allowable heights of objects in those areas.

3. Airspace Protection Zones for CNO. The airspace protection zones depicted in **Policy Map L-3: Chino Airspace Protection Zones** were prepared for CNO in accordance with Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace.

a. *FAA Height Notification Surface.* Established in accordance with FAR Part 77, Subpart B, this airspace surface extends outward and upward at a slope of

100 to 1 for a horizontal distance of 20,000 feet from the airport runways.

b. *Airspace Obstruction Surfaces.* Includes the controlling portions of the FAR Part 77, Subpart C, extending out to a point where these surfaces terminate at the outer limits of the FAA Height Notification Surface. Objects which penetrate these surfaces are subject to airspace evaluation by the FAA. Objects which penetrate the Approach/Departure Surfaces which extend beyond the FAA Height Notification Surface require evaluation by the FAA.

c. *Allowable Heights.* To determine the allowable heights of future objects, the underlying ground elevation is compared with the elevation of the controlling portions of the FAR Part 77, TERPS, and OEI surfaces. These are depicted as color bands in **Policy Map L-3: Chino Airspace Protection Zones**, each color band represents a range of distance, measured in vertical feet, between the ground and overlying surface.

4. Airspace Protection Standards for New Development. The airspace protection compatibility of proposed land uses within the AIA of CNO shall be evaluated in accordance with the policies in this section, including the existing airspace protection surfaces depicted in **Policy Map L-3: Chino Airspace Protection Zones**.

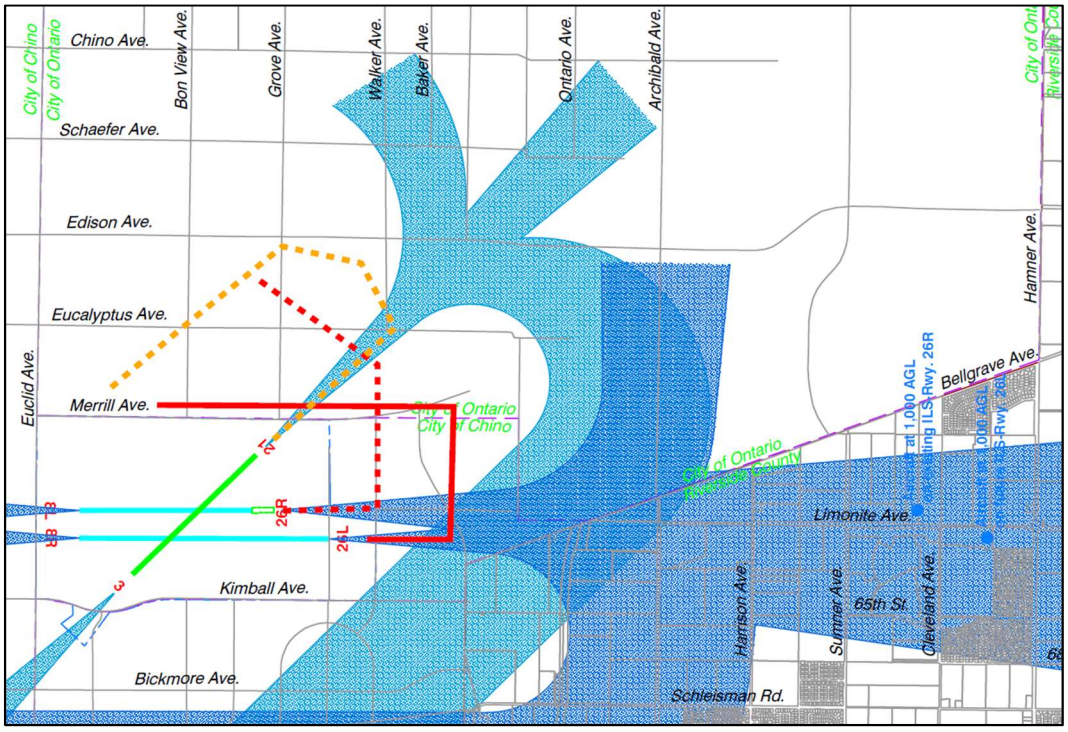
5. Airspace Protection Policies.

Policy No.	*Airspace Protection Policies*
A1	**FAA Height Notification Surface:** Except as provided in Policy A2b, if a project contains proposed structures or other objects that would penetrate the FAA Height Notification Surface for CNO, the project proponent should submit notification of the proposal to the FAA, as required by the provisions of FAR Part 77, Subpart B, and by the California Public Utilities Code, Sections 21658 and 21659. The FAA will conduct an "aeronautical study" of the object(s) and determine whether the object(s) would be of a height that would constitute a hazard to air navigation. A copy of the completed FAR Part 77 notification form submitted to the FAA and the resulting FAA aeronautical study findings should be supplied to the City by the project proponent. The results of the FAA aeronautical study shall be utilized when conducting compatibility reviews of the proposed project. The FAA notification requirements apply to the following:
A1a	**Penetrations to the FAA Height Notification Surface:** With limited exceptions, the FAA requires notification for all objects which penetrate the FAA Height Notification Surface, including structures, antennas, trees, mobile objects, and temporary objects such as construction cranes.
A1b	**Structures in Excess of 200 feet:** The FAA requires that it be notified about any proposal to construct or alter a structure that would be taller than 200 feet above the ground level regardless of the structure's proximity to CNO or any other airport.
A1c	**FAR Part 77 Notification:** FAA requires project proponents to submit notification of the proposal where required by the provisions of FAR Part 77, and by the California Public Utilities Code, Sections 21658 and 21659. Refer to the FAA notification requirements and online submittal process of Form 7460-1, Notice of Proposed Construction or Alteration.
A2	**Airspace Obstruction Surfaces:** Except as provided in Policy A2a, no object should have a height that would result in a penetration of the Airspace Obstruction Surface depicted for CNO. Any object that penetrates the Airspace Obstruction Surface shall satisfy the conditions set forth in Policy A2a. These requirements apply to all objects including structures, antennas, trees, mobile objects, and temporary objects such as construction cranes.

Policy No.	Airspace Protection Policies
A2a	**Airspace Obstacle Criteria and Review Process:** Except as indicated in Policy A2b, a proposed object having a height that penetrates CNO's airspace obstruction surfaces should be allowed only if all of the following apply: 1. The FAA conducts an aeronautical study of the proposed object and determines that the object would not be a hazard to air navigation. 2. FAA or other expert analysis conducted under the auspices of the airport owner, concludes that, despite being an airspace obstruction, the object would not cause any of the following: ▪ An increase in the ceiling or visibility minimums of the airport for an existing or planned instrument procedure (a planned procedure is one that is formally on file with the FAA); ▪ A reduction of the established operational efficiency and capacity of the airport, such as by causing the usable length of the runway to be reduced; or ▪ A conflict with the visual flight rules (VFR) airspace used for the airport traffic pattern or en route navigation to and from the airport. 3. Marking and lighting of the object will be installed as directed by the FAA aeronautical study or the California Division of Aeronautics and in a manner consistent with FAA standards in effect at the time the construction is proposed (Advisory Circular 70/7460-1J, Obstruction Marking and Lighting, or any later guidance). 4. An avigation easement is dedicated to the owner of the airport. 5. The proposed project complies with all policies of the CNO ALUCP.
A3	**Flight Hazards:** Land uses that may cause visual, electronic, or wildlife hazards, particularly bird strike hazards, to aircraft in flight or taking off or landing at the airport should be prohibited within the AIA consistent with FAA rules and regulations. To resolve any uncertainties with regard to the significance of flight hazards, local agencies should consult with the FAA, California Division of Aeronautics, and/or CNO officials. Specific characteristics to be avoided include: 1. Sources of glare (such as from mirrored or other highly reflective buildings or building features) or bright lights (including search lights and laser light displays). 2. Distracting lights that could be mistaken for airport lights. 3. Sources of dust, steam, or smoke that may impair pilots' vision. 4. Sources of steam or other emissions that cause thermal plumes or other forms of unstable air. 5. Sources of electrical interference with aircraft communications or navigation. 6. Any proposed use that creates an increased attraction for wildlife and that is inconsistent with FAA rules and regulations including, but not limited to FAA Advisory Circulars 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports and 150/5200-34A, Construction or Establishment of Landfills near Public Airports. Of particular concern are landfills and certain recreational or agricultural uses that attract large flocks of birds which pose bird strike hazards to aircraft in flight.
A4	**Avigation Easements:** An avigation easement shall be required as a condition of approval for proposed development that penetrates the Airspace Obstruction Surfaces (see Policy A2a).
A5	**Hazardous Wildlife Attractants on or Near Airports:** Wildlife can pose hazards to aircraft operations; collisions or "strikes" with wildlife can cause damage to or destroy aircraft and result in injuries or fatalities to air travelers and those on the ground. FAA strike records indicate that most wildlife strikes occur in the immediate airport vicinity during aircraft approach or departure at altitudes of less than 3,500 feet above ground level (AGL).

Policy No.	Airspace Protection Policies
A5a	**Caltrans Guidance:** Caltrans completed a Wildlife Hazard Assessment at CNO in 2014. Wildlife attractants identified in the airport vicinity included open water basins, golf courses, and agricultural operations Hazardous wildlife identified on and near the airport included: raptors, ground squirrels (because they attract raptors), gulls, blackbirds and starlings, coyotes, crows, doves and pigeons, waterfowl, and shorebirds. To prevent the creation of new habitat within on or near CNO, new development shall be subject to the following: 1. A Qualified Airport Wildlife Biologist (QAWB) shall review landscaping plans to ensure that the proposed materials will not provide food, nesting opportunities, shelter, or roosting opportunities for potentially hazardous wildlife. 2. A QAWB shall review proposed construction plans for their potential to create temporary or permanent wildlife attractants.
A5b	**Federal Guidance:** Consistent with state and federal guidance, any proposed land use that creates an increased attraction for wildlife and that is inconsistent with FAA rules and regulations, including but not limited to FAA AC 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports, and 150/5200-34A, Construction or Establishment of Landfills near Public Airports, should be avoided within the "critical zones". For CNO, the critical zone extends 10,000 feet beyond aircraft movement areas and 5 miles from the approach/departure surfaces. The following is list of land uses known to attract potentially hazardous wildlife within critical zones and should be avoided: ▪ Landfills and waste management facilities (see also AC 150/5200-34A, Construction or Establishment of Landfills near Public Airports) ▪ Stormwater management facilities that create open water ▪ Wastewater treatment facilities ▪ Wetlands and wetland mitigation sites ▪ Agricultural/aquacultural operations ▪ Parks and golf courses ▪ Resource mitigation sites If land uses that are known to attract potentially hazardous wildlife are allowed within the airport influence area by right, the land use and its features should be modified to reduce wildlife hazards or mitigate known hazards. Sample mitigation/design measures include those associated with stormwater management facilities and landscape design.
A5c	**Stormwater Management Facilities:** The FAA identifies stormwater management facilities as one of the greatest attractants to hazardous wildlife. Many species are attracted to open water features and associated vegetation that offers water, food, and shelter. New stormwater management facilities located within the AIA should be designed to avoid the creation of open water and habitat and incorporate the following criteria: 1. New detention basins should be designed to drain completely within a maximum 48-hour period following design storm event and remain totally dry between storm events. 2. Exposed surface water features should include one of the recommended design measures: ▪ Floating covers, bird balls, netting, or overhead wires should be installed to deter wildlife. The deterrent should be selected based on pond size and the type of species to be discouraged; ▪ Steep-sided, rip-rap lined, narrow, linearly shaped water detention basin (i.e., 1:1 slopes) should be provided; and ▪ Vegetation should not be provided because it can provide food or cover for hazardous wildlife. 3. Stormwater management plans located within the CNO AIA shall be reviewed by an FAA-qualified Airport Wildlife Biologist. 4. Landscape designs for proposed projects located in the CNO AIA should be reviewed by an FAA-qualified Airport Wildlife Biologist.

Figure L-7: Radar Flight Track Sample (2015)



D. Overflight. Noise from individual aircraft operations, especially by comparatively loud aircraft, can be intrusive and annoying in locations beyond the limits of the noise impacts. Sensitivity to aircraft overflights varies from one person to another. The purpose of overflight compatibility policies is to help notify people about the presence of overflights near airports so that they can make more informed decisions regarding acquisition or lease of property in the affected areas.

1. Factors Considered in Establishing Overflight Zones.

a. *State Law.* State statutes (BPC Section 11010 and CC Sections 1102.6, 1103.4, and 1353) define an AIA as "the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission."

b. *Measures of Overflight Exposure.* The loudness of individual aircraft noise events is a key determinant of where airport proximity and aircraft overflight notification are warranted. The FAA has determined that overflight exposure is not significant where aircraft are flying at an altitude of 3,000 feet or more above ground level. **Figure L-7** presents the primary aircraft traffic patterns in blue, based on published airport information. The red and orange lines represent flight patterns captured by radar data from November 2015. On this particular day, aircraft were practicing touch-and-goes (closed loop patterns) from Runway 26R, 26L and Runway 21. Safety Zone 4 encompasses areas where aircraft make a turn from base to final when landing on Runway 21. Also, Safety Zone 6 is routinely overflown by aircraft.

2. Factors Considered in Setting Overflight Compatibility Criteria.

a. *Limitations of Local Agency Authority over Existing Uses.* To be most effective, overflight policies should apply to transactions involving existing land uses, not just future development. However, local agencies have little authority to set requirements for existing development. The intent of this policy is to define, on an advisory basis, the boundaries within which required real estate transfer disclosure under state law is appropriate. Implementing the real estate transaction disclosure requirement is the responsibility of the property owner and real estate agent. The local agency is responsible only for providing a map to a property owner or real estate agent that defines the areas within which the real estate disclosure requirement should be applied.

b. *Limitations of California Real Estate Transaction Disclosure Law.* State law applies to existing development, but not to all transactions. Specifically, California state statutes (BPC Section11010 and CC Sections 1102.6, 1103.4, and 1353) require that, as part of many residential real estate transactions, information be disclosed regarding whether the property is situated within an AIA. The Business and Professions Code applies the disclosure requirement to the sale or lease of newly subdivided lands and condominium conversions and to the sale of certain existing residential property. The Civil Code applies the disclosure requirement to existing residential property transfers only when certain natural conditions (earthquake, fire, or flood hazards) warrant disclosure.

c. *Need for Continuity of Notification to Future Property Owners and Tenants.* To the extent that this Compatibility Plan sets notification requirements for new development, the policy should ensure that the notification runs with the land and is provided to prospective future owners and tenants.

d. *Inappropriateness of Avigation Easement Dedication Solely for Buyer Awareness Purposes.* Avigation easements involve conveyance of property rights from the property owner to the party owning the easement and are thus best suited to locations where land use restrictions for safety or airspace protection purposes are necessary.

3. Overflight Notification Zones for CNO. The boundaries of the overflight notification zones around CNO are shown on **Policy Map L-4: Chino Overflight Notification Zones** and include:

a. *Avigation Easement Dedication.* The boundary identifies the high-risk, and critical airspace protection areas of CNO. Although not strictly an overflight notification boundary, the Avigation Easement Dedication boundary is established in accordance with Policy SP1 and reflected on **Policy Map L-4**.

b. *Recorded Overflight Notification.* The boundary identifies the primary overflight area for the airport. The policy boundary matches Safety Zone 6 depicted on Policy Map L-4.

c. *Real Estate Transaction Disclosure.* The boundary reflects the CNO

AIA and matches the outer boundary of the FAR Part 77 conical surface of the airport.

4. Overflight Policies. Unlike the function of safety and airspace protection compatibility policies, the overflight compatibility policies set forth in this section do not restrict the manner in which land can be developed or used. The policies in this section serve only to establish the language and recommended geographic coverage for notification about airport proximity and aircraft overflights for new development and with certain real estate transactions involving existing development.

Policy No.	*Airspace Protection Policies*
O1	**Recorded Overflight Notification:** The City of Ontario shall require the recording of an overflight notification running with the land as a condition for approval of new residential development that falls within Safety Zone 6, as depicted in Policy Map L-4. Other conditions include:
O1a	**Notification Language:** The overflight notification should contain language dictated by state law with regard to real estate transaction disclosure (see Policy O2a).
O1b	**Property Deed Recording:** The overflight notification should be evident to future purchasers of the property by appearing on the property deed.
O1c	**Avigation Easement Exception:** A separate recorded overflight notification is not required where an avigation easement is provided in accordance with Policy SP1.
O1d	**Nonresidential Exception:** Recording of an overflight notification is not required for nonresidential development unless the project is a mixed-use development containing residential uses on the same property.
O2	**Real Estate Transaction Disclosure:** Airport proximity disclosure information should be provided in accordance with state law (Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353. See Section 6.4.4 (b) and Appendix A for information on these laws.
O2a	**Disclosure Language:** State Law provides the following disclosure language: **NOTICE OF AIRPORT IN VICINITY:** This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.
O2b	**Airport Influence Area:** The airport proximity disclosure is required within AIA as identified on Policy Map L-4.

E. Special Compatibility Policies. These policies are intended to address unique land use concerns.

Policy No.	*Special Compatibility Policies*
SP1	**Avigation Easement Dedication:** An avigation easement should be dedicated to the owner/operator of CNO for new development as specified in Policies SP1a and SP1b.

Policy No.	Special Compatibility Policies
SP1a	**Avigation Easement Dedication Requirements:** Within portions of the AIA inside the City of Ontario, avigation easement dedication shall be required for new development requiring discretionary as described below. Policy Map L-4 depicts the locations where an avigation easement dedication would be appropriate. 1. **Safety Zones:** All new development within Safety Zones 1, through 4 as depicted on Policy Map L-2.
SP1b	**Avigation Easement Purpose:** The avigation easement should do the following: 1. **Right of Flight:** Provide the right of flight in the airspace above the property. 2. **Noise Impacts:** Allow the generation of noise and other impacts associated with aircraft overflight. 3. **Physical Hazards:** Restrict the height of structures, trees and other objects in accordance with the policies in Section L.01.003.C and the airspace protection surfaces depicted on Policy Map L-2. 4. **Obstruction Marking:** Permit access to the property, with appropriate advance notice, for the removal or aeronautical marking of objects exceeding the established height limit. 5. **Other Airspace Hazards:** Prohibit electrical interference, glare, and other potential hazards to flight from being created on the property.
SP2	**Nonconforming Uses:** The policies within the CNO ALUCP do not apply to existing land uses even if those uses are not in conformance with the compatibility criteria set forth in this Compatibility Plan. However, proposed changes to existing uses that would change or result in increased nonconformity with the compatibility criteria are subject to the provisions of the ALUCP. Specifically, proposed changes to existing nonconforming uses (including a parcel or building) are limited as follows:
SP2a	**Residential uses:** A nonconforming residential land use may be continued, sold, leased, or rented without restriction or review.
SP2b	**Nonconforming Single-family:** A nonconforming single-family dwelling may be maintained, remodeled, reconstructed or expanded in size. The lot line of an existing single-family residential parcel may be adjusted. Also, a new single-family residence may be constructed on an existing lot. The above noted property improvements may occur if improvements do not increase the number of units and lot line adjustments do not result in allowing for additional dwelling units. Examples include: 1. Any remodeling, reconstruction, or expansion must not increase the number of dwelling units. For example, a bedroom could be added to an existing residence, but an additional dwelling unit could not be built on the parcel unless that unit is a secondary dwelling unit as defined by state and local laws. 2. A single-family residential parcel may not be divided for the purpose of allowing additional dwellings to be constructed.
SP2c	**Nonconforming Multi-family (> 8 du/ac):** Nonconforming multi-family residential dwelling units may be maintained, remodeled, or reconstructed. The size of individual dwelling units may be increased, but additional dwelling units may not be added.
SP2d	**Nonresidential uses:** A nonconforming, nonresidential use may be continued, sold, leased, or rented without restriction or review. Nonconforming, nonresidential facilities may be maintained, altered, or, if required by state law, reconstructed. However, any such work: 1. Should not result in expansion of either the portion of the site devoted to the nonconforming use or the floor area of the buildings; and 2. Should not result in an increase in the usage intensity (the number of people per acre) above the levels existing at the time of approval of the CNO ALUCP.

Policy No.	Special Compatibility Policies
SP2e	**Schools:** Children's schools (including grades K-12, day care centers with more than 14 children, and school libraries) may be continued, reconstructed (see Policy SP5), expanded with the following restrictions per State Law: 1. Land acquisition for new schools or expansion of existing schools is not permitted in any safety zone. 2. Replacement or expansion of buildings at existing schools is also not allowed in any safety zone. This limitation does not preclude work required for normal maintenance or repair.
SP3	**Reconstruction of Nonconforming Uses:** An existing nonconforming building, structure, or use that has been partially or completely destroyed as the result of a fire, flood or natural disaster may be rebuilt under the conditions listed in Policies SP3a through SP3c so long as it does not violate local ordinances. The requirements listed in this policy do not restrict normal maintenance and repairs.
SP3a	**Residential:** Nonconforming residential uses may be rebuilt provided that the reconstruction does not result in more dwelling units than existed on the parcel at the time of the damage. Addition of a secondary dwelling unit to a single-family residence is permitted if in accordance with state law and local zoning regulations.
SP3b	**Nonresidential:** A nonconforming nonresidential development may be rebuilt provided that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre).
SP3c	**Reconstruction Requirements:** The reconstruction of nonconforming uses listed in Policies SP3a and SP3b should comply with the following requirements: 1. A permit to rebuild the structure should be obtained by the local agency within twenty-four (24) months of the date the damage occurred. 2. The property should be required to dedicate an avigation easement to the airport owner, if required under Policy SP1. 3. The new structure should comply with FAR Part 77, TERPS, and applicable airport obstruction clearance standards published by the FAA.

L.01.005: Evaluating Land Use Consistency

A. Evaluating Compatibility of Proposed Development. The compatibility of proposed projects within the CNO AIA shall be evaluated in accordance with the specific safety, airspace protection, overflight policies, and special compatibility policies set forth in Section L.01.003 including the criteria listed in **Table L-1: CNO ALUCP Compatibility Criteria Matrix** and T**able L-2: Safety Zones Compatibility Criteria**, and **Policy Maps L-1 through L-4**.

B. Evaluation Tools.

1. Safety Zone Criteria Table. **Table L-2** list general land use categories and indicate each use as being either "normally compatible," "conditionally compatible," or "incompatible" depending upon the safety zone in which it is located. When evaluating a proposed development, each land use component of a project shall be evaluated as separate developments and must meet the criteria for the respective land use category.

2. Evaluation Considerations.

a. Land uses not specifically listed in **Table L-2** shall be evaluated using the criteria for similar listed uses.

b. Multiple land use categories and the compatibility criteria associated with them may apply to a single project (e.g., mixed-use developments). Each land use component shall individually satisfy the criteria for the respective land use category in Table L-2.

3. Land Use Compatibility Determinations.

a. *Normally Compatible.* Normally Compatible means that common examples of the use are compatible with the airport; uncommon examples of the use may require review to ensure compliance with compatibility criteria.

b. *Conditionally Compatible.* Conditionally Compatible means that the use is compatible if the listed conditions are met.

c. *Incompatible.* Incompatible means that the use should not be permitted under any circumstances.

L.01.006: Criteria Tables and Policy Maps

A. Criteria Tables. The compatibility tables at the end of this chapter provide the following information:

1. Table L-1: CNO ALUCP Compatibility Criteria Matrix. The Compatibility Criteria table provides a comprehensive list of open land percentages, people per acre limits and other relevant criteria summarized for each safety zone.

2. Table L-2: Safety Zones Compatibility Criteria. The safety criteria table provides a list of land use categories and identifies the acceptability of specific land uses within each of the five safety zones. Intensity limits for nonresidential uses (i.e., maximum number of people per acre) and other safety considerations within each safety zone are also noted.

B. Policy Map L-1 (Chino Airport Influence Area). The AIA boundary encompasses the geographic extents of all the compatibility factors: safety, noise, airspace protection, and overflight.

C. Policy Map L-2 (Chino Airport Safety Zones). This policy map displays a single set of safety zones reflecting the existing runway configurations. The safety zones for are based upon the generic safety zones provided in the California Airport Land Use Planning Handbook.

D. Policy Map L-2a (Chino Airport Open Land Streets). This policy map identifies three streets that will be designed to satisfy the Open Land criteria.

E. Policy Map L-3 (Chino Airspace Protection Zones). The airspace protection zones are prepared in accordance with Federal Aviation Regulation Part 77, the United States Standard for Terminal Instrument Procedures (TERPS), and applicable obstruction clearance standards published by the Federal Aviation Administration. The airspace surfaces reflect the existing runway configurations.

F. Policy Map L-4 (Chino Overflight Notification Zones). This policy map identifies the overflight notification zones. The overflight notification zones also encompass the areas underlying the airport's critical airspace surfaces.

Table L-1: CNO ALUCP Compatibility Criteria Matrix

Safety Zones	*Residential Density Limits*	*Non-Residential Intensity Limits (People per acre)*	*Open Land Requirement for Entire Zone*	*Other Criteria*	*Boundary Determinations*
Zone 1 Runway Protection Zone	0	0	All Remaining	Avigation Easement and Airspace Review Required	RPZ
Zone 2 Inner Approach/ Departure Zone	0	60 (avg.) 120 (single acre)	25%; preserve open land nearest runway end	Avigation Easement and Airspace Review Required	Safety Zone 2
Zone 3 Inner Turning Zone	1 dwelling unit per 2-acre lot	100 (avg.) 300 (single acre)	15%; preserve open land along extended runway centerline	Avigation Easement and Airspace Review Required	Safety Zone 3
Zone 4 Outer Approach/ Departure Zone	2 dwelling units per 2-acre lot	150 (avg.) 450 (single acre)	15%; preserve open land along extended runway centerline	Avigation Easement and Airspace Review Required	Safety Zone 4
Zone 6 Traffic Pattern Zone	No Limit	300 (avg.) 1,200 (single acre)	10%; preserve open land every 1/4 to 1/2 mile	Deed Notice and Airspace Review Required	Safety Zone 6

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Outdoor Uses (limited or no activities in buildings)						
Natural Land Areas: desert, brush lands [3]						1: Avoid new features that attract birds; vegetation must be clear of airspace surfaces
Water: flood plains, stormwater facilities, wetlands, lakes, reservoirs [3]						1-6: Avoid new features that attract birds
Agriculture (except residences and livestock): crops, orchards, vineyards, pasture, range land [3]						1-6: Avoid new features that attract birds
Livestock Uses: feed lots, stockyards, breeding, fish hatcheries, horse stables [3]						2-6: Avoid new features that attract birds
Outdoor Major/Large Assembly Facilities: [4] spectator-oriented outdoor stadiums, amphitheaters, fairgrounds, race tracks, water parks, zoos						6: Allowed if intensity criteria met
Outdoor Group Recreation (limited spectator stands): athletic fields, water recreation facilities, picnic areas						4, 6: Allowed only if site outside zone would not serve intended function
Outdoor Small/Non-Group Recreation: golf courses, tennis courts, shooting ranges [3]						3-6: Allowed if intensity criteria met
Local Parks: children-oriented neighborhood parks, playgrounds						6: Allowed if intensity criteria met
Camping: campgrounds, recreational vehicle/ motor home parks						3-6: Allowed only if intensity criteria met
Cemeteries (except chapels)						

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Residential and Lodging Uses						
Residential: individual dwellings, townhouses, mobile homes, apartments, condominiums, bed & breakfast inns [5]						3, 4: 1 du/2-acre lots (avg. density); 4 du/single- acre; locate dwelling max. distance from extended runway centerline where feasible
Long-Term Lodging (>30 nights): extended-stay hotels, dormitories						
Short-Term Lodging (≤ 30 nights): hotels, motels, other transient lodging (except conference/assembly facilities) [approx. 200 s.f./person]				0.69		4: FAR limits as indicated
Congregate Care: retirement homes, assisted living, nursing homes, intermediate care facilities						6: Allowed only if site outside zone would not serve intended function
Educational and Institutional Uses						
Family day care homes (≤14 children) [5]						
Children's Schools: K-12, day care centers (>14 children); school libraries						6: Subject to approval by Caltrans Division of Aeronautics
Adult Education classroom space: adult schools, colleges, universities [approx. 40 s.f./person]			0.09	0.14	0.28	3-6: FAR limits as indicated; also see individual components of campus facilities (e.g., assembly facilities, offices, gymnasiums)
Community Libraries [approx. 100 s.f./person]			0.23	0.34	0.69	3-6: FAR limits as indicated
Major Indoor Assembly Facilities [4]: auditoriums, conference centers, concert halls, arenas						
Large Indoor Assembly Facilities [4]: movie theaters, places of worship, cemetery chapels, mortuaries [approx. 15 s.f./person]			0.03	0.05	0.10	3-6: FAR limits as indicated
Indoor Recreation: gymnasiums, club houses, athletic clubs, dance studios [approx. 60 s.f./person]			0.14	0.21	0.41	3-6: FAR limits as indicated

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
In-Patient Medical: hospitals, mental hospitals						6: Allowed only if site outside zone would not serve intended function
Out-Patient Medical: health care centers, clinics [approx. 240 s.f./person]			0.55	0.83		3, 4: FAR limits as indicated
Penal Institutions: prisons, reformatories						6: Allowed only if site outside zone would not serve intended function
Public Safety Facilities: police, fire stations						3, 4: Allowed only if site outside zone would not serve intended public function
Commercial, Office, and Service Uses						
Major Retail: regional shopping centers, 'big box' retail [approx. 110 s.f./person]			0.25	0.38	0.76	3-6: FAR limits as indicated; evaluate eating/ drinking areas separately if >10% of total floor area
Local Retail: community/neighborhood shopping centers, grocery stores [approx. 170 s.f./person]			0.39	0.59		3, 4: FAR limits as indicated; evaluate eating/ drinking areas separately if >10% of total floor area
Eating/Drinking Establishments: restaurants, fast-food dining, bars [approx. 60 s.f./person]			0.14	0.21	0.41	3-5: FAR limits as indicated
Limited Retail/Wholesale: furniture, automobiles, heavy equipment, lumber yards, nurseries [approx. 250 s.f./person]		0.34	0.57			2, 3: FAR limits as indicated; design site to place parking inside and buildings outside of zone if possible
Offices: professional services, doctors, finance, civic; radio, television & recording studios, office space associated with other listed uses [approx. 215 s.f./person]		0.30	0.49	0.74		2-4: FAR limits as indicated
Personal & Miscellaneous Services: barbers, car washes, print shops [approx. 200 s.f./person]		0.28	0.46	0.69		2-4: FAR limits as indicated
Vehicle Fueling: gas stations, trucking & transportation terminals						

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Industrial, Manufacturing, and Storage Uses						
Hazardous Materials Production: oil refineries, chemical plants (≥ 6,000 gallons)						
Heavy Industrial						4: Avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Light Industrial, High Intensity: food products preparation, electronic equipment [approx. 200 s.f./person]		0.28	0.46	0.69		2-4: FAR limits as indicated; avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Light Industrial, Low Intensity: machine shops, wood products, auto repair [approx. 350 s.f./person]		0.48	0.80	1.21		2-4: FAR limits as indicated; avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Research & Development [approx. 300 s.f./person]			0.69	1.03		3-4: FAR limits as indicated; avoid bulk storage of hazardous (flammable, explosive, corrosive, or toxic) materials; permitting agencies to evaluate possible need for special measures to minimize hazards if struck by aircraft
Indoor Storage: wholesale sales, warehouses, mini/other indoor storage, barns, greenhouses [approx. 1,000 s.f./person]						2: Single story only; max. 10% in mezzanine
Outdoor Storage: public works yards, automobile dismantling						
Mining & Extraction [6]						

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2]					**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
	1	**2**	**3**	**4**	**6**	
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	
Transportation, Communication, and Utilities						
Airport Terminals: airline, general aviation						
Rail & Bus Stations						2: Allowed only if site outside zone would not serve intended public function
Transportation Routes: road & rail rights-of-way, bus stops [3]						1: Avoid new features that create airspace obstructions
Auto Parking: surface lots, structures [3]						1: Avoid new features that create airspace obstructions
Communications Facilities: emergency communications, broadcast & cell towers [7]						4, 6: Allowed only if site outside zone would not serve intended public function; not allowed within ½ mile of runway
Power Plants [7]						4, 6: Primary plants not allowed; peaker plants only
Electrical Substations [7]						4, 6: Allowed only if site outside zone would not serve intended public function; avoid features that create flight hazards
Wastewater Facilities: treatment, disposal [3]						6: Allowed only if site outside zone would not serve intended public function; avoid new features that attract birds
Solid Waste Disposal Facilities: landfill, incineration [3]						6: Allowed only if site outside zone would not serve intended public function; avoid new features that attract birds
Solid Waste Transfer Facilities, Recycle Centers [3]						6: Allowed only if site outside zone would not serve intended public function; avoid new features that attract birds

Table L-2: Safety Zones Compatibility Criteria

Legend: Land Use Compatibility
(A detailed explanation of each land use acceptability category is provided at the end of this table)

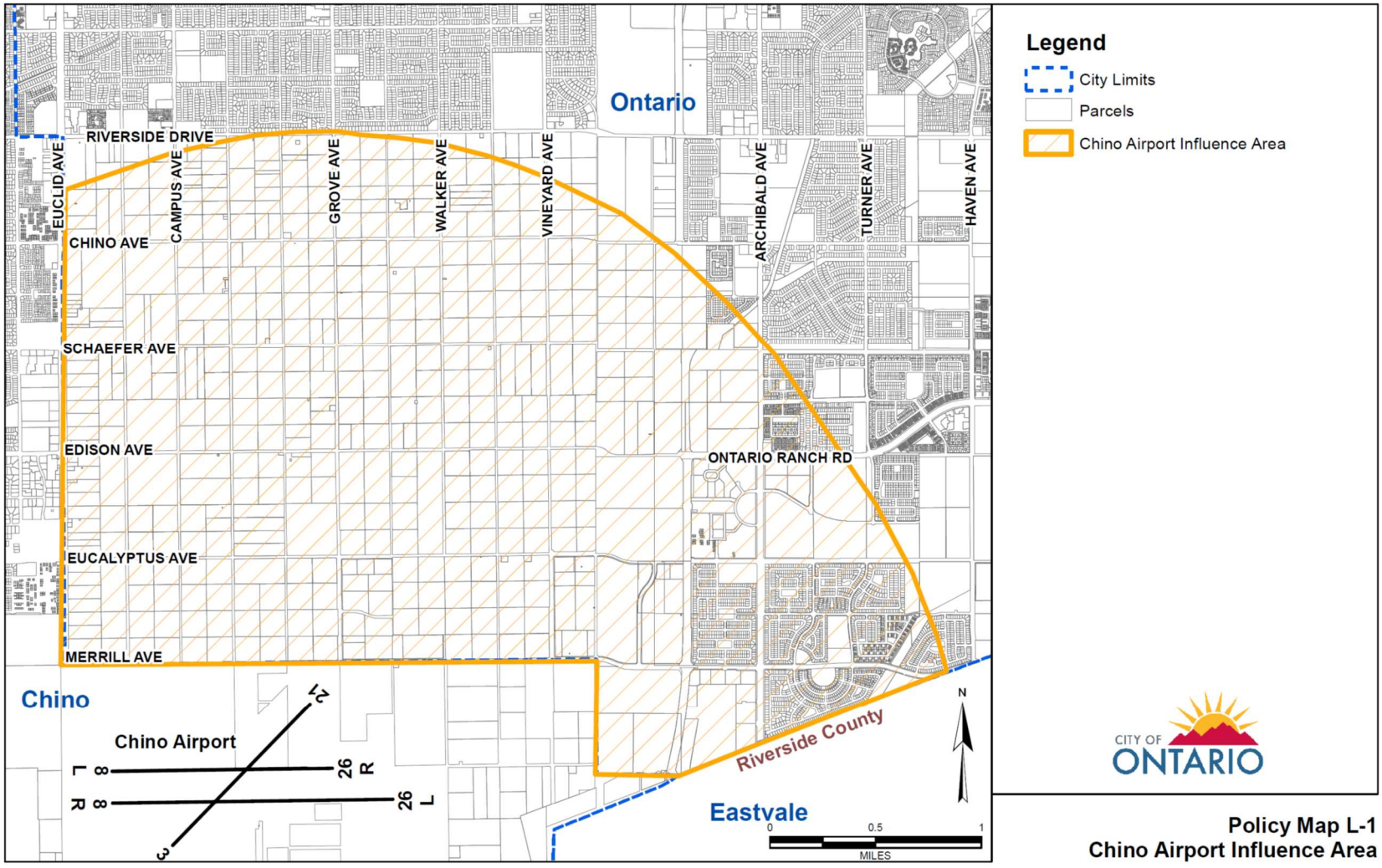
Normally Compatible Land Use	Conditional Land Use (FAR)	Incompatible Land Use

- A yellow cell indicates a use that is conditionally compatible provided it satisfies the maximum intensity limits and/or other listed conditions.
- Numbers in yellow cells indicate the Floor Area Ratio (FAR) limit for the use. The FAR limit is based on the common occupancy load factor [approx. number of square feet per person] indicated for that use. The FAR and/or the common occupancy load factors can be used to calculate the intensity (number of people per acre) of the proposed development. Up to 10% of the total FAR of a building may be devoted to an ancillary use and excluded from the single-acre intensity calculations, but not the average sitewide intensity limits.

Land Use Category [1] *Note: Multiple land use categories and compatibility criteria may apply to a project*	**Compatibility Zone** [2] 1	2	3	4	6	**Criteria for Conditional Uses** *Note: The numbers below indicate zone in which condition applies.*
Max Sitewide Average Intensity(people/acre)	**0**	**60**	**100**	**150**	**300**	▪ Nonresidential development must satisfy both forms of intensity limits. ▪ Maximum intensity criteria apply to Normally Compatible as well as Conditional land uses
Max Single-Acre Intensity (people/acre) *applicable to all nonresidential development*	**0**	**120**	**300**	**450**	**1200**	

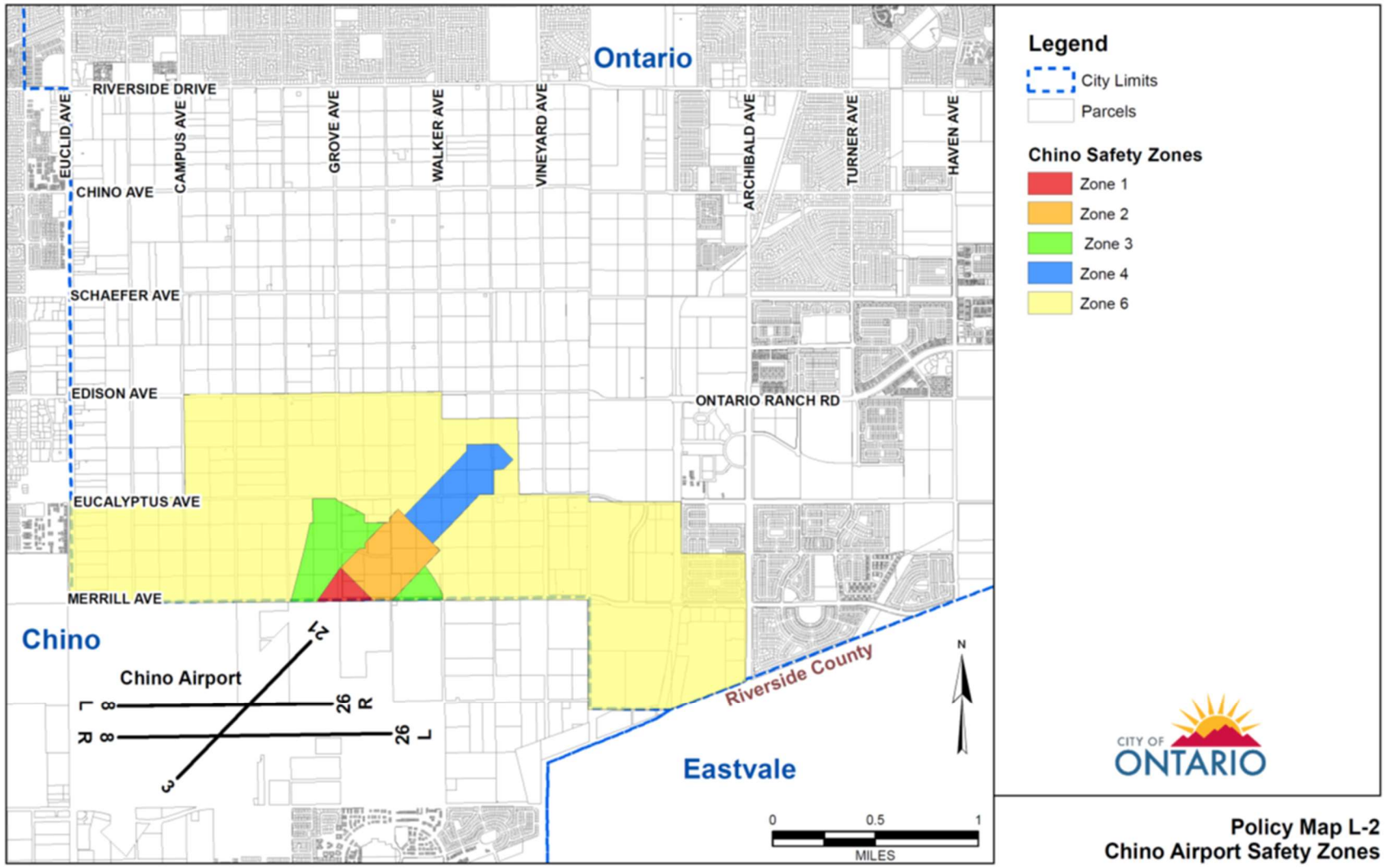
1. Land uses not specifically listed shall be evaluated using the criteria for similar uses.
2. Sample safety zones from the 2011 California Airport Land Use Planning Handbook (Handbook), as applied to Chino Airport, extend into the limits of the City of Ontario, except for Safety Zone 5. For numerical consistency, the Compatibility Zones for Chino Airport maintain the same numbering system used in the Handbook despite omission of Safety Zone 5. Avigation easement dedication required as condition of approval for all properties within Compatibility Zones 1-4.
3. Although these uses may satisfy the Safety criteria, they may be inconsistent with the Airspace Protection criteria as these uses may attract birds or other wildlife that could pose hazards to flight (see **Airspace Protection Policies**) or create obstructions to navigable airspace.
4. A *Major Assembly Facility* is defined as having a capacity of ≥1,000 people, while a *Large Assembly Facility* has a capacity of 300 to 999 people. Source: International Building Code.
5. Construction of a single-family home, including a second dwelling unit as defined by state law, allowed on a legal lot of record if such use is permitted by local land use regulations. A family day care home (serving ≤14 children) may be established in any dwelling.
6. These uses may generate dust or other hazards to flight.
7. Power lines or other tall objects associated with these uses may be hazards to flight.

Policy Map L-1 (Chino Airport Influence Area)



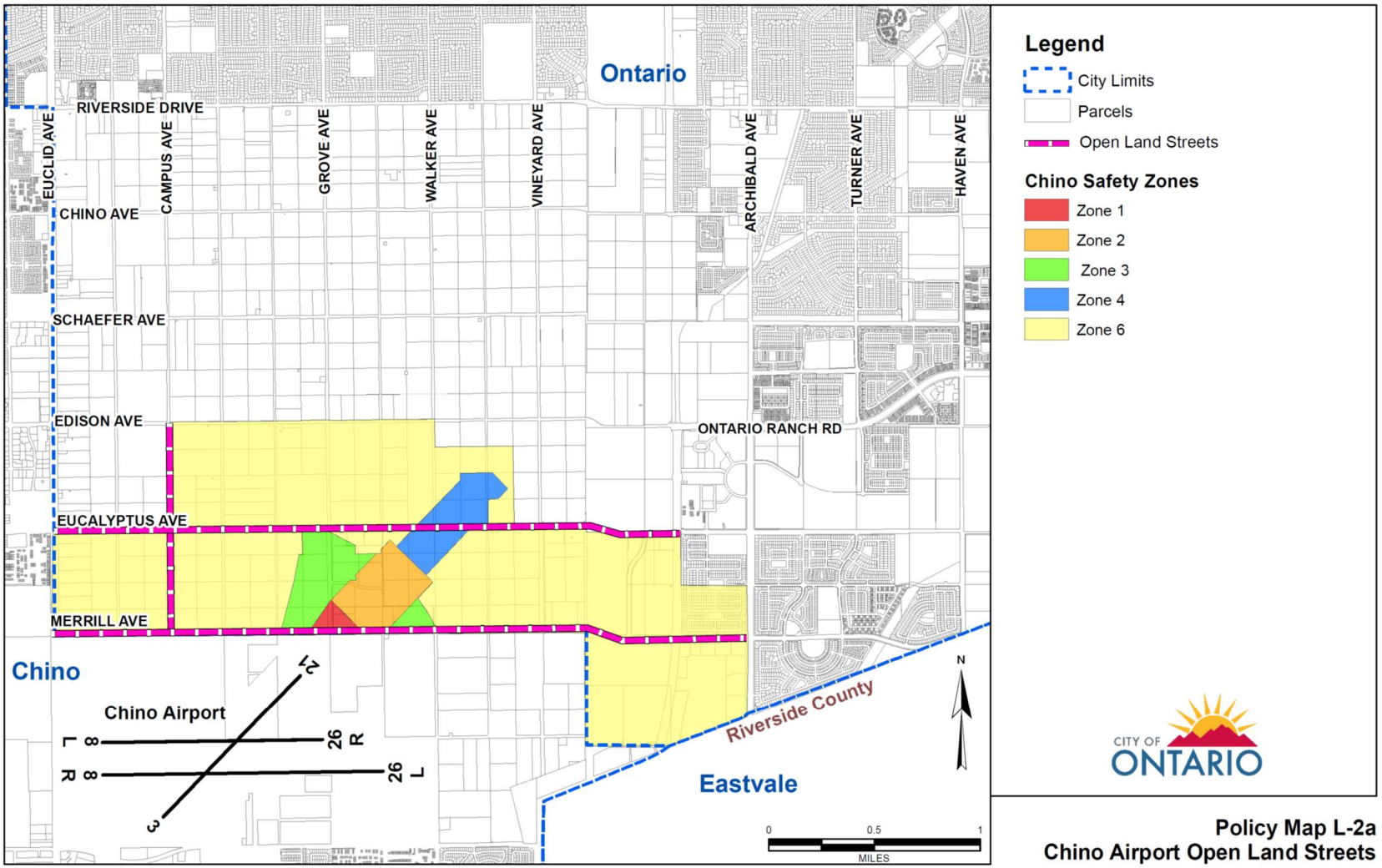
Policy Map L-1
Chino Airport Influence Area

Policy Map L-2 (Chino Airport Safety Zones)



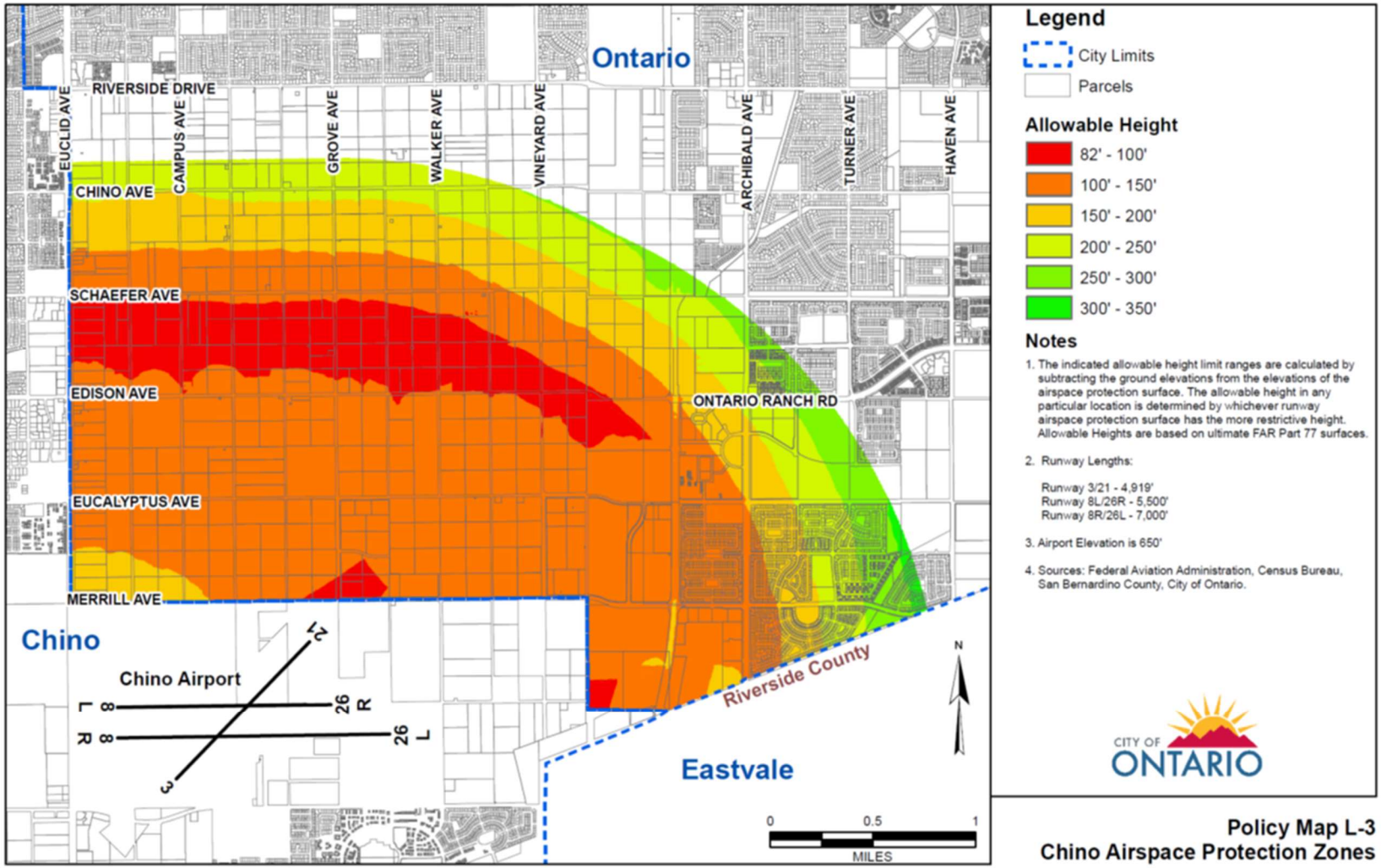
Policy Map L-2
Chino Airport Safety Zones

Policy Map L-2a: Chino Airport Open Land Streets



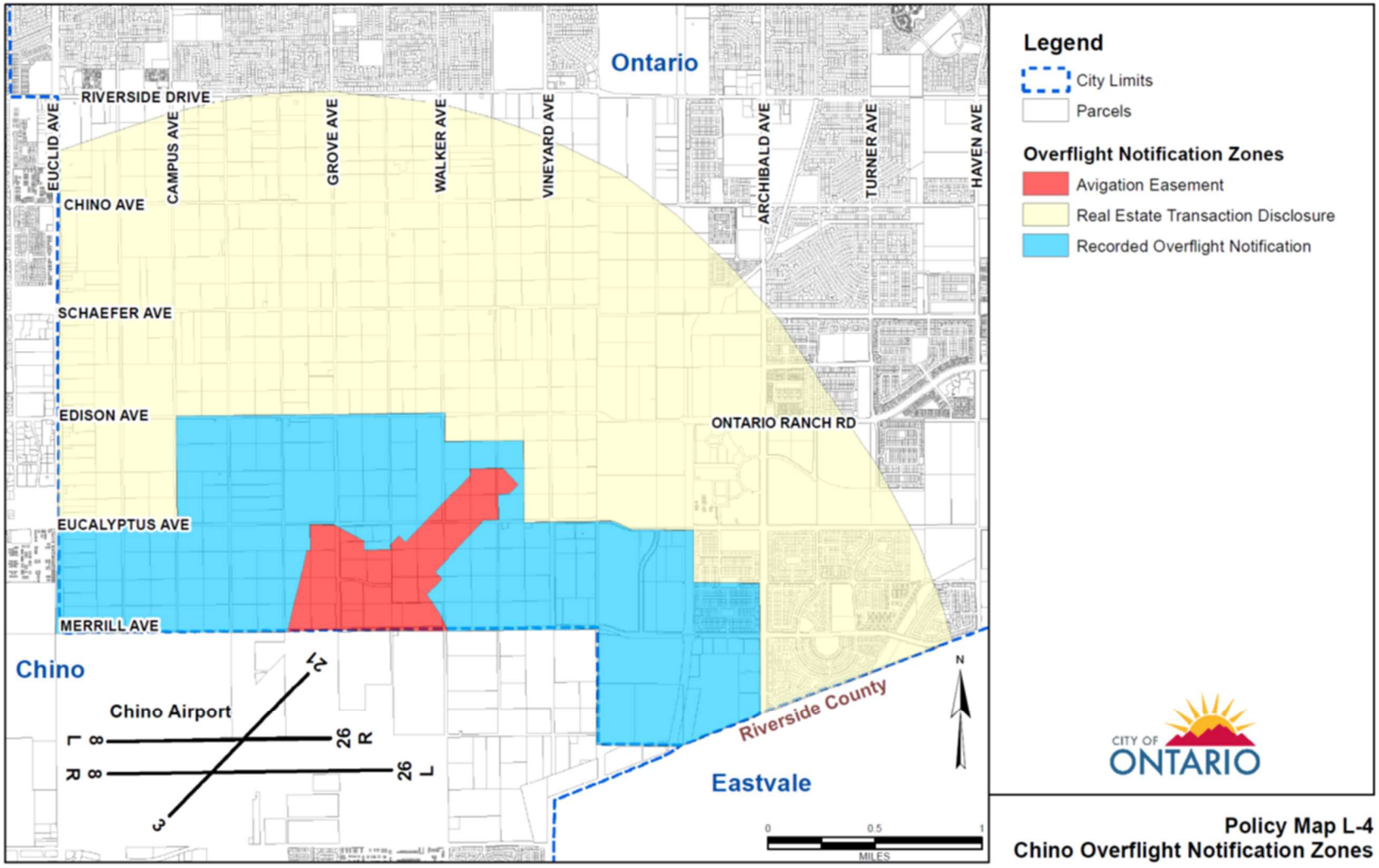
Policy Map L-2a
Chino Airport Open Land Streets

Policy Map L-3: Chino Airspace Protection Zones



Policy Map L-3
Chino Airspace Protection Zones

Policy Map L-4: Chino Overflight Notification Zones



CITY OF ONTARIO *Agenda Report* **August 2, 2022**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: City Manager's Office Prepared By: Scott Ochoa Staff Member Presenting: Ruben Duran, City Attorney Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: RESOLUTIONS CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION

RECOMMENDATION: That the City Council adopt Resolutions (1) Placing a measure to approve a general capital Transactions and Use Tax (Sales Tax) at the rate of one cent (1¢) on the November 8, 2022 General Municipal Election ballot; (2) requesting the Board of Supervisors of the County of San Bernardino render the General Municipal Election consolidated with the State General Election; and (3) setting rules for the filing of primary and rebuttal arguments regarding the measure.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the Growth and Evolution of the Cityâ€™s Economy
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The current Bradley Burns Sales & Use Tax rate in the City of Ontario is 7.75%, and breaks down as follows:

5.00% to the State of California
0.50% for Prop 172 Public Safety (Statewide)
0.25% for County Transportation Development Act (TDA)
0.50% to the County Health & Welfare
0.50% to the San Bernardino County Transit Authority
1.00% to the City of Ontario
7.75%

The sales and use tax applies to general consumer goods and merchandize. Unprocessed foods (such as groceries form a grocery store or farmer's market), prescription medications, real estate transactions, and services are exempt from the tax.

Over the last several years (pre and post-COVID 19 pandemic), the City's share of the sales tax has generated an annual average of $95 million. An additional 1% would double this amount for the City's General Fund. The General Fund may be appropriated by the City Council for non-enterprise government projects and services like police, fire & EMS, libraries, parks, and administration.

If approved by voters, this general tax, could be used to augment existing staffing levels in various City departments, from OPD to Community Improvement to Homeless Services. Just as importantly, this ongoing revenue stream could significantly enhance the City's capital improvement program (CIP) and allow for strategic investments in streets, storm drains, parks, drinking water facilities, crime prevention infrastructure, and affordable broadband access. Additionally, programs including emergency response, youth and senior services, and access to new affordable housing could be expanded.

BACKGROUND & ANALYSIS: The City of Ontario has a strong economic base, featuring a diverse and dynamic sales tax revenue stream. Indeed, the City's sales tax receipts outstrip those of the City's property tax revenues. Ideally, these two foundational General Fund resources would develop an equilibrium that would assure the community of more stable revenues (and thus services), regardless of a given economic cycle.

To help achieve this strategic balance of resources and services, City staff recommends placing a measure on the ballot to allow voters to decide on a 1% sales tax measure that would generate an estimated $95 million per year. This general tax could fund investments in infrastructure, public safety and quality of life services. These investments would manifest in the City's property values, thereby securing the City's revenue balance and stability over the long term. Moreover, because more than half of the City's sales tax revenues are generated by non-Ontario residents (through regional retail locations and worldwide online sales), the City would be able to use this additional sales tax revenue to improve the local quality of life with non-local funding.

The City Council is extremely sensitive to the concerns of residents and businesses regarding the state of the national economy and the potential impact of a 1% sales tax increase. Still, the reality that any new funds generated would be allocated locally and with direct accountability to voters acts as a safeguard to ensure that real and lasting value is created for the Ontario community. This focus on local control has led many cities to seek local sales tax increases and thus insulate themselves from the actions of the state and provide the resources to reinvest in the community.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PROVIDING FOR THE FILING OF PRIMARY AND REBUTTAL ARGUMENTS AND SETTING RULES FOR THE FILING OF WRITTEN ARGUMENTS REGARDING A CITY MEASURE TO BE SUBMITTED AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION.

WHEREAS, a General Municipal Election is to be held in the City of Ontario, California on November 8, 2022, at which there will be submitted to the voters the following measure:

"City of Ontario Services Measure To secure Ontario's long-term financial stability; maintain fire, police, 9-1-1 response, help prevent crime/thefts/burglaries; recruit/retain firefighters/paramedics/police; repair streets/potholes; improve local drinking water sources; address homelessness; clean/maintain public areas; fund youth/afterschool programs; for general government use; shall the measure establishing a 1¢ sales tax providing approximately $95,000,000 annually until ended by voters; requiring audits/public spending disclosure, funds locally controlled, be adopted?"	Yes No

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Primary Arguments. That the City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California, and to change the argument until and including the date fixed below by the City Clerk, after which no arguments for or against the City measure may be submitted to the City Clerk.

The deadline to submit arguments for or against the City Measure pursuant to this Resolution is declared by the City Clerk to be Monday, August 22, 2022, at 12:00 p.m. Each argument shall not exceed 300 words and shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

If the City Council chooses to file an argument in favor of the ballot measure, it hereby designates the following Councilmembers to author the argument on behalf of the City Council:

_____

_____

SECTION 2. Rebuttal Arguments. Pursuant to Section 9285 of the Elections Code of the State of California, when the City Clerk has selected the primary arguments for and against the City Measure which will be printed and distributed to the voters, the Clerk shall send copies of the primary argument in favor of the Measure to the authors of the primary argument against, and copies of the primary argument against to the authors of the primary argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than Friday, August 26, 2022, at 5:00 p.m. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

SECTION 3. Prior Resolutions. That all previous resolutions providing for the filing of primary and rebuttal arguments related to City measures are repealed.

SECTION 4. November 8, 2022 Election. That the provisions of Sections 1 and 2 shall apply only to the election to be held on November 8, 2022 and shall then be repealed.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2022 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THAT DATE PURSUANT TO §10403 OF THE ELECTIONS CODE.

WHEREAS, on August 2, 2022, the City Council of the City of Ontario adopted Resolution No. 2022-____, calling a General Municipal Election to be held on November 8, 2022; for the purpose of submitting to the voters the question relating to the Transactions and Use Tax; and

WHEREAS, it is therefore desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the election department of the County of San Bernardino canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Request for Consolidation. Pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of San Bernardino is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 8, 2022, for the purpose of submitting to the voters the following question relating to the Transactions and Use Tax.

SECTION 2. Measure Language. A measure is to appear on the ballot as follows:

"City of Ontario Services Measure To secure Ontario's long-term financial stability; maintain fire, police, 9-1-1 response, help prevent crime/thefts/burglaries; recruit/retain firefighters/paramedics/police; repair streets/potholes; improve local drinking water sources; address homelessness; clean/maintain public areas; fund youth/afterschool programs; for general government use; shall the measure establishing a 1¢ sales tax providing approximately $95,000,000 annually until ended by voters; requiring audits/public spending disclosure, funds locally controlled, be adopted?"	Yes No

SECTION 3. Canvass of Returns. The County election department is authorized to canvass the returns and perform all other proceedings incidental to and connected with the General Municipal Election. The Election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. Pursuant to California Elections Code Sections 10403 and 10418, the election will be held and conducted in accordance with the provisions of law regulating the Statewide General Election.

SECTION 4. Necessary Steps. The Board of Supervisors is requested to issue instructions to the County election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 5. Costs. The City Council determines and declares that the City will pay to the County the reasonable and actual expenses incurred by the County by the consolidation of the General Municipal Election with the Statewide General Election. The City shall reimburse the County for services performed when the work is completed and upon presentation to the City of a properly approved bill. The City Manager of the City of Ontario is authorized and directed to pay for the expenses incurred after receiving a statement from the County of San Bernardino.

SECTION 6. Filing of Resolution. The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the election department of the County of San Bernardino.

SECTION 7. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE TO ENACT A GENERAL TRANSACTIONS AND USE TAX (SALES TAX) AT THE RATE OF ONE CENT (1¢).

WHEREAS, the City Council of the City of Ontario ("City") is authorized to levy a Transactions and Use Tax ("sales tax") for general purposes pursuant to California Revenue and Taxation Code section 7285.9, subject to approval by a majority vote of the electorate pursuant to Article XIII C, section 2 of the California Constitution ("Proposition 218"); and

WHEREAS, pursuant to California Elections Code section 9222, the City Council has authority to place local measures on the ballot to be considered at a Municipal Election; and

WHEREAS, the City Council would like to submit to the voters at the November 8, 2022 General Municipal Election a measure enacting a general sales tax at a rate of one cent (1¢) on the sale and/or use of all tangible personal property sold at retail in the City until it is ended by voters, as more specifically set forth in the attached proposed ordinance adding Chapter 12 to Title 3 of the City's Municipal Code; and

WHEREAS, a 1% increase will cost an additional one .01 cent per $1.00 dollar spent on taxable goods or .10 cents for every $10.00 spent and whereby the sales tax does not apply to groceries, medicine, medical, dental, real estate, rent, education, utilities, personal services, or labor; and

WHEREAS, the one cent (1¢) sales tax is a general tax, the revenue of which will be placed in the City's general fund and will be used to pay for important general City services; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218, an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, pursuant to Proposition 218 (California Constitution, Article XIII C, § 2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, the next regularly scheduled general election at which City Council members are to be elected is November 8, 2022; and

WHEREAS, pursuant to Government Code section 53724 ("Proposition 62") and Revenue and Taxation Code section 7285.9, a two-thirds (2/3) vote of all members of the City Council is required to place the Measure on the November 8, 2022 ballot; and

WHEREAS, the ordinance to be considered by the qualified voters and the terms of approval, collection and use of the general sales tax are described and provided for in the ordinance/measure attached hereto as Exhibit "A" (the "Measure") and by this reference made an operative part hereof, in accordance with all applicable laws.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

SECTION 2. Submission of Ballot Measure. Pursuant to California Elections Code section 9222, Government Code section 53724, Revenue and Taxation Code section 7285.9 and any other applicable requirements of the laws of the State of California relating to the City, the City Council, by a two-thirds (2/3) vote of all members, hereby orders the Measure to be submitted to the voters of the City at the General Municipal Election to be held on Tuesday, November 8, 2022.

SECTION 3. The City Council, pursuant to California Elections Code section 9222, hereby orders that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on Tuesday, November 8, 2022, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

<table>
<tr><td rowspan="2">"City of Ontario Services Measure

To secure Ontario's long-term financial stability; maintain fire, police, 9-1-1 response, help prevent crime/thefts/burglaries; recruit/retain firefighters/paramedics/police; repair streets/potholes; improve local drinking water sources; address homelessness; clean/maintain public areas; fund youth/afterschool programs; for general government use; shall the measure establishing a 1¢ sales tax providing approximately $95,000,000 annually until ended by voters; requiring audits/public spending disclosure, funds locally controlled, be adopted?"</td><td>YES</td></tr>
<tr><td>NO</td></tr>
</table>

SECTION 4. Conduct of Election. The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Pursuant to Elections Code section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in

length, showing the effect of the Measure on the existing law and the operation of the Measure, and transmit such impartial analysis to the City Clerk not later than the deadline for submittal of primary arguments for or against the Measure.

The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information guide, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: "The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the Office of the City Clerk at (909) 395-2395 and a copy will be mailed at no cost to you."

SECTION 6. Notice of the election is hereby given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. Placement on the Ballot. The full text of the Measure shall /shall not be printed in the voter information guide, and a statement shall be printed on the ballot pursuant to Elections Code section 9223 advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the City Clerk.

SECTION 8. Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 8, 2022, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of San Bernardino, State of California, a certified copy of this Resolution.

SECTION 9. Public Examination. Pursuant to Elections Code section 9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

SECTION 10. The City Council hereby finds and determines that the Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 11. Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

SECTION 12. This Resolution shall become effective upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of August 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held August 2, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held August 2, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit “A”
Transactions and Use Tax Ordinance

[attached behind this page]

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ONTARIO, CALIFORNIA, ADDING CHAPTER 12 TO TITLE 3 OF THE ONTARIO MUNICIPAL CODE TO ENACT A ONE-CENT (1¢) GENERAL TRANSACTIONS AND USE TAX (SALES TAX) TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION.

WHEREAS, pursuant to California Revenue and Taxation Code section 7285.9 the City of Ontario ("City") is authorized to levy a Transactions and Use Tax for general purposes, subject to majority voter approval; and

WHEREAS, the People of the City desire to levy a Transactions and Use Tax for general purposes until repealed to fund important general City services, at a rate of one cent (1¢); and

WHEREAS, if approved by the City Council and Ontario voters, the Transactions and Use Tax Ordinance will be incorporated into Chapter 12 of Title 3 of the Ontario Municipal Code.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ONTARIO DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title and Text. This Ordinance shall be known as the Ontario Transactions and Use Tax Ordinance, the full text of which is set forth in Attachment "1", attached hereto and incorporated herein by reference.

SECTION 2. Approval by the City Council. Pursuant to California Government Code section 53724 and Revenue and Taxation Code section 7285.9, this Ordinance was duly approved for placement on the ballot by a minimum two-thirds (2/3) supermajority of all members of the City Council on August 2, 2022.

SECTION 3. Approval by the Voters. Pursuant to California Elections Code section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Ontario voting at the General Municipal Election of November 8, 2022. It shall be deemed adopted when the City Council has certified the results of that election by resolution and shall take effect ten (10) days thereafter.

SECTION 4. Operative Date. "Operative Date" for the Transactions and Use Tax means the first day of the first calendar quarter commencing more than 110 days after the date this Ordinance is adopted, as set forth in Section 3 above.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 6. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

I hereby certify that the Ontario Transactions and Use Tax Ordinance was PASSED, APPROVED, AND ADOPTED by the People of the City of Ontario on the 8th day of November 2022.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Chapter 12 – TRANSACTIONS AND USE TAX

Sections:

3-12.01 - Purpose.
3-12.02 - Contract with State.
3-12.03 - Transactions Tax Rate.
3-12.04 - Place of Sale.
3-12.05 - Use Tax Rate.
3-12.06 - Adoption of Provisions of State Law.
3-12.07 - Limitations on Adoption of State Law and Collection of Use Taxes.
3-12.08 - Permit Not Required.
3-12.09 - Exemptions and Exclusions.
3-12.10 - Amendments.
3-12.11 - Enjoining Collection Forbidden.
3-12.12 - Duration of Tax

Sections:

3-12.01 - Purpose.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record-keeping upon persons subject to taxation under the provisions of this ordinance.

3-12.02 - Contract with State.

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3-12.03- Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3-12.04 - Place of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

3-12.05 - Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one percent (1%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3-12.06 - Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3-12.07 - Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

   1. The word “State” is used as a part of the title of the State Controller, State Treasurer, California Victim Compensation Board, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;

   2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

   3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

      a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

      b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

   4. In reference to Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word “city” shall be substituted for the word “state” in the phrase “retailer engaged in business in this state” in Section 6203 of the Revenue and Taxation Code and in the definition of that phrase in Section 6203.

   1. “A retailer engaged in business in the District” shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars ($500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3-12.08 - Permit not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3-12.09 - Exemptions and Exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

    a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

    b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this subsection, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this subsection, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. “A retailer engaged in business in the City” shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the

Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3-12.10 - Amendments.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

3-12.11 - Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3-12.12 – Duration of Tax.

The tax imposed by this chapter shall continue until this ordinance is repealed.