CITY OF ONTARIO
CITY COUNCIL/HOUSING AUTHORITY
AGENDA
APRIL 20, 2021

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Ruben Valencia
Council Member

Sheila Mautz
City Clerk

James R. Milhiser
Treasurer

Scott Ochoa
City Manager

Ruben Duran
City Attorney

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 provide public comment or to address the Council have been provided alternative measures including U.S. mail, email, and a website comment form. All public comments received by the established deadline for this meeting will be included as part of the official meeting record.**
- **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.**

SPECIAL AND URGENT NOTICE

In accordance with the Governor's Declarations of Emergency for the State of California (Executive Orders N-25-20 and N-29-20), the Ontario City Council Meetings are being conducted via teleconference to limit in-person attendance at the upcoming meeting of the City of Ontario City Council and Housing Authority.

Members of the Public may utilize alternative measures established by the City of Ontario to view the City Council meetings and/or to address the Mayor and City Council Members.

The meeting will be live broadcast on local cable Channel 3 as well as live streamed at: www.ontarioca.gov/Agendas/CityCouncil or Zoom.

TO PROVIDE PUBLIC COMMENT: Those wishing to speak during the "Public Comment" portion of the meeting or any item on "Consent Calendar" must call 909-395-2900 between 6:00 p.m. and 6:30 p.m. the day of the meeting.

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.

TO COMMENT BY MAIL: To submit your comments by mail, provide your name, agenda item you are commenting on, and your comment by mailing to Records Management, Ontario City Hall, 303 East "B" Street, Ontario, CA 91764. Comments by mail must be received by the Records Management Department no later than 4:00 p.m. on the day of the meeting. Postmarks are not accepted. All comments received by the deadline will be provided to the City Council for consideration before action us taken on the matter.

We appreciate your understanding during this unprecedented time of social distancing under the Stay at Home Order. These procedures may be modified in the future as social and public gathering protocols change.

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.

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

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

PLEDGE OF ALLEGIANCE

Mayor pro Tem Wapner

INVOCATION

PUBLIC COMMENTS 6:30 p.m.

Members of the Public who wish to provide a general comment or address a specific agenda item may do so by mailing comments to the City Clerk's Office, or by calling (909) 395-2900 between 6:00 - 6:30 p.m. or by emailing PublicComments@ontarioca.gov no later than 4:00 p.m. on the day of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

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 special meeting of the City Council and Housing Authority of March 12, 2021 and regular meeting of the City Council and Housing Authority of March 16, 2021, approving same as on file in the Records Management Department.

ATTACHMENT: 20210312 S Minutes (not official until approved).pdf
ATTACHMENT: 20210316 Minutes (not official until approved).pdf

2. BILLS & PAYROLL

Bills March 18, 2021 through April 1, 2021 and Payroll February 28, 2021 through March 27, 2021 when audited by the Finance Committee.

3. PRE-AUTHORIZED LIST OF VENDORS TO PROVIDE SPECIALIZED PERSONAL PROTECTIVE EQUIPMENT, MAINTENANCE AND SPECIALIZED SERVICE

That the City Council approve pre-authorized vendors to provide personal protective equipment and maintenance services for emergency equipment and services for the Fire Department.

4. APPROVAL OF SIDE LETTERS AMENDING THE MEMORANDUM OF UNDERSTANDING FOR THE ONTARIO POLICE MANAGEMENT GROUP IN ACCORDANCE WITH MODIFICATIONS REQUESTED BY CALPERS

That the City Council, by motion, adopt a resolution to approve side letters amending the Memorandum of Understanding (MOU) in accordance with modifications requested by the California Public Employees Retirement System (CALPERS) to ensure that pension benefits are properly calculated.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING SIDE LETTERS AMENDING THE MEMORANDUM OF UNDERSTANDING FOR EMPLOYEES REPRESENTED BY THE ONTARIO POLICE MANAGEMENT GROUP.

ATTACHMENT: 20210420 Amending MOU for PMG^01^RESO^RM.docx
ATTACHMENT: 20210420 PMG Side Letters^02 EXH A - C

5. *AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 59 (GATEWAY SERVICES)*

That the City Council consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 59 (Gateway Services).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 59 (GATEWAY SERVICES).

ATTACHMENT: 20210420 Community Facilities District No. 59 Gateway Services 01^ORD^RM

6. *AUTHORIZE THE PURCHASE OF POLICE EQUIPMENT*

That the City Council approve the purchase and enhancement of forty one (41) Automated License Plate Recognition (ALPR) cameras.

ATTACHMENT: 20210420 FLOCK Proposal^01 EXH

7. *AUTHORIZE THE PURCHASE OF FLEET VEHICLES*

That the City Council take the following actions:

A. Authorize the cooperative purchase and delivery of two F350 Flat Bed trucks in the amount of $137,899 for the Parks and Maintenance Department, one Ford F450 Stake Bed truck in the amount of $75,080 for the Parks and Maintenance Department, and one Ford F350 Utility truck in the amount of $57,972 for the Utilities Department from National Auto Fleet Group of Watsonville, California consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.
B. Authorize the cooperative purchase and delivery of one John Deere 410L Backhoe in the amount of $132,414 for the Utilities Department from RDO Equipment Company of Riverside, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 032515-JDC.
C. Authorize the cooperative purchase and delivery of three BMW Police Motorcycles in the amount of $105,745 for the Police Department from Long Beach BMW Motorcycles of Long Beach, California, consistent with the terms and conditions of the Los Angeles County Sheriff Contract PO-SH-20008660-2, Bid RFB-IS-20200851-1.
D. Authorize the cooperative purchase and delivery of one CNG Peterbilt Refuse Automated Side Loading truck in the amount of $314,837 for the Integrated Waste Department from Rush Truck Centers of Pico Rivera, California consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 060920-PMC.

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing. Affidavits of posting compliance, for all items below, are on file with the Records Management Department.

8. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP, TO DEFER THE COMMENCEMENT OF CERTAIN STREET IMPROVEMENTS AND ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20265, A 21.10 ACRE PROPERTY LOCATED ON THE EAST SIDE OF MILL CREEK AVENUE, APPROXIMATELY 670 FEET SOUTH OF ONTARIO RANCH ROAD, WITHIN THE STANDALONE RESIDENTIAL LAND USE DISTRICT OF THE RICH-HAVEN SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27

That the City Council introduce and waive further reading of an ordinance approving the First Amendment to the Development Agreement (File No. PDA16-003) between the City of Ontario and GDCI-RCCD 2, LP, to defer the commencement of certain street improvements and establish the terms and conditions for the development of Tentative Tract Map 20265, a 21.10 acre property located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP, TO DEFER THE COMMENCEMENT OF CERTAIN STREET IMPROVEMENTS AND ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20265, A 21.10 ACRE PROPERTY LOCATED ON THE EAST SIDE OF MILL CREEK AVENUE, APPROXIMATELY 670 FEET SOUTH OF ONTARIO RANCH ROAD, WITHIN THE STANDALONE RESIDENTIAL LAND USE DISTRICT OF THE RICH-HAVEN SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27.

ATTACHMENT: 20210420 File No. PDA16-003 GDCI-RCCD 2 LP^01 EXH A & B
ATTACHMENT: 20210420 File No. PDA16-003 GDCI-RCCD 2 LP^02 PC Backup
ATTACHMENT: 20210420 File No. PDA16-003^03^ORD^RM.docx
ATTACHMENT: 20210420 File No. PDA16-003 GDCI-RCCD 2 LP^04 AGMT

9. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA18-004) BETWEEN THE CITY OF ONTARIO AND MERRILL COMMERCE CENTER EAST, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20273 (FILE NO. PMTT20-010), A 366.65-ACRE PROPERTY GENERALLY BORDERED BY

EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE EAST, AND GROVE AVENUE TO THE WEST, WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF THE MERRILL COMMERCE CENTER SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - (APNS: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06)

That the City Council introduce and waive further the reading of an ordinance approving the Development Agreement (File No. PDA18-004) between the City of Ontario and Merrill Commerce Center East, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 20273 (File No. PMTT20-010), a 366.65-acre property generally bordered by Eucalyptus Avenue to the north, Merrill Avenue to the south, Carpenter Avenue to the east, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA18-004, A DEVELOPMENT AGREEMENT, BETWEEN THE CITY OF ONTARIO AND MERRILL COMMERCE CENTER EAST, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20273 (FILE NO. PMTT20-010), A 366.65 ACRE PROPERTY GENERALLY BORDERED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE EAST, AND GROVE AVENUE TO THE WEST, WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF THE MERRILL COMMERCE CENTER SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06.

ATTACHMENT: 20210420 File No. PDA18-004 MCC East LLC^01 EXH A & B
ATTACHMENT: 20210420 File No. PDA18-004 MCC East LLC^02 PC Backup
ATTACHMENT: 20210420 File No. PDA18-004^03 ORD^RM
ATTACHMENT: 20210420 File No. PDA18-004 MCC East LLC^04 AGMT

10. A PUBLIC HEARING TO CONSIDER A PETITION OF CANCELLATION OF WILLIAMSON ACT CONTRACTS 69-147 (FILE NO. PWIL20-001) AND 70-167 (FILE NO. PWIL20-002), FOR PROPERTIES LOCATED SOUTH OF EUCALYPTUS AVENUE AND NORTH OF MERRILL AVENUE, APPROXIMATELY 552 FEET WEST OF CARPENTER AVENUE AND 630 FEET EAST OF WALKER AVENUE, WITHIN PLANNING AREAS 4, 4A, 6, AND 6A (INDUSTRIAL AND BUSINESS PARK DISTRICTS), OF THE MERRILL

COMMERCE CENTER SPECIFIC PLAN - APNS: 1054-151-02, 1054-161-03, 1054-201-02, 1054-351-02 AND 1073-111-02

That the City Council consider and adopt a resolution approving the Tentative Cancellation of Land Conservation Contract Numbers 69-147 (File No. PWIL20-001) and 70-167 (File No. PWIL20-002).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PWIL20-001, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 69-147 FOR 29.095 ACRES OF LAND GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EUCALYPTUS AVENUE AND VINEYARD AVENUE, APPROXIMATELY 522 FEET WEST OF CARPENTER AVENUE, WITHIN PLANNING AREAS 6 AND 6A (INDUSTRIAL AND BUSINESS PARK DISTRICTS) OF MERRILL COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1073-111-02.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PWIL20-002, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 70-167 FOR 37.34 ACRES OF LAND GENERALLY LOCATED AT THE SOUTHSIDE OF EUCALYPTUS AVENUE, APPROXIMATELY 630 FEET EAST OF WALKER AVENUE AND APPROXIMATELY 2,490 WEST OF CARPENTER AVENUE AT 8643 SOUTH EUCALYPTUS AVENUE, WITHIN PLANNING AREA 4 AND 4A (INDUSTRIAL DISTRICT AND BUSINESS PARK DISTRICTS) OF MERRILL COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1054-151-02, 1054-161-03, 1054-201-02 AND 1054-351-02.

ATTACHMENT:	20210420 File No. PWIL20-001 and PWIL20-002^01 AR ATTACH A
ATTACHMENT:	20210420 PWIL20-001_PWIL20-002^02 PC Backup
ATTACHMENT:	20210420 File No. PWIL20-001^04 LCC 69-147^03 RESO^RM
ATTACHMENT:	20210420 File No. PWIL20-001^05 LCC 69-147^04 RESO ATTACH A
ATTACHMENT:	20210420 File No. PWIL20-002^06 LCC 70-167^05 RESO^RM
ATTACHMENT:	20210420 File No. PWIL20-002^07 LCC 70-167^06 RESO ATTACH A

11. A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND ONTARIO EMPORIA II HOUSING PARTNERS, L.P. FOR THE DEVELOPMENT OF A 50-UNIT HOUSING DEVELOPMENT AND A GRANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO HOUSING AUTHORITY, IN AN AMOUNT NOT TO EXCEED $8,000,000, FOR APPROXIMATELY 2.15 ACRES OF LAND BORDERED BY TRANSIT STREET ON THE NORTH, FERN AVENUE ON THE WEST, EMPORIA STREET ON THE SOUTH, AND PALM AVENUE ON THE EAST.

That the City Council ("City") and the Board of the Ontario Housing Authority ("Authority"):

A. Adopt the attached resolutions approving the Disposition and Development Agreement ("Agreement") between the Authority and Ontario Emporia II Housing Partners, L.P. ("Developer") (on file with the Records Management Department); and

B. Approve a Grant Agreement ("Grant Agreement") between the City and the Authority, in an amount not to exceed $8,000,000 (on file with the Records Management Department); and
C. Authorize the City Manager/Executive Director or his designee to sign all documents necessary to implement the Agreements.

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND ONTARIO EMPORIA II HOUSING PARTNERS, L.P., FOR DEVELOPMENT OF A MULTIFAMILY, RENTAL HOUSING PROJECT AND MAKING CERTAIN FINDINGS IN SUPPORT THEREOF (APNS: 1049-054-02, 1049-054-03, 1049-054-04, 1049-054-06, 1049-059-06, AND 1049-059-07).

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THAT CERTAIN CITY GRANT AGREEMENT [EMPORIA PHASE II MULTIFAMILY DEVELOPMENT] CONCERNING THE GRANT OF STATE AND DEVELOPER IN-LIEU FEE FUNDS TO THE ONTARIO HOUSING AUTHORITY FOR THE EMPORIA PHASE II AFFORDABLE HOUSING PROJECT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THAT CERTAIN CITY GRANT AGREEMENT [EMPORIA PHASE II MULTIFAMILY DEVELOPMENT] CONCERNING THE GRANT OF STATE AND DEVELOPER IN-LIEU FEE FUNDS TO THE ONTARIO HOUSING AUTHORITY FOR THE EMPORIA PHASE II AFFORDABLE HOUSING PROJECT.

ATTACHMENT:	20210420 Project Site^01 EXH A
ATTACHMENT:	20210420 Unit Distribution^02 EXH B
ATTACHMENT:	20210420 Site Plan and Elevations^03 EXH C
ATTACHMENT:	20210420 OHA-Resolution for Emporia Phase II Disposition and Development Agreement^04^RESO^RM.docx
ATTACHMENT:	20210420 OHA Resolution Grant Agreement to OHA for Emporia Phase II^05 RESO^RM
ATTACHMENT:	20210420 City Resolution Grant Agreement to OHA for Emporia Phase II^06 RESO^RM

12. A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND UNITED INVESTMENT GROUP, LLC, FOR THE DEVELOPMENT OF TWO SINGLE-FAMILY HOUSING UNITS LOCATED AT 1004 SOUTH EUCLID AVENUE (APN: 1049-563-10)

That the Board of the Ontario Housing Authority ("Authority") adopt the attached resolution approving the Disposition and Development Agreement ("Agreement") between the Authority and United Investment Group LLC ("Developer") (on file with the Records Management Department) and authorize the Executive Director or his designee to sign all documents necessary to implement the Agreement.

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT

AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND UNITED INVESTMENT GROUP, LLC. FOR THE DEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED AT 1004 SOUTH EUCLID AVENUE. (APN: 1049-563-10).

ATTACHMENT: 20210420 OHA-UNITED CONSTRUCTION FINAL DDA-1004 S. EUCLID^01 AGMT.pdf
ATTACHMENT: 20210420 OHA Resolution DDA 1004 South Euclid Avenue^02^RESO^RM.docx

13. A PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT SUBSIDY REPORT AND OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND HOME DEPOT U.S.A, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083.1; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS

That the City Council take the following actions:

A. Hold the public hearing;
B. Adopt the resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083.1 regarding an Operating Covenant Agreement (on file in the Records Management Department) by and between the City of Ontario and Home Depot U.S.A, Inc., hereinafter referred to as "Home Depot";
C. Adopt a resolution approving the Operating Covenant Agreement, hereinafter referred to as the "Agreement," and authorizing the City Manager to execute the Agreement, and making related findings; and
D. Direct City staff to file a Notice of Exemption based upon the City Council's finding that the impacts of this Agreement do not constitute a project and are not subject to environmental review and that there is no possibility that the activity in question will have a significant effect on the environment.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083.1 REGARDING THE DEVELOPMENT OF AN E-COMMERCE DISTRIBUTION FACILITY BY HOME DEPOT U.S.A., INC. IN THE CITY OF ONTARIO AND APPROVING AN OPERATING COVENANT AGREEMENT.

ATTACHMENT: 20210420 Home Depot Covenant Agreement 01^RESO^RM.DOCX
ATTACHMENT: 20210420 Home Depot Econ Subsidy Report-final-EXH A^02.docx
ATTACHMENT: 20210420 Home Depot Covenant Agreement^03^EXH B.DOCX

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

14. A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 46 (AVENUE 176 FACILITIES) SPECIAL TAX BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $9,000,000 AND RELATED MATTERS

That the City Council consider and adopt a resolution authorizing the issuance of City of Ontario Community Facilities District No. 46 (Avenue 176 Facilities) Special Tax Bonds, Series 2021.

A. Authorizes the issuance of special tax bonds for public improvements required to facilitate the development of the Avenue 176 project and the Ontario Ranch development;
B. Approves the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement;
C. Authorizes a negotiated sale of the special tax bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") in accordance with the terms of the Bond Purchase Agreement; and
D. Authorizes the execution of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification in connection with the Preliminary Official Statement, a final Official Statement and other documents in connection with the issuance of the bonds by the City Manager or the other specified authorized officers.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 46 (AVENUE 176 FACILITIES) SPECIAL TAX BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $9,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

ATTACHMENT: 20210420 CFD 46 Avenue 176 Facilities^01 RESO^RM.docx

STAFF MATTERS

CITY MANAGER OCHOA

COUNCIL MATTERS

MAYOR LEON
MAYOR PRO TEM WAPNER
COUNCIL MEMBER BOWMAN
COUNCIL MEMBER DORST-PORADA
COUNCIL MEMBER VALENCIA

ADJOURNMENT

SPECIAL ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
MARCH 12, 2021
(Not official Until Approved)

JOINT MEETINGS

Special Meetings of the Ontario City Council/Ontario Housing Authority were held on Friday, March 12, 2021, at the Ontario City Hall, 303 East B Street, Ontario, California.

CALL TO ORDER

Mayor Leon called the Joint City Council and Ontario Housing Authority meetings to order at 9:34 a.m.

SPECIAL AND URGENT ANNOUNCEMENT

In accordance with the Governor's Declarations of Emergency for the State of California (Executive Orders N-25-20 and N-29-20), the Ontario City Council Meetings are being conducted via teleconference to limit in-person attendance at meetings of the City of Ontario City Council and Housing Authority.

Members of the public were advised to utilize alternative measures to view the City Council meetings and/or to address the Mayor and City Council Members.

The meeting was live broadcast on local cable Channel 3, as well as internet live streamed at www.ontarioca.gov/Agendas/CityCouncil.

ROLL CALL

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

Also present were City Manager/Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran and Assistant City Clerk/Assistant Secretary Claudia Y. Isbell (all participating via teleconference).

The Pledge of Allegiance was led by Council Member Dorst-Porada.

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, City Attorney Duran announced the matter for discussion, as listed on the agenda, and the City Council recessed to Closed Session at 9:37 a.m. for discussion of the following:

- GC 54656.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION Robles, et al. v. City of Ontario et al., Case No. CIVDS2007038

CALL TO ORDER

Mayor Leon called the City Council and Ontario Housing Authority meetings to order at 10:57 a.m.

REPORT ON CLOSED SESSION

City Attorney Duran stated there was no reportable action.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 10:57 a.m.

Respectfully submitted,

_____
CLAUDIA Y. ISBELL, ASSISTANT CITY CLERK/
ASSISTANT SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
MARCH 16, 2021
(Not official until approved)

JOINT MEETINGS

Regular meetings of the Ontario City Council/Ontario Housing Authority were held on Tuesday, March 16, 2021, at the Ontario City Hall, 303 East B Street, Ontario, California.

CALLED TO ORDER

Mayor Leon called the Joint City Council and Ontario Housing Authority meetings to order at 5:36 p.m.

SPECIAL AND URGENT ANNOUNCEMENT

In accordance with the Governor's Declarations of Emergency for the State of California (Executive Orders N-25-20 and N-29-20), the Ontario City Council Meetings are being conducted via teleconference to limit in-person attendance at meetings of the City of Ontario City Council and Housing Authority.

Members of the public were advised to utilize alternative measures to view the City Council meetings and/or to address the Mayor and City Council Members.

The meeting was live broadcast on local cable Channel 3, as well as internet live streamed at www.ontarioca.gov/Agendas/CityCouncil.

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 (all participating via teleconference)
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 (all participating via teleconference).

CLOSED SESSION

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, City Attorney Duran announced the matters for discussion, as listed on the agenda, and the City Council recessed to Closed Session at 5:40 p.m. for discussion of the following:

- GC 54957.6, CONFERENCE WITH LABOR NEGOTIATORS
  Agency designated representatives: City Manager or his designee; Employee organization: American Federation of State, County and Municipal Employees (AFSCME)

- GC 54656.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
  City of Ontario v. Culhane, Riverside Superior Court Case No. RIC1901791

- GC 54656.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
  Robles, et al. v. City of Ontario et al., Case No. CIVDS2007038

CALL TO ORDER – OPEN SESSION

Mayor Leon called the City Council and Ontario Housing Authority meetings to order at 6:55 p.m.

URGENCY ITEM

Mayor Leon indicated the City Manager declared a State of Emergency on Tuesday, March 16, 2021, after the posting of the agenda. The Mayor explained that the proclamation required ratification by the City Council and requested City Council add this as an urgency matter to this agenda.

City Attorney Duran provided further details requiring the ratification of the City Manager's proclamation of a State of Emergency.

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman and carried by unanimous roll call vote of those present, to add the following item to the agenda:

A RESOLUTION RATIFYING THE PROCLAMATION OF A LOCAL EMERGENCY

Mayor Leon asked the City Clerk to read the resolution title into the record.

RESOLUTION NO. 2021-024 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PROCLAIMING THE EXISTENCE OF A LOCAL EMERGENCY AND DIRECT THE EMERGENCY ORGANIZATION OF THE CITY OF ONTARIO TO TAKE THE NECESSARY STEPS FOR THE PROTECTION OF LIFE, HEALTH AND SAFETY IN THE CITY OF ONTARIO.

MOTION: Moved by Council Member Bowman, seconded by Council Member Dorst-Porada and carried by unanimous roll call vote of those present, to adopt Resolution No. 2021-024.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor pro Tem Wapner.

INVOCATION

Mayor Leon led a moment of silent reflection in lieu of the Invocation.

REPORT ON CLOSED SESSION

City Attorney Duran stated there was no reportable action.

PUBLIC COMMENTS

Assistant City Clerk Isbell reported two emailed comments as follows:

Eartha Walker, regarding illegal street vendors.

Citlali Guzman, regarding planting trees.

Assistant City Clerk Isbell further reported there were two callers as follows:

Citlali Guzman, spoke on her desire to plant trees throughout the City of Ontario.

D'Andre Lampkin, commended City staff for their response to the explosion that occurred earlier in the day.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

CONSENT CALENDAR

MOTION: Moved by Council Member Bowman, seconded by Council Member Valencia and carried by unanimous roll call vote of those present, to approve the Consent Calendar as presented.

1. APPROVAL OF MINUTES

City Council approved Minutes for the regular meeting of the City Council and Housing Authority of February 16, 2021.

2. BILLS/PAYROLL

City Council approved **Bills** for the period February 18, 2021 through February 25, 2021 in the amount of $13,696,834.11 and **Payroll** for the period January 31, 2021 through February 13, 2021 in the amount of $3,447,593.88 when audited by the Finance Committee.

3. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARSONS TRANSPORTATION GROUP, INC. FOR THE MOUNTAIN AVENUE AND HOLT BOULEVARD INTERSECTION WIDENING PROJECT

The City Council approved an amendment to the Professional Services Agreement with Parsons Transportation Group, Inc. of Ontario, California, to provide additional engineering design and right-of-way services for the Mountain Avenue and Holt Boulevard Intersection Widening Project (Project) for the amount of $30,000, plus a 20% contingency of $6,000 for a revised total authorized expenditure of $837,089; and authorize the City Manager to execute said amendment and future amendments within the authorization limits.

4. APPROVAL OF A ONE-YEAR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ONTARIO AND THE ASSOCIATION OF ONTARIO MANAGEMENT EMPLOYEES

The City Council approved a one-year Memorandum of Understanding (MOU) regarding wages, hours, and other terms and conditions of employment between the City of Ontario (City) and employees represented by the Association of Ontario Management Employees (AOME); and authorize the City Manager to make any non-substantive changes which may be necessary to implement the agreement.

5. APPROVAL OF A ONE-YEAR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ONTARIO AND THE TEAMSTERS LOCAL 1932

The City Council approved a one-year Memorandum of Understanding (MOU) regarding wages, hours, and other terms and conditions of employment between the City of Ontario (City) and employees represented by the Teamsters Local 1932; and authorize the City Manager to make any non-substantive changes which may be necessary to implement the agreement.

6. AUTHORIZE THE PURCHASE OF COMPUTER EQUIPMENT FOR DATA BACKUP

The City Council authorized the purchase of computer equipment required for the City's data backup solution from Sidepath, Inc. of Laguna Hills, California, in the amount of $147,252 with the terms and conditions of the National Association of State Procurement Officials (NASPO) Cooperative Contract MNWNC-108.

7. 2020 GENERAL PLAN ANNUAL PROGRESS REPORT AND 2020 HOUSING ELEMENT ANNUAL PROGRESS REPORT

The City Council considered and adopted a resolution authorizing Staff to transmit the 2020 General Plan Annual Progress Report, which includes the 2020 Housing Element Annual Progress Report, to the California Department of Housing and Community Development and the Governor's Office of Planning and Research.

RESOLUTION NO. 2021-023 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE 2020 GENERAL PLAN ANNUAL PROGRESS REPORT (FILE NO. PADV21-002), WHICH INCLUDES THE HOUSING ELEMENT ANNUAL PROGRESS REPORT, AND AUTHORIZING STAFF TO SUBMIT THE REPORTS TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE GOVERNOR'S OFFICE OF PLANNING AND RESEARCH.

8. A PROFESSIONAL SERVICES AGREEMENT WITH STETSON ENGINEERS INC. FOR THE MULTI-AGENCY WASTEWATER AND RECYCLED WATER REGULATORY COMPLIANCE REVIEW

The City Council approved a Professional Services Agreement, subject to non-substantive changes, with Stetson Engineers Inc., of Covina, California, for the Multi-Agency Wastewater and Recycled Water Regulatory Compliance Review, in the amount of $108,455, plus a contingency of $50,000 for a total amount of $158,455; and authorized the City Manager to execute the agreement and any future amendments within the authorization limits.

9. A DESIGN SERVICES AGREEMENT WITH HAZEN AND SAWYER FOR THE DESIGN OF ADVANCED METERING INFRASTRUCTURE

The City Council approved and authorized the City Manager to execute a Design Services Agreement (on file in the Records Management Department) with Hazen and Sawyer Corporation, of Irvine, California, for final design of the Advanced Metering Infrastructure (AMI Technology) Project. OMUC Contract UT1053 in the amount of $55,993 plus a 15% contingency of $8,399 for a total amount of $64,392.

PUBLIC HEARINGS

10. A PUBLIC HEARING TO AMEND THE DOWNTOWN CIVIC CENTER PLANNED UNIT DEVELOPMENT ("DCCPUD") AMENDING CERTAIN PROVISIONS TO: [1] BRING THE DCCPUD INTO CONSISTENCY WITH THE POLICY PLAN (GENERAL PLAN) COMPONENT OF THE ONTARIO PLAN AND CITY'S DEVELOPMENT CODE; [2] AMEND CERTAIN LAND USE AND DEVELOPMENT STANDARDS APPLICABLE TO BLOCKS A1 AND C1,

INCLUDING BUT NOT LIMITED TO ALLOWING FOR GROUND FLOOR RESIDENTIAL LAND USES, AT GRADE STAND-ALONE PARKING STRUCTURES, AND AN INCREASE IN THE MAXIMUM HEIGHT OF BUILDING ELEMENT PROJECTIONS (FROM 60 FEET TO 65 FEET), REVISION TO ALLOW VEHICULAR ACCESS POINTS, AND MODIFY MINIMUM PARKING STALL AND DRIVE AISLE STANDARDS; AND [3] MAKE VARIOUS REVISIONS NECESSARY FOR INTERNAL CONSISTENCY OF THE DCCPUD

The City Council introduced and waived further reading of an ordinance approving File No. PUD20-002, amending the Downtown Civic Center Planned Unit Development.

ORDINANCE NO. 3180 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD20-002, AN AMENDMENT TO THE DOWNTOWN CIVIC CENTER PLANNED UNIT DEVELOPMENT ("DCCPUD"), AMENDING CERTAIN PROVISIONS TO: [1] BRING THE DCCPUD INTO CONSISTENCY WITH THE POLICY PLAN (GENERAL PLAN) COMPONENT OF THE ONTARIO PLAN AND CITY'S DEVELOPMENT CODE; [2] AMEND CERTAIN LAND USE AND DEVELOPMENT STANDARDS APPLICABLE TO BLOCKS A1 AND C1, INCLUDING BUT NOT LIMITED TO ALLOWING FOR GROUND FLOOR RESIDENTIAL LAND USES, AT GRADE STAND-ALONE PARKING STRUCTURES, AND AN INCREASE IN THE MAXIMUM HEIGHT OF BUILDING ELEMENT PROJECTIONS (FROM 60 FEET TO 65 FEET), REVISION TO ALLOW VEHICULAR ACCESS POINTS, AND MODIFY MINIMUM PARKING STALL AND DRIVE AISLE STANDARDS; AND [3] MAKE VARIOUS REVISIONS NECESSARY TO INTERNAL CONSISTENCY OF THE DCCPUD AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: 1048-547-29, 1048-547-36, 1048-553-15, 1048-551-13, 1048-552-13, 1048-553-13, 1048-547-33, 1048-547-34, 1048-553-02, 1048-553-04, 1048-547-30, 1048-552-21, 1048-547-32, 1048-551-11, 1048-547-94, 1048-553-11, 1048-547-31, 1048-553-06, 1048-551-10, 1048-547-39, 1048-547-43, 1048-553-09, 1048-553-10, 1048-547-42, 1048-551-12, 1048-553-16, 1048-553-05, 1048-553-14, 1048-552-17, 1048-552-17, 1048-553-17, 1048-547-40, 1048-553-08, 1048-554-11, 1048-553-12, 1048-547-44, 1048-547-37, 1048-553-07, 1048-547-35, 1048-553-01, 1048-553-03, 1048-547-87, 1048-548-30, 1048-547-81, 1048-547-88, 1048-547-69, 1048-547-76, 1048-548-40, 1048-547-47, 1048-547-89, 1048-547-64, 1048-547-85, 1048-547-51, 1048-547-77, 1048-547-38, 1048-547-70, 1048-547-45, 1048-548-12, 1048-547-71, 1048-547-73, 1048-547-56, 1048-547-92, 1048-547-83, 1048-548-02, 1048-547-49, 1048-547-46, 1048-547-48, 1048-547-91, 1048-548-24, 1048-547-41, 1048-548-47, 1048-547-90, 1048-548-54, 1048-548-15, 1048-547-72, 1048-547-82, 1048-547-50, 1048-547-68, 1048-547-84, 1048-547-86, 1048-547-52, 1048-548-48, 1048-547-80, 1048-547-78, 1048-548-32, 1048-547-55, 1048-547-66, 1048-548-21, 1048-548-23, 1048-547-62, 1048-548-06, 1048-547-63,

1048-547-79,	1048-547-61,	1048-547-59,	1048-548-25,	1048-548-31,
1048-548-20,	1048-548-05,	1048-548-46,	1048-548-03,	1048-548-41,
1048-548-42,	1048-548-27,	1048-547-60,	1048-548-34,	1048-548-43,
1048-548-26,	1048-548-01,	1048-547-67,	1048-548-29,	1048-547-65,
1048-548-04,	1048-548-22,	1048-547-54,	1048-548-07,	1048-548-44,
1048-547-75,	1048-547-57,	1048-547-58,	1048-548-45,	1048-547-27,
1048-547-21,	1048-547-23,	1048-547-15,	1048-552-15,	1048-548-08,
1048-548-11,	1048-548-49,	1048-547-16,	1048-548-52,	1048-548-18,
1048-548-13,	1048-548-09,	1048-548-53,	1048-548-28,	1048-547-22,
1048-547-12,	1048-548-39,	1048-552-22,	1048-552-22,	1048-548-36,
1048-548-19,	1048-547-18,	1048-548-33,	1048-548-35,	1048-552-18,
1048-548-16,	1048-547-13,	1048-547-20,	1048-548-38,	1048-547-24,
1048-548-10,	1048-548-50,	1048-548-51,	1048-548-17,	1048-547-25,
1048-547-26,	1048-547-14,	1048-548-37,	1048-552-14,	1048-552-14,
1048-548-14,	1048-547-19,	1048-547-11,	1048-547-17,	1048-547-09,
1048-547-10,	1048-547-04,	1048-547-08,	1048-547-07,	1048-547-05,
1048-547-06.				

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department.

There were no written communications and two callers on the line to speak to the item. Mayor Leon opened the public hearing asking those persons interested in this item to speak.

Juan Olmedo, member of the Southwest Regional Council of Carpenters, thanked Council and staff for bringing job opportunities to residents.

D'Andre Lampkin, thanked Council for bringing job opportunities to residents and commended them for the continuous development of Ontario's downtown.

Hearing no one else, Mayor Leon closed the public hearing.

MOTION: Moved by Council Member Bowman, seconded by Council Member Valencia, and carried by unanimous roll call vote of those present to introduce Ordinance No. 3180.

11. A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND CALIFORNIA CAPITAL, INC. FOR THE DEVELOPMENT OF FOUR SINGLE-FAMILY HOUSING UNITS LOCATED AT 1325-1329 SOUTH EUCLID AVENUE (APNS: 1049-531-01 AND 1049-531-02)

The Board of the Ontario Housing Authority ("Authority"):

A. Adopted the attached resolution approving the Disposition and Development Agreement ("Agreement") between the Authority and California Capital, Inc. ("Developer") (on file with the Records Management Department); and
B. Authorized the Executive Director or his designee to sign all documents necessary to implement the Agreement.

RESOLUTION NO. OHA-102 A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND CALIFORNIA CAPITAL, INC. FOR THE DEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED AT 1325/1329 SOUTH EUCLID AVENUE, ONTARIO (APNS: 1049-531-01 AND 1049-531-02)

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department.

There were no written communications and no callers on the line to speak to the item. Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one, Mayor Leon closed the public hearing.

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman, and carried by unanimous roll call vote of those present to adopt Resolution No. OHA-102.

STAFF MATTERS

City Manager Ochoa did not have any announcements.

COUNCIL COMMENTS

Mayor pro Tem Wapner made no comments.

Council Member Bowman made no comments.

Council Member Dorst-Porada encouraged residents to be safe and continue wearing face masks.

Council Member Valencia made no comments.

Mayor Leon commended Ontario Fire and Police departments for their courage and responsiveness to the explosion in the City.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:20 p.m. to the next regular meetings to be held on Tuesday, April 6, 2021.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **CONSENT CALENDAR**
Department: Fire Department Prepared By: Janny Phan Staff Member Presenting: Ray Gayk, Fire Chief Reviewed By: Jordan T Villwock Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: PRE-AUTHORIZED LIST OF VENDORS TO PROVIDE SPECIALIZED PERSONAL PROTECTIVE EQUIPMENT, MAINTENANCE AND SPECIALIZED SERVICE

RECOMMENDATION: That the City Council approve pre-authorized vendors to provide personal protective equipment and maintenance services for emergency equipment and services for the Fire Department.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: There is no direct fiscal impact with the approval of this vendor list. The designation of pre-authorized vendors to provide specialized safety equipment, maintenance and specialized services does not commit the City to any specific level of future expenditures with these vendors. Expenditures for each vendor, and in total for each fiscal year, will not exceed the Fire Department's appropriations limits established by the City Council.

BACKGROUND & ANALYSIS: The Fire Department utilizes specialized personal protective equipment (PPE) and specialized services that allows firefighters to safely perform their duties during all-risk emergency responses. The Fire Department must ensure that all fire personnel have the appropriate equipment, personal protective equipment and that all PPE is maintained in an appropriate manner. Due to the specialized nature of the equipment and services, as well as the specialized cleaning and maintenance that must be performed in a timely manner, there are a limited number of vendors that can provide these goods and services.

For these reasons, it is not cost-effective for the City to follow its standard purchasing procedures to solicit bids or issue requests for proposals. Establishing a pre-authorized list of vendors will facilitate the following:

- Ensure that necessary equipment and PPE is available when needed;
- Services are performed by qualified vendors familiar with firefighter PPE; and
- Better maintenance because pre-authorized vendors are familiar with the service and repair history of the Department's firefighting PPE.

The list of recommended vendors was developed based upon input from the manufactures of all current

firefighter PPE utilized by Ontario Fire Department, as well as the City's past procurement experience. If approved, purchase orders (within approved budgeted amounts) will be issued to each vendor, without quotes for individual equipment or services for expeditious ordering at current market rates.

Ontario Municipal Code Section 2-6.23(b) and 2-6.23(c) authorizes the Purchasing Officer to make purchases without following the standard purchasing procedures whenever (1) the goods can be obtained from only one source, and/or (2) a breakdown in machinery, equipment, or an essential services which requires immediate purchase of supplies and equipment to protect public health, safety, and welfare generates circumstances that a competitive bid would thus be undesirable, impractical, or impossible.

Sole Source Vendors	**Non-Sole Source Vendors**
Stryker Sales Corporation	5.11 Tactical
	All Safe Industries
	Bound Tree Medical, LLC
	Chino Mower and Engine Service
	Diamondback Fire and Rescue Equipment
	HILTI Store
	Life-Assist, Inc.
	LA Police Gear
	Northrop Grumman Remotec
	Parkes, Kevin
	Training Center Pros, Inc. (EOD-Gear)

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **CONSENT CALENDAR**
Department: Human Resources Prepared By: Jeannette F Chavez Staff Member Presenting: Angela C. Lopez, Executive Director Human Resources Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: APPROVAL OF SIDE LETTERS AMENDING THE MEMORANDUM OF UNDERSTANDING FOR THE ONTARIO POLICE MANAGEMENT GROUP IN ACCORDANCE WITH MODIFICATIONS REQUESTED BY CALPERS

RECOMMENDATION: That the City Council, by motion, adopt a resolution to approve side letters amending the Memorandum of Understanding (MOU) in accordance with modifications requested by the California Public Employees Retirement System (CALPERS) to ensure that pension benefits are properly calculated.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The recommended action has no fiscal impact as the collective bargaining agreement modifications coincide with the City's current practice of reporting special compensation.

BACKGROUND & ANALYSIS: In conjunction with the adopted resolutions presented to the City Council on April 6, 2021, amending the Memorandum of Understanding (MOU) for the Ontario Professional Firefighters Association (OFFA) and the Ontario Fire Management Group (OFMG), the proposed Resolution for the Ontario Police Management Group (OPMG) is recommended as a result of the review from CalPERS of reportable compensation for recent retirees in accordance with the California Public Employees' Retirement Law (PERL).

In addition to the modifications presented for OFFA and OFMG, CalPERS instructed the City to make similar modifications to certain sections in the OPMG labor agreement to coincide with the City's practice in reporting special compensation to CalPERS. The modifications requested in the proposed Resolution and side letters is to include language to identify the calculation of special compensation, including the calculation for Educational Incentive and Longevity Pay.

To ensure compliance, the City met with OPMG to discuss the proposed changes and approve the modifications. The Resolution and side letters will help ensure that certain special compensation items reported by the City to CalPERS are included in the calculation of pension benefits for recent retirees as intended.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING SIDE LETTERS AMENDING THE MEMORANDUM OF UNDERSTANDING FOR EMPLOYEES REPRESENTED BY THE ONTARIO POLICE MANAGEMENT GROUP.

WHEREAS, CalPERS conducted a review of the reported compensation for several retiring City employees and instructed the City to make certain modifications to the Memorandum of Understanding in order to ensure that reported special compensation items were included in pension benefit calculations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

SECTION 1. That the City Council hereby approves side letters amending the Memorandum of Understanding between the Ontario Police Management Group and the City of Ontario, incorporated herein by reference and enclosed at Exhibits “A” through “C” (“Side Letters”), which incorporate the modifications requested by CalPERS.

SECTION 2. That the City Council hereby authorizes the City Manager to execute said side letters on behalf of the City of Ontario.

SECTION 3. 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 20th day of April 2021.

_____
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. 2021-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 20, 2021 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. 2021-_____ duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

Side Letter of Agreement
To the Current Memorandum of Understanding
Between the City of Ontario and
Ontario Police Management Group

The City of Ontario (City) and the Ontario Police Management Group agree to modify Article X. Compensation by incorporating Section 10.11 Special Compensation Calculations, of the applicable Memorandum of Understanding covering the period of January 1, 2018 through June 30, 2022.

Section 10.11 Special Compensation Calculations

For compensation reported to CalPERS, Shift Differential, Training Pay, Airport Operations Bureau compensation, and all skill compensation items identified above are calculated on an employee's base pay plus holiday worked compensation as defined in Sections 15.02 and 15.03.

Approved:

Scott Ochoa, City Manager City of Ontario	Date
Sean Hardin, President Ontario Police Management Group	Date

EXHIBIT "B"

Side Letter of Agreement
To the Current Memorandum of Understanding
Between the City of Ontario and
Ontario Police Management Group

The City of Ontario (City) and the Ontario Police Management Group agree to modify Section 11.10 Educational Incentive Program, of the applicable Memorandum of Understanding covering the period of January 1, 2018 through June 30, 2022.

Section 11.10 Educational Incentive Program

The following educational incentive compensation program will apply:

Classification	Highest Education Completed	Additional Pay Percentage
Police Sergeant/ Police Lieutenant	AA Degree	2.25%
All OPMG Classifications	BA Degree	4.5%
All OPMG Classifications	Master's/Other Post-Graduate Degree	6.75%

Employees shall receive no more than 6.75% educational incentive compensation. Educational incentive reported to CalPERS is calculated using an employee's base pay plus holiday worked compensation as defined in Sections 15.02 and 15.03 and Management Incentive Pay as defined in Section 10.10.

Approved:

_____ _____

Scott Ochoa, City Manager
City of Ontario

Date

_____ _____

Sean Hardin, President
Ontario Police Management Group

Date

EXHIBIT "C"

Side Letter of Agreement
To the Current Memorandum of Understanding
Between the City of Ontario and
Ontario Police Management Group

The City of Ontario (City) and the Ontario Police Management Group agree to modify Section 11.14 Longevity Pay, of the applicable Memorandum of Understanding covering the period of January 1, 2018 through June 30, 2022.

Section 11.14 Longevity Pay

A. Employees shall receive Longevity Pay as follows:

	Percentage of Base Salary		
Years of Completed Service	**Police Sergeant**	**Police Lieutenant**	**Police Captain**
15	None	None	None
20	2.5%	None	None
25	5%	2.5%	2.5%
27	6%	3.5%	3.5%
29	7%	4.5%	4.5%

B. After October 14, 2007, employees that promote into the unit shall retain their previous longevity pay less 7.5%. Such new employees shall only be eligible to receive increases in Longevity pay in accordance with the schedule contained in Section 11.14(A).

C. Longevity Pay reported to CalPERS is calculated using an employee's base pay plus holiday worked compensation as defined in Section 15.02. For employees in the Police Captain classification, the number of hours paid also includes management incentive pay as defined in Section 10.10. and holiday worked compensation as defined in Section 15.03.

Approved:

Scott Ochoa, City Manager
City of Ontario

Date

Sean Hardin, President
Ontario Police Management Group

Date

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **CONSENT CALENDAR**
Department: Investments & Revenue Resources Prepared By: Jason M Jacobsen Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Jason M Jacobsen, Armen Harkalyan Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 59 (GATEWAY SERVICES)

RECOMMENDATION: That the City Council consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 59 (Gateway Services).

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 to fund City services required by the Gateway Services mixed-use development is estimated to generate approximately $387,659, per year, for residential properties; and $53,091, per year, for commercial properties. As a result, this project will not impact the City's General Fund. Additionally, the project developer will fund all required facilities for this project. As such, Mello-Roos financing will not be needed to fund City facilities, and bonds will not be issued for this development. City Council approval will be required in future years to process annual special tax levies necessary for the ongoing funding of City services for the development.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 (the Act) provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts (CFDs) for the purpose of levying special taxes to fund governmental services.

At a public hearing conducted by the City Council on April 6, 2021, the City Council adopted resolutions which established Community Facilities District No. 59 (Gateway Services); authorized the levy of special taxes within the Community Facilities District; and called a special election to submit to the qualified electors of the Community Facilities District the combined proposition to levy a special tax within the Community Facilities District; and to establish an appropriations limit for the Community Facilities District. On that date, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act. Adoption of the ordinance authorizing the levy of special taxes within the Community Facilities District

will conclude the formation process for City of Ontario Community Facilities District No. 59 (Gateway Services).

The Gateway Services project addresses the development of approximately 54.6 acres located west of Hamner Avenue, east of Cleveland Avenue, north of Edison Avenue and south of Ontario Ranch Road. At build out, the development is projected to include 224 residential units (comprised of 137 attached units and 87 detached units) and 156,150 square feet of commercial space.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 59 (GATEWAY SERVICES).

WHEREAS, on February 16, 2021, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 59 (Gateway Services) and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 59 (Gateway Services) (the "Community Facilities District") and to finance certain services (the "Services"); and

WHEREAS, on April 6, 2021, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 59 (Gateway Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation") and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 59 (Gateway Services)," which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on April 6, 2021, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies special taxes 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 Exhibit B to the Resolution of Formation (the "Rate and Method of Apportionment"). The special taxes are hereby levied commencing in fiscal year 2021-22 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

SECTION 2. 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 Rate and Method of Apportionment.

SECTION 3. The special tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method of Apportionment.

SECTION 4. The proceeds of the special tax shall only be used to pay, in whole or in part, the cost of providing the Services and incidental expenses pursuant to the Act.

SECTION 5. 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 6. 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 7. 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.

The City Clerk of the City of Ontario shall certify as to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____
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. 3181 was duly introduced at a regular meeting of the City Council of the City of Ontario held April 6, 2021 and adopted at the regular meeting held April 20, 2021 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. 3181 duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021 and that Summaries of the Ordinance were published on April 13, 2021 and April 27, 2021, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Nicole Alvarez Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: AUTHORIZE THE PURCHASE OF POLICE EQUIPMENT

RECOMMENDATION: That the City Council approve the purchase and enhancement of forty one (41) Automated License Plate Recognition (ALPR) cameras.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The Fiscal Year 2020-21 Adopted Budget includes appropriations for the expansion of an Automated License Plate Recognition System. The estimated annual cost of the subscription-based system is $2,500 per camera, $5,637.50 for implementation and $12,300 for extended retention for a total of $120,437.50. If approved, appropriations for the recurring annual subscription cost of $2,500 (per camera) will be included in future annual budgets.

BACKGROUND & ANALYSIS: The Ontario Police Department and Information Technology Department intend to purchase and enhance the Automated License Plate Recognition (ALPR) system and deploy throughout the City. The subscription-based ALPR system will include 41 pole-mounted cameras that will be used by the Police Department to recover stolen vehicles, identify wanted persons, collect evidence for criminal prosecution, and monitor “Amber Alerts.”

The Ontario Police Department utilizes the FLOCK License plate reader system daily. The most common use of the system is automated alerting of stolen vehicles. When one of the cameras detects a stolen vehicle plate, the Ontario police dispatch center is immediately notified and a picture of the plate and vehicle is sent for confirmation. To date, with the 39 cameras currently part of the system, OPD has received 222 "hits" and recovered 47 stolen vehicles. Another benefit to the FLOCK system is the investigative value to apprehend suspects in crimes. The suspect(s) license plate information can be entered into the FLOCK system where a search can be completed. If the plate has been previously captured on any FLOCK camera an alert will appear. The purchase of the proposed 41 cameras will double the amount of automated license plate recognition readers and increase public safety within the City.

Subscription Details	Price	QTY	Subtotal
Annual Subscription Price per year	$2,500.00	41	$102,500.00
Automatic License Plate Reader (ALPR) Solar or DC Power 2 Year Maintenance Warranty	$0.00	41	$0.00
Hosting & Analytics Cloud Hosting Unlimited User Licenses Hotlist Integration & Alerts Neighborhood Camera Integration Ongoing Software Enhancements	$0.00	41	$0.00
Implementation Camera Setup Shipping & Handling	$5,637.50	1	$5,637.50
Extended Retention (1 year) All data after 30 days and up to 1 year will be stored in Amazon Glacier storage.	$300.00	41	$12,300.00
		Total	**$120,437.50**

Special terms:

- Flock will install all 41 cameras for the price of $5637.50 (a 45% discount)

Today's Date - Mar 03, 2021
This proposal expires in 30 days.

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Michael Johnson Staff Member Presenting: Tito Haes, Executive Director Public Works Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: AUTHORIZE THE PURCHASE OF FLEET VEHICLES

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the cooperative purchase and delivery of two F350 Flat Bed trucks in the amount of $137,899 for the Parks and Maintenance Department, one Ford F450 Stake Bed truck in the amount of $75,080 for the Parks and Maintenance Department, and one Ford F350 Utility truck in the amount of $57,972 for the Utilities Department from National Auto Fleet Group of Watsonville, California consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.
B. Authorize the cooperative purchase and delivery of one John Deere 410L Backhoe in the amount of $132,414 for the Utilities Department from RDO Equipment Company of Riverside, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 032515-JDC.
C. Authorize the cooperative purchase and delivery of three BMW Police Motorcycles in the amount of $105,745 for the Police Department from Long Beach BMW Motorcycles of Long Beach, California, consistent with the terms and conditions of the Los Angeles County Sheriff Contract PO-SH-20008660-2, Bid RFB-IS-20200851-1.
D. Authorize the cooperative purchase and delivery of one CNG Peterbilt Refuse Automated Side Loading truck in the amount of $314,837 for the Integrated Waste Department from Rush Truck Centers of Pico Rivera, California consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 060920-PMC.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2020-21 Adopted Budget includes appropriations of $465,000 in the Equipment Services Fund for the purchase of replacement vehicles, $60,000 in the Sewer Operating Fund for one additional vehicle, and $315,000 in the Integrated Waste Impact Fee (DIF) Fund for one additional vehicle. The total cost of the vehicles recommended for purchase is $823,947.

BACKGROUND & ANALYSIS: The vehicles recommended for replacement in this action have outlived their useful life and it is no longer cost effective to maintain them. They are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment, while ensuring safe and reliable operations. This

procurement action will result in the replaced vehicles being available to surplus, with any auction sale proceeds returning to the Equipment Service Fund.

The one additional vehicle requested for the Utilities Department and the additional vehicle requested for Integrated Waste are a result of growth throughout the City.

In general conformation with the provisions of Government Code Section 54201 through 54204, Ontario Municipal Code Section 2-6.29 allows for the purchase of supplies and equipment through cooperative purchasing programs, pursuant to California Government Code Section 6502 and City of Ontario Resolution No. 91-141. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain lower pricing than otherwise might be possible.

QUANTITY	TYPE	DEPARTMENT	PRICE
2	Ford F350 Flatbeds	PKS/MT	$137,899
1	Ford F450 Stake Bed	PKS/MT	$75,080
1	Ford F350 Utility	PU	$57,972
1	John Deere 410L Backhoe	PU	$132,414
3	BMW Motorcycles	PD	$105,745
1	Peterbilt Refuse Roll Off Trucks	IW	$314,837
9 Total		**Total**	**$823,947**

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **PUBLIC HEARINGS**
Department: Development Administration Prepared By: Derrick E Womble Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: **A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP, TO DEFER THE COMMENCEMENT OF CERTAIN STREET IMPROVEMENTS AND ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20265, A 21.10 ACRE PROPERTY LOCATED ON THE EAST SIDE OF MILL CREEK AVENUE, APPROXIMATELY 670 FEET SOUTH OF ONTARIO RANCH ROAD, WITHIN THE STANDALONE RESIDENTIAL LAND USE DISTRICT OF THE RICH-HAVEN SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27**

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving the First Amendment to the Development Agreement (File No. PDA16-003) between the City of Ontario and GDCI-RCCD 2, LP, to defer the commencement of certain street improvements and establish the terms and conditions for the development of Tentative Tract Map 20265, a 21.10 acre property located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven 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
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 proposed First Amendment to the Development Agreement (File No. PDA16-003) will not have a direct impact to the City's budget. The original Development Agreement provides funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Rich-Haven Specific Plan development, thereby mitigating the increased costs associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No General City revenue will be used to support the Ontario Ranch development.

BACKGROUND & ANALYSIS: On December 4, 2007, the City Council approved the Rich-Haven

Specific Plan, File No. PSP05-004 ("Specific Plan") and certified the related Environmental Impact Report (State Clearinghouse No. 2006051081), which addressed the potential development of residential units and commercial/office.

On April 4, 2017, the City Council adopted Ordinance No. 3071, approving a Development Agreement (File No. PDA16-003) to establish the terms and conditions for the development of Tentative Parcel Map Nos. 19725 (File No. PMTT16-010) and 19741 (File No. PMTT16-011). Tentative Parcel Map 19725 is located at the southeast corner of Ontario Ranch Road and Mill Creek Avenue and subdivided 40.10 acres of land into 4 numbered lots and one lettered lot. Tentative Parcel Map 19741 is located at the southwest corner of Ontario Ranch Road and Hamner Avenue and subdivided 19.64 acres of land into 4 lots. To date, no development has occurred for either parcel and the properties remain vacant.

On March 19, 2019, the Owner submitted Tentative Tract Map 20265 (File No. PMTT19-006), which proposes to subdivide Lots 3 and 4 of the previously approved Tentative Parcel Map 19725. Tentative Tract Map 20265 subdivides approximately 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) for residential, public/private streets, landscaped neighborhood edges, and common open space purposes. The project site is located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan.

Additionally, as part of the development of Tentative Tract Map 20265, the Owner has requested to defer the landscape improvements along Mill Creek Avenue and Street "A", respectively, and the landscape, sidewalk, and multi-purpose trail improvements on Ontario Ranch Road (collectively, the "Deferred Street Improvements"). Staff has reviewed the request and concurs with the Owner that the deferral of the street improvements will allow for orderly development of Tentative Tract Map 20265 and Tentative Parcel Map 19725, ensuring a well-planned community. All other infrastructure and utility improvements required per the original Development Agreement on Mill Creek Avenue and Ontario Ranch Road will be constructed and completed by Owner as part of the development for Tentative Tract Map 20265.

The new tract map and deferment of certain street improvements necessitates an amendment (the "First Amendment") to the Development Agreement. The key points of the First Amendment are as follows:

- Owner shall make a cash security deposit with the City for the Deferred Street Improvements, which shall be the greater of (i) $655,458 or (ii) based on the latest Engineer's Cost Estimate approved by the City Engineer, prior to the Owner's request for the 100th certificate of occupancy for Tentative Tract Map 20265 or, three (3) years following the approval of the First Amendment, whichever occurs first;

- The Deferred Street Improvements shall be constructed, completed, and operational prior to Owner requesting the first occupancy for a non-residential unit or production unit for any such parcel map or tract map outside the limits of Tentative Tract Map 20265, but within the limits of Tentative Parcel Map 19725; and

- Per The Ontario Plan and Rich Haven Specific Plan, Owner shall maintain the minimum density requirement of 14 dwelling units per acre over the residential component, unless the density range is amended.

The terms of the original Development Agreement remain in full force and effect. The main points of the agreement continue to address funding for all new City expenses created by the project, which

includes: Development Impact Fees ("DIF") for construction of public improvements (i.e. streets, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District ("CFD") for the maintenance of public facilities.

In considering the application at their meeting on March 23, 2021, the Planning Commission found that the First Amendment to the Development Agreement was consistent with State law, The Ontario Plan, and the City's Development Agreement policies, previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC21-011 recommending City Council approval of the First Amendment to the Development Agreement with a 5-0 vote.

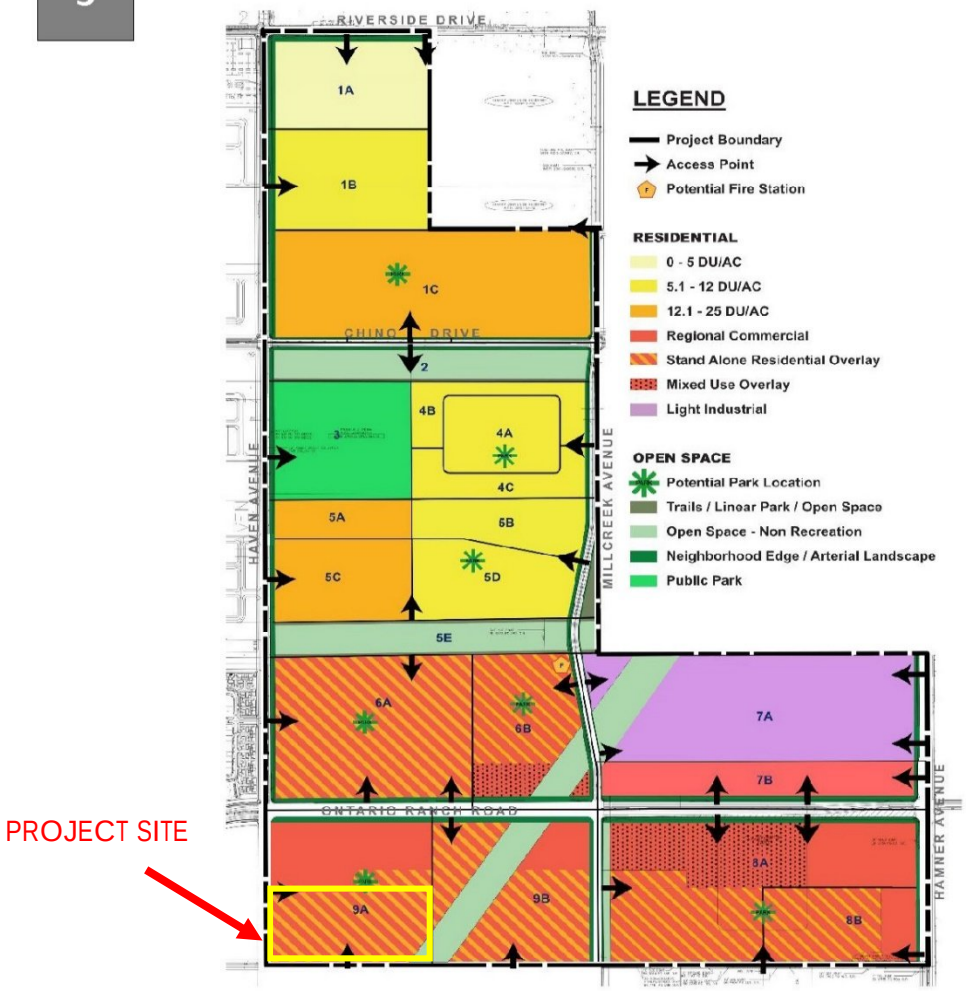
HOUSING ELEMENT COMPLIANCE: Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that, based on the facts and information contained in the Application and supporting documentation, 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 and, with approval of the related Specific Plan Amendment (File No. PSPA19-006), the proposed project will be consistent with the number of dwelling units and density (minimum 14 dwelling units per acre) within Planning Area 8A, as 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. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was adopted by the City Council on December 4, 2007. 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.

Exhibit "A"
Rich-Haven Specific Plan Proposed Land Use Map
(File No. PSPA19-006)

3 LAND USE

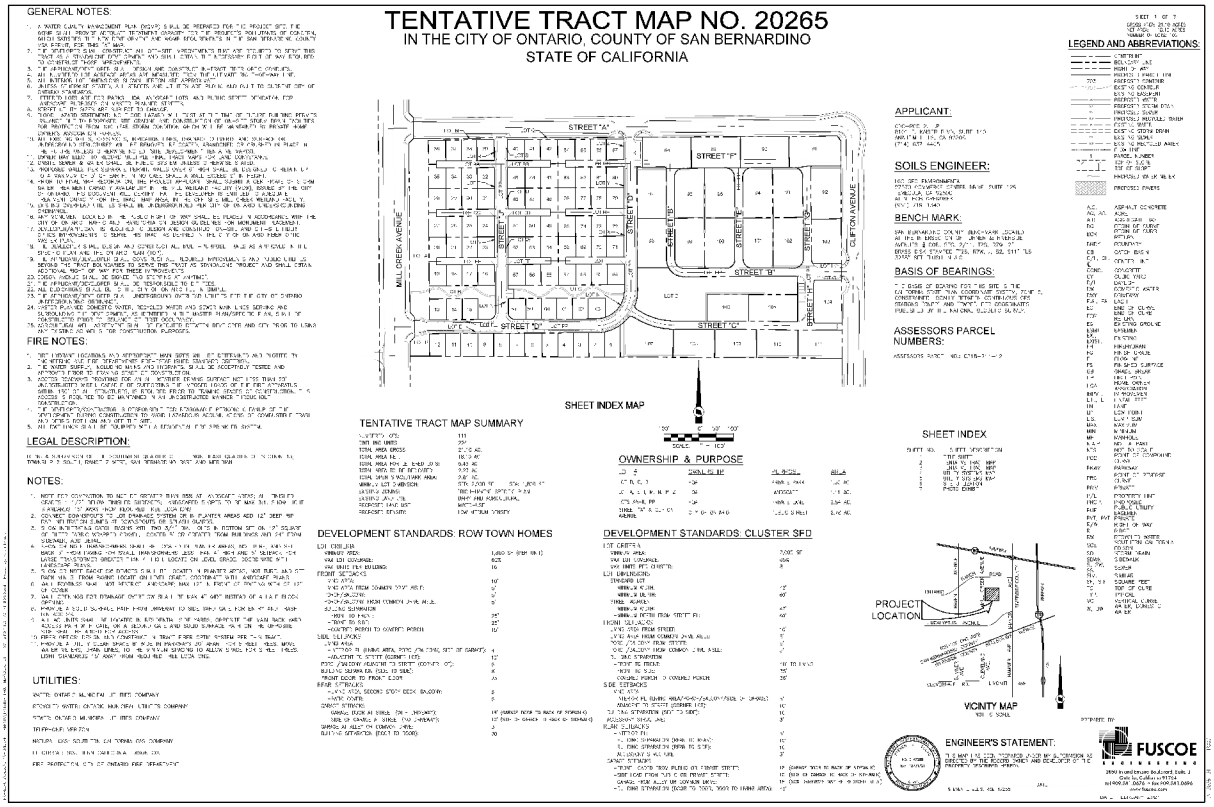


PROJECT SITE

* Circulation pattern for local streets within Specific Plan Area to be established at Tentative Tract Map submittal.
** Residential development along the frontage of Haven Avenue within Planning Areas 5A, 5C and 6A and residential development along the frontage of Ontario Ranch Road within Planning Areas 6A and 7 shall average a density of 18 to 25 dwelling units per acre to support Bus Rapid Transit (BRT) along Haven Avenue.
*** After full dedication of Master Plan streets and neighborhood edges, residential development within Planning Areas 6A + 9A and residential development within Planning Areas 6B + 9B shall meet a minimum net density of 14 dwelling units per acre.
The minimum density in Planning Areas 6A + 9A and Planning Areas 6B + 9B can be averaged between the two areas and shall be established at Tentative Tract submittal for each Planning Area.
**** Planning Area 7B shall have a minimum depth of 300 feet along Ontario Ranch Road measured from the back of the ROW and Neighborhood Edge.

RICH HAVEN SPECIFIC PLAN
LAND USE PLAN
FIGURE 3-1

Exhibit “B”
Tentative Tract Map 20265



CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

March 23, 2021

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

FILE NO: PDA16-003

SUBJECT: A First Amendment to the Development Agreement (File No. PDA16-003) between the City of Ontario and GDCI-RCCD 2, LP, to defer the commencement of certain street improvements and establish the terms and conditions for the development of Tentative Tract Map 20265 (File No. PMTT19-006), a 21.10 acre property located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan (APNs: 0218-652-27) **Submitted by GDCI-RCCD 2, LP. City Council action is required.**

PROPERTY OWNER: GDCI-RCCD 2, LP, a Delaware limited partnership

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RECOMMENDED ACTION: That the Planning Commission consider and recommend City Council adoption of an ordinance approving the First Amendment to the Development Agreement (File No. PDA16-003) between the City of Ontario and GDCI-RCCD 2, LP, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The project site is comprised of 21.10 acres of land located on the east side of Mill Creek Avenue, approximately 670 feet below Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan, and is depicted in Figure 1: Project Location.

PROJECT ANALYSIS:

(1) Background — On December 4, 2007, the City Council approved the Rich-Haven Specific Plan, File No. PSP05-004 ("Specific Plan") and certified the related Environmental Impact Report (State Clearinghouse No. 2006051081), which addressed the potential development of residential units and commercial/office

On April 4, 2017, the City Council adopted Ordinance No. 3071, approving a Development Agreement (File No. PDA16-003) to establish the terms and conditions for the development of

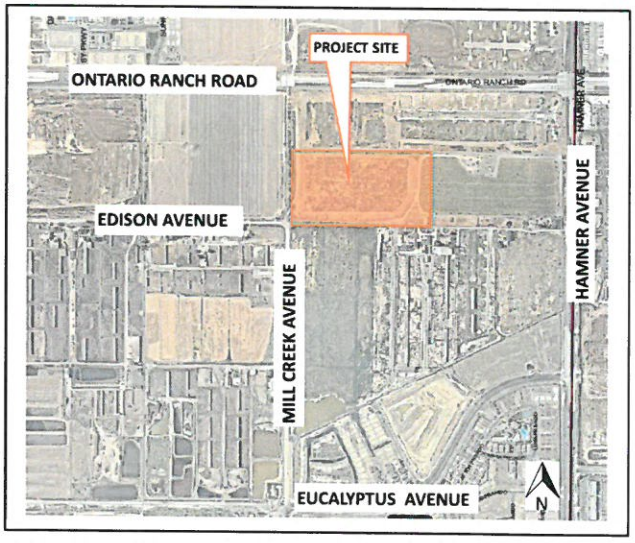


Figure 1: Project Location

Case Planner:	Derrick Womble, Administrative Officer
Planning Director Approval:	
Submittal Date:	04/08/2020

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	03/23/2021	Approval	Recommend
CC	04/20/2021		Final

Tentative Parcel Map Nos. 19725 (File No. PMTT16-010) and 19741 (File No. PMTT16-011). Tentative Parcel Map 19725 is located at the southeast corner of Ontario Ranch Road and Mill Creek Avenue and subdivided 40.10 acres of land into 4 numbered lots and one lettered lot. Tentative Parcel Map 19741 is located at the southwest corner of Ontario Ranch Road and Hamner Avenue and subdivided 19.64 acres of land into 4 lots. To date, no development has occurred for either parcel map and the properties remain vacant.

(2) Staff Analysis — On March 19, 2019, the Owner submitted new Tentative Tract Map 20265 (File No. PMTT19-006), which proposes to subdivide Lots 3 and 4 of the previously approved Tentative Parcel Map 19725. Tentative Tract Map 20265 subdivides approximately 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) for residential, public/private streets, landscaped neighborhood edges, and common open space purposes. The project site is located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan.

Additionally, as part of the development of Tentative Tract Map 20265, the Owner has requested to defer the landscape improvements along Mill Creek Avenue and Street "A", respectively, and the landscape, side walk, and multi-purpose trail improvements on Ontario Ranch Road (collectively, the "Deferred Street Improvements"). Staff has reviewed the request and concurs with the Owner that the deferral of the street improvements will allow for orderly development of Tentative Tract Map 20265 and Tentative Parcel Map 19725, respectively, ensuring a well-planned community. All other infrastructure and utility improvements required per the original Development Agreement, on Mill Creek Avenue and Ontario Ranch Road will be constructed and completed by Owner as part of the development for Tentative Tract Map 20265.

The new tract map and deferment of certain street improvements necessitates an amendment (the "First Amendment") to the Development Agreement. The key points of the First Amendment are as follows:

- Owner shall make a cash security deposit with the City for the Deferred Street Improvements, which shall be the greater of (i) $655,458 or (ii) based on the latest Engineer's Cost Estimate approved by the City Engineer, prior to the Owner's request for the 100th certificate of occupancy for Tentative Tract Map 20265 or, 3 years following the approval of the First Amendment, whichever occurs first.

- The Deferred Street Improvements shall be constructed, completed, and operational prior to Owner requesting the first occupancy for a non-residential unit or production unit for any such parcel map or tract map outside the limits of Tentative Tract Map 20265, but within the limits of Tentative Parcel Map 19725.

- Per The Ontario Plan and Specific Plan, Owner shall maintain the minimum density requirement of 14 dwelling units per acre over the residential component, unless the density range is amended.

The terms of the original Development Agreement remain in full force and effect. The main points of the agreement continue to address funding for all new City expenses created by the project, which includes: Development Impact Fees ("DIF") for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District ("CFD") for the maintenance of public facilities.

Staff finds that the First Amendment to the Development Agreement is 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 Development Agreement is 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
- 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 the New Model Colony

(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.

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.

  - H2-4 New Model Colony. We support a premier lifestyle community in the New Model Colony distinguished by diverse housing, highest design quality, and cohesive and highly amenitized neighborhoods.

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

- 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.

➢ CD1-3 Neighborhood Improvement. We require viable existing residential and non-residential neighborhoods to be preserved, protected, and enhanced in accordance with our land use policies.

▪ 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.

➢ CD2-7 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: 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 DAB 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, and with approval of the related Specific Plan Amendment (File No. PSPA19-006) the proposed project will be consistent with the number of dwelling units and density (minimum 14 dwelling units per acre) within Planning Area 8A, as specified in the Available Land Inventory.

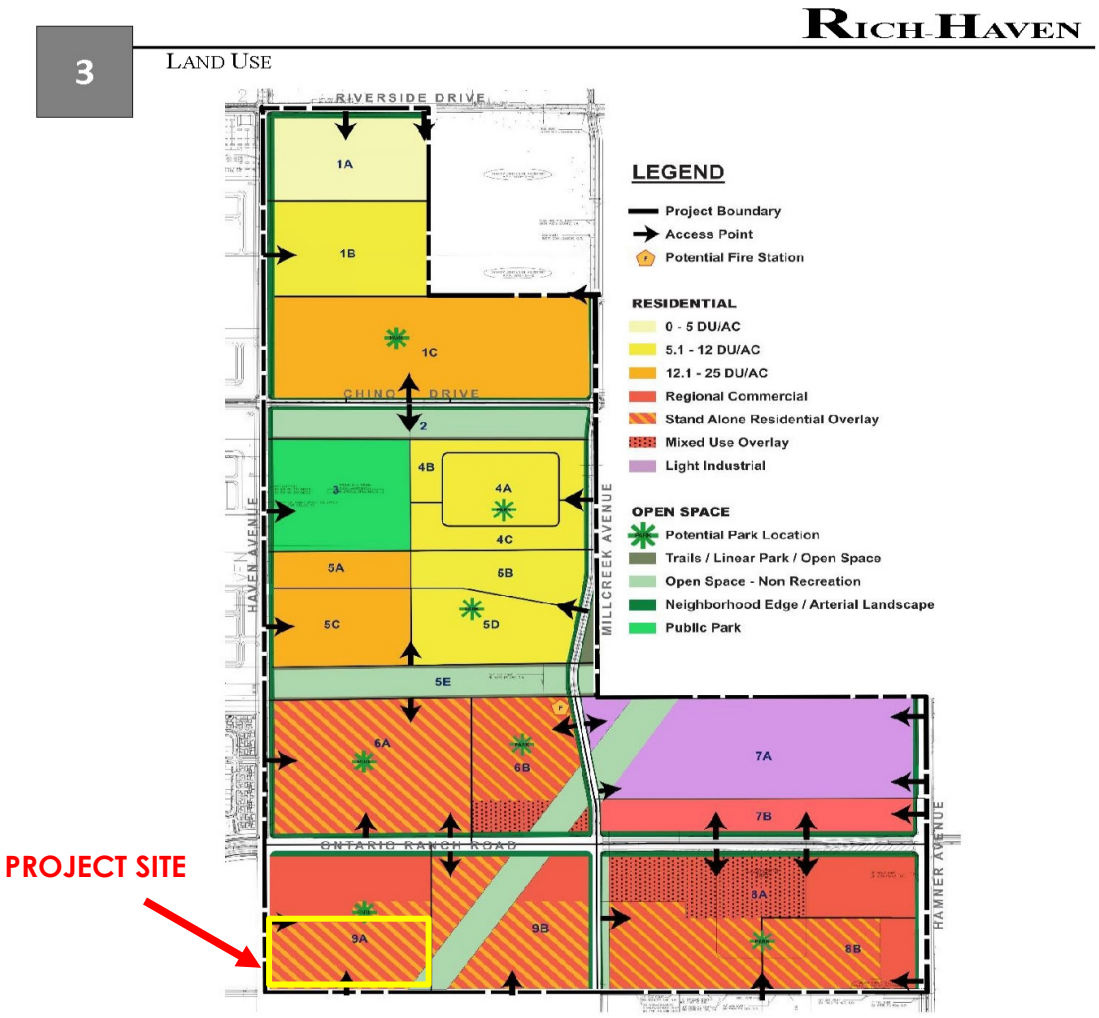
AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development 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. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution.

ENVIRONMENTAL REVIEW: The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts. On the basis of the initial study, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of insignificance, a Mitigated Negative Declaration was prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines. Furthermore, to ensure that the mitigation measures are implemented, a Mitigation Monitoring and Reporting Program has been prepared for the Project pursuant to CEQA Guidelines Section 15097, which specifies responsible agencies/departments, monitoring frequency, timing and method of verification and possible sanctions for non-compliance with mitigation measures. The environmental documentation for this project is available for review at the Planning Department public counter.

The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was adopted by the City Council on December 4, 2007. 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.

Exhibit A—Rich-Haven Specific Plan Proposed Land Use Map
(File No. PSPA19-006)



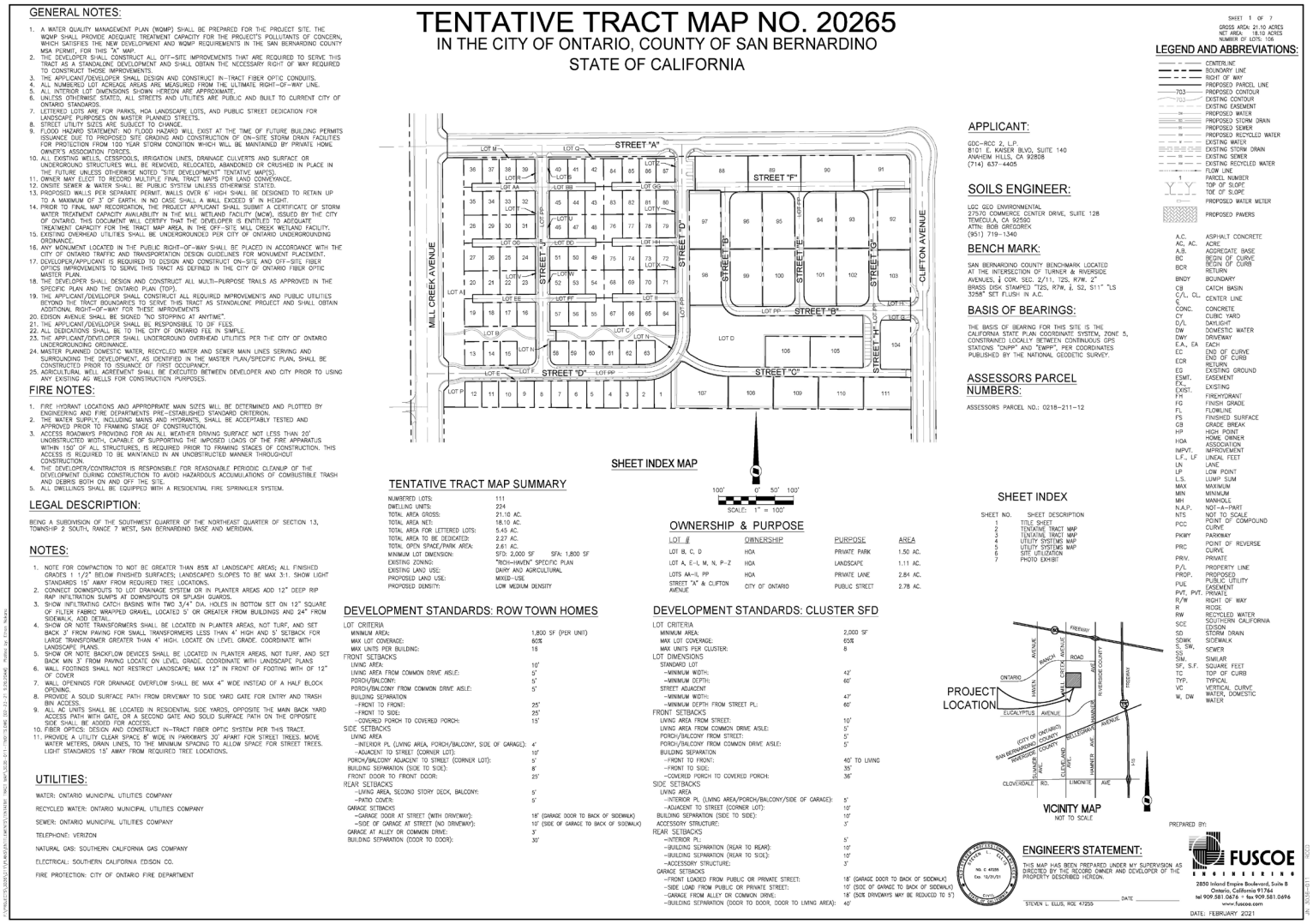
* Circulation pattern for local streets within Specific Plan Area to be established at Tentative Tract Map submittal.
** Residential development along the frontage of Haven Avenue within Planning Areas 5A, 5C and 6A and residential development along the frontage of Ontario Ranch Road within Planning Areas 6A and 7 shall average a density of 18 to 25 dwelling units per acre to support Bus Rapid Transit (BRT) along Haven Avenue.
*** After full dedication of Master Plan streets and neighborhood edges, residential development within Planning Areas 6A + 9A and residential development within Planning Areas 6B + 9B shall meet a minimum net density of 14 dwelling units per acre.
The minimum density in Planning Areas 6A + 9A and Planning Areas 6B + 9B can be averaged between the two areas and shall be established at Tentative Tract submittal for each Planning Area.
**** Planning Area 7B shall have a minimum depth of 300 feet along Ontario Ranch Road measured from the back of the ROW and Neighborhood Edge.

RICH HAVEN SPECIFIC PLAN
LAND USE PLAN
FIGURE 3-1

3-4

February 2021

Exhibit B—Tentative Tract Map 20265



TENTATIVE TRACT MAP NO. 20265

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

SHEET 1 OF 7
GROSS AREA: 21.10 ACRES
NET AREA: 18.10 ACRES
NUMBER OF LOTS: 106

GENERAL NOTES:

1. A WATER QUALITY MANAGEMENT PLAN (WQMP) SHALL BE PREPARED FOR THE PROJECT SITE. THE WQMP SHALL PROVIDE ADEQUATE TREATMENT CAPACITY FOR THE PROJECT'S POLLUTANTS OF CONCERN, WHICH SATISFIES THE NEW DEVELOPMENT AND WQMP REQUIREMENTS IN THE SAN BERNARDINO COUNTY MSA PERMIT, FOR THIS "A" MAP.
2. THE DEVELOPER SHALL CONSTRUCT ALL OFF-SITE IMPROVEMENTS THAT ARE REQUIRED TO SERVE THIS TRACT AS A STANDALONE DEVELOPMENT AND SHALL OBTAIN THE NECESSARY RIGHT OF WAY REQUIRED TO CONSTRUCT THOSE IMPROVEMENTS.
3. THE APPLICANT/DEVELOPER SHALL DESIGN AND CONSTRUCT IN-TRACT FIBER OPTIC CONDUITS.
4. ALL NUMBERED LOT ACREAGE AREAS ARE MEASURED FROM THE ULTIMATE RIGHT-OF-WAY LINE.
5. ALL INTERIOR LOT DIMENSIONS SHOWN HEREON ARE APPROXIMATE.
6. UNLESS OTHERWISE STATED, ALL STREETS AND UTILITIES ARE PUBLIC AND BUILT TO CURRENT CITY OF ONTARIO STANDARDS.
7. LETTERED LOTS ARE FOR PARKS, HOA LANDSCAPE LOTS, AND PUBLIC STREET DEDICATION FOR LANDSCAPE PURPOSES ON MASTER PLANNED STREETS.
8. STREET UTILITY SIZES ARE SUBJECT TO CHANGE.
9. FLOOD HAZARD STATEMENT: NO FLOOD HAZARD WILL EXIST AT THE TIME OF FUTURE BUILDING PERMITS ISSUANCE DUE TO PROPOSED SITE GRADING AND CONSTRUCTION OF ON-SITE STORM DRAIN FACILITIES FOR PROTECTION FROM 100 YEAR STORM CONDITION WHICH WILL BE MAINTAINED BY PRIVATE HOME OWNER'S ASSOCIATION FORCES.
10. ALL EXISTING WELLS, CESSPOOLS, IRRIGATION LINES, DRAINAGE CULVERTS AND SURFACE OR UNDERGROUND STRUCTURES WILL BE REMOVED, RELOCATED, ABANDONED OR CRUSHED IN PLACE IN THE FUTURE UNLESS OTHERWISE NOTED "SITE DEVELOPMENT" TENTATIVE MAP(S).
11. OWNER MAY ELECT TO RECORD MULTIPLE FINAL TRACT MAPS FOR LAND CONVEYANCE.
12. ONSITE SEWER & WATER SHALL BE PUBLIC SYSTEM UNLESS OTHERWISE STATED.
13. PROPOSED WALLS PER SEPARATE PERMIT. WALLS OVER 6' HIGH SHALL BE DESIGNED TO RETAIN UP TO A MAXIMUM OF 3' OF EARTH, IN NO CASE SHALL A WALL EXCEED 9' IN HEIGHT.
14. PRIOR TO FINAL MAP RECORDATION, THE PROJECT APPLICANT SHALL SUBMIT A CERTIFICATE OF STORM WATER TREATMENT CAPACITY AVAILABILITY IN THE MILL WETLAND FACILITY (MCW), ISSUED BY THE CITY OF ONTARIO. THIS DOCUMENT WILL CERTIFY THAT THE DEVELOPER IS ENTITLED TO ADEQUATE TREATMENT CAPACITY FOR THE TRACT MAP AREA IN THE OFF-SITE MILL CREEK WETLAND FACILITY.
15. EXISTING OVERHEAD UTILITIES SHALL BE UNDERGROUNDED PER CITY OF ONTARIO UNDERGROUNDING ORDINANCE.
16. ANY MONUMENT LOCATED IN THE PUBLIC RIGHT-OF-WAY SHALL BE PLACED IN ACCORDANCE WITH THE CITY OF ONTARIO TRAFFIC AND TRANSPORTATION DESIGN GUIDELINES FOR MONUMENT PLACEMENT.
17. DEVELOPER/APPLICANT IS REQUIRED TO DESIGN AND CONSTRUCT ON-SITE AND OFF-SITE FIBER OPTICS IMPROVEMENTS TO SERVE THIS TRACT AS DEFINED IN THE CITY OF ONTARIO FIBER OPTIC MASTER PLAN.
18. THE DEVELOPER SHALL DESIGN AND CONSTRUCT ALL MULTI-PURPOSE TRAILS AS APPROVED IN THE SPECIFIC PLAN AND THE ONTARIO PLAN (TOP).
19. THE APPLICANT/DEVELOPER SHALL CONSTRUCT ALL REQUIRED IMPROVEMENTS AND PUBLIC UTILITIES BEYOND THE TRACT BOUNDARIES TO SERVE THIS TRACT AS STANDALONE PROJECT AND SHALL OBTAIN ADDITIONAL RIGHT-OF-WAY FOR THESE IMPROVEMENTS
20. EDISON AVENUE SHALL BE SIGNED "NO STOPPING AT ANYTIME".
21. THE APPLICANT/DEVELOPER SHALL BE RESPONSIBLE FOR ANY OF FILES.
22. ALL DEDICATIONS SHALL BE TO THE CITY OF ONTARIO FEE IN SIMPLE.
23. THE APPLICANT/DEVELOPER SHALL UNDERGROUND OVERHEAD UTILITIES PER THE CITY OF ONTARIO UNDERGROUNDING ORDINANCE.
24. MASTER PLANNED DOMESTIC WATER, RECYCLED WATER AND SEWER MAIN LINES SERVING AND SURROUNDING THE DEVELOPMENT, AS IDENTIFIED IN THE MASTER PLAN/SPECIFIC PLAN, SHALL BE CONSTRUCTED PRIOR TO ISSUANCE OF FIRST OCCUPANCY.
25. AGRICULTURAL WELL AGREEMENT SHALL BE EXECUTED BETWEEN DEVELOPER AND CITY PRIOR TO USING ANY EXISTING AG WELLS FOR CONSTRUCTION PURPOSES.

FIRE NOTES:

1. FIRE HYDRANT LOCATIONS AND APPROPRIATE MAIN SIZES WILL BE DETERMINED AND PLOTTED BY ENGINEERING AND FIRE DEPARTMENTS PRE-ESTABLISHED STANDARD CRITERION.
2. THE WATER SUPPLY, INCLUDING MAINS AND HYDRANTS, SHALL BE ACCEPTABLY TESTED AND APPROVED PRIOR TO FRAMING STAGE OF CONSTRUCTION.
3. ACCESS ROADWAYS PROVIDING FOR AN ALL WEATHER DRIVING SURFACE NOT LESS THAN 20' UNOBSTRUCTED WIDTH, CAPABLE OF SUPPORTING THE IMPOSED LOADS OF THE FIRE APPARATUS WITHIN 150' OF ALL STRUCTURES, IS REQUIRED PRIOR TO FRAMING STAGES OF CONSTRUCTION. THIS ACCESS IS REQUIRED TO BE MAINTAINED IN AN UNOBSTRUCTED MANNER THROUGHOUT CONSTRUCTION.
4. THE DEVELOPER/CONTRACTOR IS RESPONSIBLE FOR REASONABLE PERIODIC CLEANUP OF THE DEVELOPMENT DURING CONSTRUCTION TO AVOID HAZARDOUS ACCUMULATIONS OF COMBUSTIBLE TRASH AND DEBRIS BOTH ON AND OFF THE SITE.
5. ALL DWELLINGS SHALL BE EQUIPPED WITH A RESIDENTIAL FIRE SPRINKLER SYSTEM.

LEGAL DESCRIPTION:

BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN.

NOTES:

1. NOTE FOR COMPACTION TO NOT BE GREATER THAN 85% AT LANDSCAPE AREAS; ALL FINISHED GRADES 1 1/2" BELOW FINISHED SURFACES; LANDSCAPED SLOPES TO BE MAX 3:1. SHOW LIGHT STANDARDS 15' AWAY FROM REQUIRED TREE LOCATIONS.
2. CONNECT DOWNSPOUTS TO LOT DRAINAGE SYSTEM OR PLANTER AREAS ADD 12" DEEP RIP RAP INFILTRATION SUMPS AT DOWNSPOUTS OR SPLASH GUARDS.
3. SHOW INFILTRATING CATCH BASINS WITH TWO 3/4" DIA. HOLES IN BOTTOM SET ON 13" SQUARE OF FILTER FABRIC WRAPPED GRAVEL, LOCATED 5' OR GREATER FROM BUILDINGS AND 24" FROM SIDEWALK, ADD DETAIL.
4. SHOW OR NOTE TRANSFORMERS SHALL BE LOCATED IN PLANTER AREAS, NOT TURF, AND SET BACK 3' FROM PAVING FOR SMALL TRANSFORMERS LESS THAN 4' HIGH AND 5' SETBACK FOR LARGE TRANSFORMER GREATER THAN 4' HIGH. LOCATE ON LEVEL GRADE. COORDINATE WITH LANDSCAPE PLANS.
5. SHOW OR NOTE BACKFLOW DEVICES SHALL BE LOCATED IN PLANTER AREAS, NOT TURF, AND SET BACK MIN 3' FROM PAVING LOCATE ON LEVEL GRADE. COORDINATE WITH LANDSCAPE PLANS
6. WALL FOOTINGS SHALL NOT RESTRICT LANDSCAPE; MAX 12" IN FRONT OF FOOTING WITH OF 12" OF COVER
7. WALL OPENINGS FOR DRAINAGE OVERFLOW SHALL BE MAX 4" WIDE INSTEAD OF A HALF BLOCK OPENING.
8. PROVIDE A SOLID SURFACE PATH FROM DRIVEWAY TO SIDE YARD GATE FOR ENTRY AND TRASH BIN ACCESS.
9. ALL AC UNITS SHALL BE LOCATED IN RESIDENTIAL SIDE YARDS, OPPOSITE THE MAIN BACK YARD ACCESS PATH WITH GATE, OR A SECOND GATE AND SOLID SURFACE PATH ON THE OPPOSITE SIDE SHALL BE ADDED FOR ACCESS.
10. FIBER OPTICS: DESIGN AND CONSTRUCT IN-TRACT FIBER OPTIC SYSTEM PER THIS TRACT.
11. PROVIDE A UTILITY CLEAR SPACE 8' WIDE IN PARKWAYS 30' APART FOR STREET TREES. MOVE WATER METERS, DRAIN LINES, TO THE MINIMUM SPACING TO ALLOW SPACE FOR STREET TREES. LIGHT STANDARDS 15' AWAY FROM REQUIRED TREE LOCATIONS.

UTILITIES:

WATER: ONTARIO MUNICIPAL UTILITIES COMPANY

RECYCLED WATER: ONTARIO MUNICIPAL UTILITIES COMPANY

SEWER: ONTARIO MUNICIPAL UTILITIES COMPANY

TELEPHONE: VERIZON

NATURAL GAS: SOUTHERN CALIFORNIA GAS COMPANY

ELECTRICAL: SOUTHERN CALIFORNIA EDISON CO.

FIRE PROTECTION: CITY OF ONTARIO FIRE DEPARTMENT

SHEET INDEX MAP

100' 0' 50' 100'
SCALE: 1" = 100'

TENTATIVE TRACT MAP SUMMARY

NUMBERED LOTS:	111
DWELLING UNITS:	224
TOTAL AREA GROSS:	21.10 AC.
TOTAL AREA NET:	18.10 AC.
TOTAL AREA FOR LETTERED LOTS:	5.45 AC.
TOTAL AREA TO BE DEDICATED:	2.27 AC.
TOTAL OPEN SPACE/PARK AREA:	2.61 AC.
MINIMUM LOT DIMENSION:	SFD: 2,000 SF SFA: 1,800 SF
EXISTING ZONING:	"RCH—HAVEN" SPECIFIC PLAN
EXISTING LAND USE:	DAIRY AND AGRICULTURAL
PROPOSED LAND USE:	MIXED-USE
PROPOSED DENSITY:	LOW MEDIUM DENSITY

OWNERSHIP & PURPOSE

LOT #	OWNERSHIP	PURPOSE	AREA
LOT B, C, D	HOA	PRIVATE PARK	1.50 AC.
LOT A, E-I, M, N, P-Z	HOA	LANDSCAPE	1.11 AC.
LOTS AA—II, PP	HOA	PRIVATE LANE	2.84 AC.
STREET "A" & CLIFTON AVENUE	CITY OF ONTARIO	PUBLIC STREET	2.78 AC.

DEVELOPMENT STANDARDS: ROW TOWN HOMES

LOT CRITERIA	
MINIMUM AREA:	1,800 SF (PER UNIT)
MAX LOT COVERAGE:	60%
MAX UNITS PER BUILDING:	18
FRONT SETBACKS	
LIVING AREA:	10'
LIVING AREA FROM COMMON DRIVE AISLE:	5'
PORCH/BALCONY:	5'
PORCH/BALCONY FROM COMMON DRIVE AISLE:	5'
BUILDING SEPARATION	
—FRONT TO FRONT:	25'
—FRONT TO SIDE:	25'
—COVERED PORCH TO COVERED PORCH:	15'
SIDE SETBACKS	
LIVING AREA	
—INTERIOR PL (LIVING AREA, PORCH/BALCONY, SIDE OF GARAGE):	4'
—ADJACENT TO STREET (CORNER LOT):	10'
PORCH/BALCONY ADJACENT TO STREET (CORNER LOT):	5'
BUILDING SEPARATION (SIDE TO SIDE):	8'
FRONT DOOR TO FRONT DOOR:	25'
REAR SETBACKS	
—LIVING AREA, SECOND STORY DECK, BALCONY:	5'
—PATIO COVER:	5'
GARAGE SETBACKS	
—GARAGE DOOR AT STREET (WITH DRIVEWAY):	18' (GARAGE DOOR TO BACK OF SIDEWALK)
—SIDE OF GARAGE AT STREET (NO DRIVEWAY):	10' (SIDE OF GARAGE TO BACK OF SIDEWALK)
GARAGE AT ALLEY OR COMMON DRIVE:	3'
BUILDING SEPARATION (DOOR TO DOOR):	30'

DEVELOPMENT STANDARDS: CLUSTER SFD

LOT CRITERIA	
MINIMUM AREA:	2,000 SF
MAX LOT COVERAGE:	65%
MAX UNITS PER CLUSTER:	8
LOT DIMENSIONS	
STANDARD LOT	
—MINIMUM WIDTH:	42'
—MINIMUM DEPTH:	60'
STREET ADJACENT	
—MINIMUM WIDTH:	47'
—MINIMUM DEPTH FROM STREET PL:	60'
FRONT SETBACKS	
LIVING AREA FROM STREET:	10'
LIVING AREA FROM COMMON DRIVE AISLE:	5'
PORCH/BALCONY FROM STREET:	5'
PORCH/BALCONY FROM COMMON DRIVE AISLE:	5'
BUILDING SEPARATION	
—FRONT TO FRONT:	40' TO LIVING
—FRONT TO SIDE:	35'
—COVERED PORCH TO COVERED PORCH:	36'
SIDE SETBACKS	
LIVING AREA	
—INTERIOR PL (LIVING AREA/PORCH/BALCONY/SIDE OF GARAGE):	5'
—ADJACENT TO STREET (CORNER LOT):	10'
BUILDING SEPARATION (SIDE TO SIDE):	10'
ACCESSORY STRUCTURE:	3'
REAR SETBACKS	
—INTERIOR PL:	5'
—BUILDING SEPARATION (REAR TO REAR):	10'
—BUILDING SEPARATION (REAR TO SIDE):	10'
—ACCESSORY STRUCTURE:	3'
GARAGE SETBACKS	
—FRONT LOADED FROM PUBLIC OR PRIVATE STREET:	18' (GARAGE DOOR TO BACK OF SIDEWALK)
—SIDE LOAD FROM PUBLIC OR PRIVATE STREET:	10' (SIDE OF GARAGE TO BACK OF SIDEWALK)
—GARAGE FROM ALLEY OR COMMON DRIVE:	18' (SIDE DRIVEWAYS MAY BE REDUCED TO 5')
—BUILDING SEPARATION (DOOR TO DOOR, DOOR TO LIVING AREA):	40'

APPLICANT:

GDC-RCC 2, L.P.
8101 E. KAISER BLVD, SUITE 140
ANAHEIM HILLS, CA 92808
(714) 637-4405

SOILS ENGINEER:

LGC GEO ENVIRONMENTAL
27570 COMMERCE CENTER DRIVE, SUITE 128
TEMECULA, CA 92590
ATTN: BOB GREGOREK
(951) 719-1340

BENCH MARK:

SAN BERNARDINO COUNTY BENCHMARK LOCATED AT THE INTERSECTION OF TURNER & RIVERSIDE AVENUES, ∔ COR, SEC. 2/11, T2S, R7W, 2"
BRASS DISK STAMPED "T2S, R7W, ∔, S2, S11" "LS 3258" SET FLUSH IN A.C.

BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS SITE IS THE CALIFORNIA STATE PLAN COORDINATE SYSTEM, ZONE 5, CONSTRAINED LOCALLY BETWEEN CONTINUOUS GPS STATIONS "CNPP" AND "EWPP", PER COORDINATES PUBLISHED BY THE NATIONAL GEODETIC SURVEY.

ASSESSORS PARCEL NUMBERS:

ASSESSORS PARCEL NO.: 0218-211-12

SHEET INDEX

SHEET NO.	SHEET DESCRIPTION
1	TITLE SHEET
2	TENTATIVE TRACT MAP
3	TENTATIVE TRACT MAP
4	UTILITY SYSTEMS MAP
5	UTILITY SYSTEMS MAP
6	SITE UTILIZATION
7	PHOTO EXHIBIT

LEGEND AND ABBREVIATIONS:

CENTERLINE
BOUNDARY LINE
RIGHT OF WAY
PROPOSED PARCEL LINE
703 PROPOSED CONTOUR
703 EXISTING CONTOUR
EXISTING EASEMENT
PROPOSED WATER
PROPOSED STORM DRAIN
PROPOSED SEWER
PROPOSED RECYCLED WATER
EXISTING WATER
EXISTING STORM DRAIN
EXISTING SEWER
EXISTING RECYCLED WATER
FLOW LINE
1 PARCEL NUMBER
TOP OF SLOPE
TOE OF SLOPE
PROPOSED WATER METER
PROPOSED PAVERS

A.C.	ASPHALT CONCRETE
AC, AC.	ACRE
A.B.	AGGREGATE BASE
BC	BEGIN OF CURVE
BCR	BEGIN OF CURB RETURN
BNDY	BOUNDARY
CB	CATCH BASIN
C/L, CL, ℄	CENTER LINE
CONC.	CONCRETE
CY	CUBIC YARD
D/L	DAYLIGHT
DW	DOMESTIC WATER
DWY	DRIVEWAY
E.A., EA	EACH
EC	END OF CURVE
ECR	END OF CURB RETURN
EG	EXISTING GROUND
ESMT.	EASEMENT
EX., EXIST.	EXISTING
FH	FIREHYDRANT
FG	FINISH GRADE
FL	FLOWLINE
FS	FINISHED SURFACE
GB	GRADE BREAK
HP	HIGH POINT
HOA	HOME OWNER ASSOCIATION
IMPVT.	IMPROVEMENT
L.F., LF	LINEAL FEET
LN	LANE
LP	LOW POINT
L.S.	LUMP SUM
MAX	MAXIMUM
MIN	MINIMUM
MH	MANHOLE
N.A.P.	NOT—A—PART
NTS	NOT TO SCALE
PCC	POINT OF COMPOUND CURVE
PKWY	PARKWAY
PRC	POINT OF REVERSE CURVE
PRIV.	PRIVATE
P/L	PROPERTY LINE
PROP.	PROPOSED
PUE	PUBLIC UTILITY EASEMENT
PVT, PVT.	PRIVATE
R/W	RIGHT OF WAY
R	RIDGE
RW	RECYCLED WATER
SCE	SOUTHERN CALIFORNIA EDISON
SD	STORM DRAIN
SDWK	SIDEWALK
S, SW, SS	SEWER
SIM.	SIMILAR
SF, S.F.	SQUARE FEET
TC	TOP OF CURB
TYP.	TYPICAL
VC	VERTICAL CURVE
W, DW	WATER, DOMESTIC WATER

ENGINEER'S STATEMENT:

THIS MAP HAS BEEN PREPARED UNDER MY SUPERVISION AS DIRECTED BY THE RECORD OWNER AND DEVELOPER OF THE PROPERTY DESCRIBED HEREON.

DATE _____

STEVEN L. ELLIS, RCE 47255

PREPARED BY:

FUSCOE ENGINEERING
2850 Inland Empire Boulevard, Suite B
Ontario, California 91764
tel 909.581.0676 • fax 909.581.0696
www.fuscoe.com

DATE: FEBRUARY 2021

RESOLUTION NO. PC21-011

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP, TO DEFER THE COMMENCEMENT OF CERTAIN STREET IMPROVEMENTS AND ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20265, A 21.10 ACRE PROPERTY LOCATED ON THE EAST SIDE OF MILL CREEK AVENUE, APPROXIMATELY 670 FEET SOUTH OF ONTARIO RANCH ROAD, WITHIN THE STANDALONE RESIDENTIAL LAND USE DISTRICT OF THE RICH-HAVEN SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-652-27.

WHEREAS, GDCI-RCCD 2, LP ("Applicant") has filed an Application for the approval of a First Amendment to the Development Agreement, File No. PDA16-003, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 21.10 acres of land generally located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan, and is presently vacant; and

WHEREAS, on December 4, 2007, the City Council approved the Rich-Haven Specific Plan, File No. PSP05-004 (the “Specific Plan”), and certified the related Environmental Impact Report (State Clearinghouse No. 2006051081), which addressed the potential development of residential units and commercial/office uses; and

WHEREAS, on April 4, 2017, the City Council adopted Ordinance No. 3071, approving a Development Agreement (File No. PDA16-003) to establish the terms and conditions for the development of Tentative Parcel Map Nos. 19725 (File No. PMTT16-010) and 19741 (File No. PMTT16-001). To date, no development has occurred for either parcel map, and the properties remain vacant; and

WHEREAS, on March 19, 2019, the Owner submitted new Tentative Tract Map 20265 (File No. PMTT19-006), which proposes to subdivide Lots 3 and 4 of the previously approved Tentative Parcel Map 19725. Tentative Tract Map 20265 subdivides approximately 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) for residential, public/private streets, landscaped neighborhood edges, and common open space purposes; and

WHEREAS, as part of the development of Tentative Tract Map 20265, the Owner has requested to defer the landscape improvements along Mill Creek Avenue and Street “A”, respectively, and the landscape, side walk, and multi-purpose trail improvements on Ontario Ranch Road (collectively, the “Deferred Street Improvements”); and

WHEREAS, per The Ontario Plan (“TOP”) and Rich-Haven Specific Plan, Tentative Tract Map 20265 is deficient in meeting the minimum density requirement of 14 dwelling units per acre, and Applicant shall maintain the minimum density requirement of 14 dwelling units per acre over the remainder of Planning Area 8A, within the Standalone Residential land use district of the Rich-Haven Specific Plan, unless the minimum density is amended; and

WHEREAS, the new tract map and deferment of certain street improvements necessitates an amendment (the “First Amendment”) to the Development Agreement; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report — State Clearinghouse No. 2006051081 — (hereinafter referred to as "Certified EIR") was adopted by the City Council on December 4, 2007, and this Application introduces no new significant environmental impacts; 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 recommend to 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, 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 March 23, 2021, 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 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 this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which a Certified EIR was adopted by the City Council on December 4, 2007; 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

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

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, and with approval of the related Specific Plan Amendment (File No. PSPA19-006) the proposed project will be consistent with the number of dwelling units and density (minimum 14 dwelling units per acre) within Planning Area 8A, as 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 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, 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 First Amendment to the Development Agreement applies to approximately 21.10 acres of land, located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch road, within the Standalone Residential land use district of the Rich-Haven Specific Plan; and

(b) The First Amendment to the Development Agreement continues to establish parameters for the development within the Standalone Residential land use district of the Rich-Haven Specific Plan. The First Amendment also grants the Applicant, the right to develop, the ability to quantify 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 Merrill Commerce Center Specific Plan; and

(c) The Applicant has submitted a new Tentative Tract Map 20265 (File No. PMTT19-006), which proposes to subdivide Lots 3 and 4 of the previously approved Tentative Parcel Map 19725. Tentative Tract Map 20265 subdivides approximately 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) for residential, public/private streets, landscaped neighborhood edges, and common open space purposes; and

(d) As part of the development of Tentative Tract Map 20265, the Applicant has requested to defer the landscape improvements along Mill Creek Avenue and Street "A", respectively, and the landscape, sidewalk, and multi-purpose trail improvements on Ontario Ranch Road (collectively, the "Deferred Street Improvements"); and

(e) Per The Ontario Plan (TOP) and Rich-Haven Specific Plan, Tentative Tract Map 20265 is deficient in meeting the minimum density of 14 dwelling units per acre, and the Applicant shall maintain the minimum density requirement of 14 dwelling units per acre over the remainder of Planning Area 8A, within the Standalone Residential land use district of the Rich-Haven Specific Plan, unless the minimum density is amended; and

(f) The new tract map and deferment of certain street improvements necessitates the First Amendment to the Development Agreement. The key points of the First Amendment are as follows:

(i) The Applicant shall make a cash security deposit with the City for the Deferred Street Improvements, which shall be the greater of $655,458 or based on the latest Engineer's Cost Estimate approved by the City Engineer, prior to the Applicant's request for the 100th certificate of occupancy for Tentative Tract Map 20265 or, 3 years following the approval of the First Amendment, whichever occurs first.

(ii) The Deferred Street Improvements shall be constructed, completed, and operational prior to Owner requesting the first occupancy for a non-residential unit or production unit for any such parcel map or tract map outside the limits of Tentative Tract Map 20265, but within the limits of Tentative Parcel Map 19725.

(iii) Per The Ontario Plan and Specific Plan, Owner shall maintain the minimum density requirement of 14 dwelling units per acre over the residential component, unless the density range is amended; and

(g) The First Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

(h) The First Amendment to 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

(i) This First Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

(j) This First Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environmental or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan, for which an EIR (State Clearinghouse No. 2006051081) was adopted by the City Council on December 4, 2007. 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; and

(k) The terms of the original Development Agreement shall remain in full force and effect. The City and Applicant hereby re-affirm and ratify all other provisions of the original Development Agreement as amended.

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 First Amendment to the Development Agreement (File No. PDA16-003) 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 23rd day of March 2021, 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. PC21-011, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on March 23, 2021, by the following roll call vote, to wit:

AYES: DeDiemar, Gage, Lampkin, Ricci, Willoughby

NOES: None

ABSENT: None

ABSTAIN: Gregorek

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA16-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO
a California municipal corporation

and

GDCI-RCCD 2, LP
a Delaware limited partnership

(First Amendment to the Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

Space above this line for Recorder's Use Exempt from Fees Per Gov. Code § 6103

File No. PDA16-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO
a California municipal corporation

and

GDCI-RCCD 2, LP
a Delaware limited partnership

_____, 2021

San Bernardino County, California

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP FILE NO. PDA16-003

This First Amendment to the Development Agreement (hereinafter the "First Amendment") is entered into effective as of the _____ day of _____ 2021 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and GDCI-RCCD 2, LP, a Delaware limited partnership company, (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement (File No. PDA16-003) dated April 4, 2017 and recorded in San Bernardino County, California on May 10, 2017 as Instrument No. 2017-0191865 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "**Development Agreement**"); and

WHEREAS, OWNER has submitted a new Tentative Tract Map 20265 (File No. PMTT19-006) to subdivide 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) located on the east side of Mill Creek Avenue, approximately 670 feet below Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan; and

WHEREAS, Tentative Tract Map 20265, subdivides Lots 3 and 4, respectively, of the previously approved Tentative Parcel Map 19725 (File No. PMTT16-010) of the Development Agreement; and

WHEREAS, pursuant to Section 3.7.3 of the Development Agreement, OWNER is required to construct Street Improvements, which include the Last Lane, Neighborhood Edge, Landscape, Sidewalk, and Multi-Purpose Trail Improvements, on Ontario Ranch Road and Mill Creek Avenue, respectively, and two (2) signalized intersections on Ontario Ranch Road, in conjunction with Tentative Parcel Map 19725; and

WHEREAS, in conjunction with Tentative Tract Map 20265, OWNER has requested to defer the Landscape Improvements along Mill Creek Avenue and Street "A", respectively, and the Landscape, Side Walk, and Multi-Purpose Trail Improvements on Ontario Ranch Road (collectively, the "**Deferred Street Improvements**"), as depicted in the revised Exhibit F-1, attached hereto and incorporated by reference herein; and

WHEREAS, the revised Exhibit F-1 attached hereto and incorporated by reference herein shall supersede and replace the original Exhibit F-1 in the Development Agreement; and

WHEREAS, OWNER and CITY agree and acknowledge that the postponement of the Deferred Street Improvements will allow for orderly development of Tentative Tract Map 20265 and Tentative Parcel Map 19725; and

WHEREAS, per The Ontario Plan (TOP) and Rich-Haven Specific Plan, Tentative Tract Map 20265 is deficient in meeting the minimum of fourteen (14) dwelling units per acre, and OWNER shall maintain the minimum density requirement of fourteen (14) dwelling units per acre over the remainder of Planning Area 8A, within the Standalone Residential land use district of the Rich-Haven Specific Plan, unless the minimum density is amended.

AGREEMENTS

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

1. Section 1.2, reference to Exhibit “F-1” of the Development Agreement is amended to read as follows:

“1.2 Exhibits. Exhibit “F-1” – Infrastructure Improvements Exhibit for Parcel Map No. 19725 and Tentative Tract Map No. 20265.”

2. Section 3.4.1 of the Development Agreement is amended to read as follows:

“3.4.1 Attached hereto as Exhibit "F-1" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19725 and Tentative Tract Map No. 20265. Also, attached hereto as Exhibit "F-2" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19741 (collectively, the “Infrastructure Improvement Exhibits").”

3. Section 3.4.2 shall be added to the Development Agreement to read as follows:

“3.4.2 The TOP and Rich Haven Specific Plan require that for the residential component of Planning Area 8A, density requirements of 14.0 to 50 dwelling units per acre be maintained. The proposed Tentative Tract Map No. 20265 is on a portion of Planning Area 8A and is currently proposing 204 units and is required to construct 253 units based on a minimum of 14 dwelling units per acre for that portion of Planning Area 8A. Since the proposed Tentative Tract Map No. 20265 is deficient in meeting the minimum of 14 dwelling units per acre, any future development of the Property, whether residential, commercial, mixed-use, industrial, or any combination thereof, for the remainder of Planning Area 8A, shall be required to maintain the minimum density requirement of 14 dwelling units per acre over the residential component, unless the

density range is amended."

4. Section 3.7 of the Development Agreement is amended to read as follows:

"3.7 Public Infrastructure and Utilities. OWNER is required by this Agreement 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 in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval of the portion of the Property covered by Parcel Map No. 19725, OWNER shall connect the portion of the Project covered by Parcel Map No. 19725 to all utilities necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19725. Also, as a condition of development approval OWNER shall connect the portion of the Project covered by Parcel Map No. 19741 to all utilities, necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19741. Furthermore, as a condition of development approval of the portion of the Property covered by Tentative Tract Map No. 20265, OWNER shall connect the portion of the Project covered by Tentative Tract Map No. 20265 to all utilities necessary as shown on Exhibit F-1, to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Tentative Tract Map No 20265. OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the infrastructure improvements required for the respective Parcel or Tract Map, as described in the attached Exhibit F- 1 for Parcels within the boundaries of Parcel Map No. 19725 and Tentative Tract Map No. 20265 or, the attached Exhibit F-2 for Parcels within the boundaries of Parcel Map No. 19741."

5. The following Sections 3.7.11 and 3.7.12 shall be added to the Development Agreement to read as follows:

"3.7.11 OWNER agrees that development of the portion of the Project within the boundaries of Tentative Tract Map No. 20265 shall require the construction, at OWNER's sole cost and expense, the street, water, recycled water, sewer, storm drain, fiber optic, and multi-purpose trail improvements as depicted in the attached Exhibit F-1. OWNER may defer the Landscape Improvements along Mill Creek Avenue and Street "A", respectively, and the Landscape, Sidewalk, and Multi-Purpose Trail Improvements on Ontario Ranch Road (collectively, the "**Deferred Street Improvements**"), as depicted in the revised Exhibit F-1. OWNER shall make a cash security deposit with CITY for the Deferred Street Improvements:

(i) Prior to the OWNER's request for the 100th certificate of occupancy for Tentative Tract Map No. 20265; or

(ii) Three (3) years after the approval of this First Amendment, whichever occurs first.

The cash deposit amount shall be the greater of (i) $655,458.22 or (ii) the latest Engineer's Cost Estimate approved by the City Engineer and may be used by CITY to construct the Deferred Street Improvements, at the discretion of the City Engineer. If OWNER or its assignee receives Subsequent Development Approvals and enters into a Subdivision Improvement Agreement for any parcels outside of Tentative Tract Map No. 20265, and CITY has not initiated construction of the Deferred Street Improvements, the CITY shall refund the total amount of the cash deposit to the entity who posted the cash security deposit within 90 days of approval of the Subdivision Improvement Agreement. OWNER shall be required to construct and complete the Deferred Street Improvements prior to OWNER's request for the first certificate of occupancy for any parcel outside of Tentative Tract Map No. 20265, but within the limits of Tentative Parcel Map No. 19725.

"3.7.12 OWNER agrees that development of the portion of the Project within the boundaries of Tentative Tract Map No. 20265 shall require the construction and completion of water improvements from at least two (2) points of connection, at OWNER's sole cost and expense, as depicted in the attached Exhibit F-1. OWNER shall select either of the following options in order to satisfy the requirement for two (2) points of connection:

(i) OWNER shall construct the water improvements through a public utility easement across Lot 2 of Tentative Parcel Map No. 19725, as depicted in the attached Exhibit F-1. OWNER may relocate the water improvements, and vacate the public utility easement, only if an alternative second point of connection is provided that is acceptable to the CITY; or

(ii) OWNER shall extend the water improvements on Mill Creek Avenue, south to the existing point of connection available at the time of construction.

In either case, the ultimate pipe size and location of the offsite and onsite water improvements shall be subject to technical studies and consistent with the Conditions of Approval."

6. Section 4.3.1 of the Development Agreement is amended to read as follows:

"4.3.1 Timely Construction of Public Infrastructure. The phasing of the area-wide infrastructure construction within the Ontario Ranch area will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map No. 19725 and Tentative Tract Map No. 20265, as shown on the attached Exhibit "F-1"

and OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map 19741 as shown on the attached Exhibit "F-2". OWNER shall also be responsible for the construction and completion of any and all tentative parcel or tract map conditions. Unless otherwise specified in the Subdivision Agreement/Parcel/Tract Map conditions, all other required Improvements for each Tract or Parcel Map, and all subsequent Parcel or Tract Maps for the Property shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel/Tract Map conditions for Parcel Map Nos. 19725 and 19741 and as required by Tentative Tract Map No. 20265 and any future Tract Maps for the Property. Notwithstanding the above, OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the conditions of approval for the respective Parcel Map. The construction and completion of the Deferred Street Improvements shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first occupancy for a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map outside of the limits of Tentative Tract Map No. 20265, but within the limits of Tentative Parcel Map No. 19725."

7. Miscellaneous.

7.1 Integration. All remaining Sections of the Development Agreement and the Exhibits thereto shall not be affected by this First Amendment. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Development Agreement, this First Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement as amended.

7.2 Additional Documents/Actions. The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this First Amendment to the Development Agreement.

7.3 Defined Terms/Other Provisions. Unless otherwise defined herein, capitalized terms contained in this First Amendment shall have the meanings ascribed to them in the Development Agreement. Except as expressly amended herein, all provisions of the Development Agreement, as supplemented, restated and amended, shall remain.

7.4 Indemnification. OWNER hereby agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, agents, contractors and volunteers from and against any and all claims, suits or proceedings arising from or related to CITY's entering into, or carrying out, this First Amendment. This indemnification includes the

payment of all penalties, fines, judgments, awards, decrees, attorney's fees and related costs or expenses incurred by the CITY.

{signature page to follow}

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date below, the ("Effective Date").

SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
PDA16-003

"OWNER"

GDCI-RCCD 2, LP
A Delaware limited partnership company

By: GDC Holdings, LLC, a California limited liability company
Its: General Partner

By:_____
Name:_____
Title: Authorized Representative
Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa, City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST BEST KREIGER LLP

_____
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate isattached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

EXHIBIT "A"

Legal Description of Property

THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF, APPROVED BY THE SURVEYOR GENERAL, DATED DECEMBER 30, 1881.

TOGETHER WITH THAT PORTION OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 13 LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 13, SAID CORNER ALSO BEING A POINT ON THE CENTERLINE INTERSECTION OF ONTARIO RANCH ROAD AND THE FUTURE MILL CREEK AVENUE.

THENCE SOUTH 00°17'30" EAST ALONG THE WEST LINE OF SAID NORTH ONE-HALF AND SAID MILL CREEK AVENUE CENTERLINE A DISTANCE OF 633.60 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE BEING DESCRIBED HEREIN;

THENCE LEAVING SAID WEST LINE NORTH 89°39'24" EAST 1221.87 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 38.00 FEET;

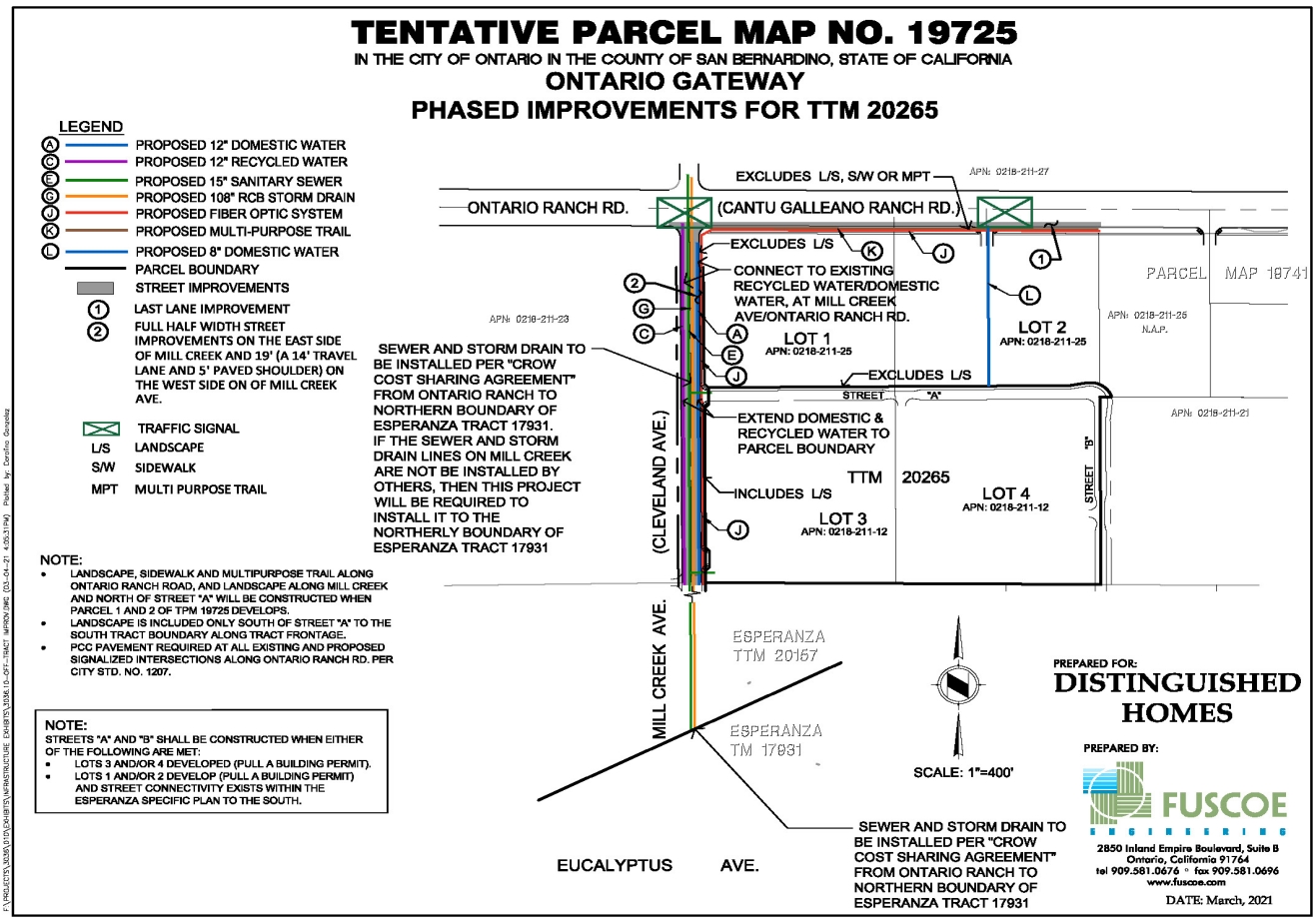
THENCE EASTERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE, FROM AN INITIAL RADIAL BEARING OF NORTH 00°20'36" WEST THROUGH A CENTRAL ANGLE OF 09°43'36", AN ARC LENGTH OF 6.45 FEET;

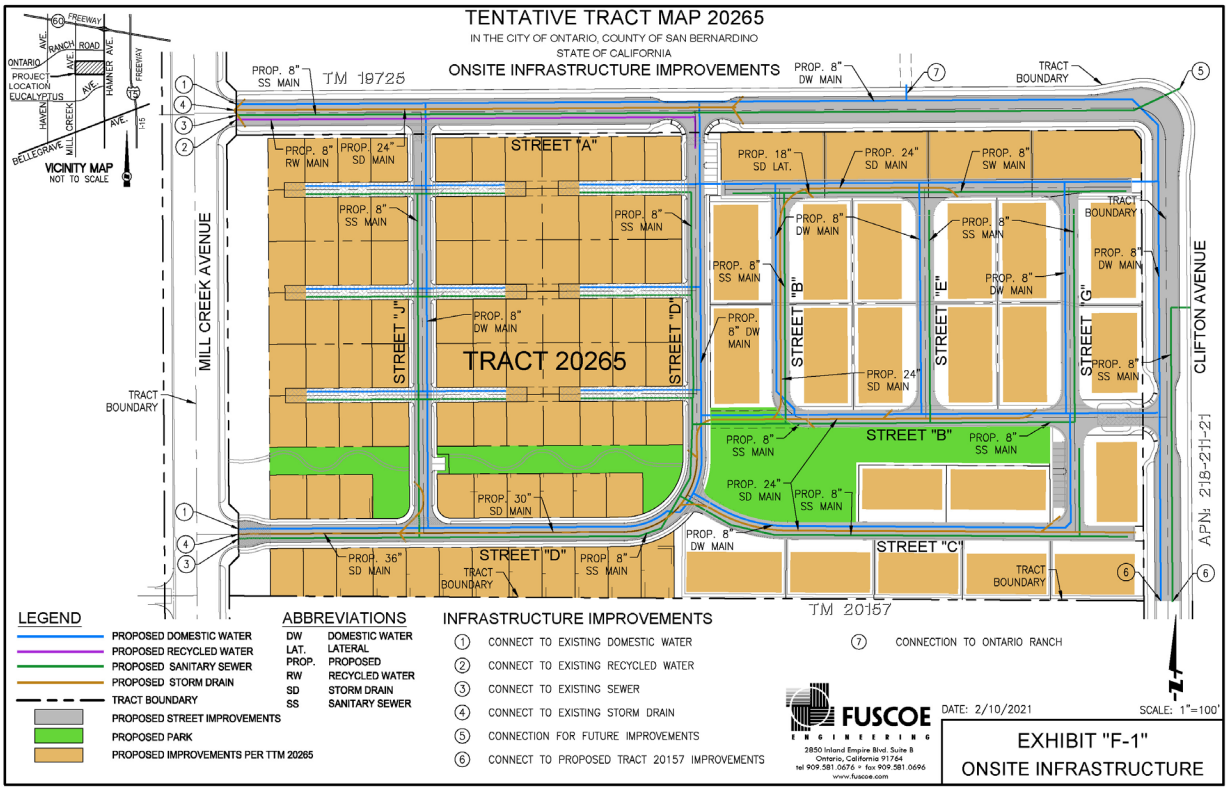
THENCE NORTH 79°55'47" EAST 53.13 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 70.00 FEET;

THENCE EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, FROM AN INITIAL RADIAL BEARING OF SOUTH 10°01'17" EAST THROUGH A CENTRAL ANGLE OF 83°45'45" AN ARC LENGTH OF 102.33 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID NORTH ONE-HALF, SAID POINT OF INTERSECTION BEING THE TERMINUS OF THE DESCRIBED LINE.

EXHIBIT "F-1"
TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements




TENTATIVE TRACT MAP 20265
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
ONSITE INFRASTRUCTURE IMPROVEMENTS
VICINITY MAP
NOT TO SCALE
PROJECT LOCATION
ONTARIO
EUCALYPTUS AVE.
HAVEN AVE.
MILL CREEK AVE.
BELLEGRAVE AVE.
RANCH ROAD
HAMNER AVE.
60 FREEWAY
15 FREEWAY
TM 19725
TM 20157
TRACT 20265
MILL CREEK AVENUE
CLIFTON AVENUE
STREET "A"
STREET "B"
STREET "C"
STREET "D"
STREET "E"
STREET "G"
STREET "J"
TRACT BOUNDARY
APN: 218-211-21
PROP. 8" SS MAIN
PROP. 8" RW MAIN
PROP. 24" SD MAIN
PROP. 8" DW MAIN
PROP. 18" SD LAT.
PROP. 8" SW MAIN
PROP. 30" SD MAIN
PROP. 36" SD MAIN
LEGEND
PROPOSED DOMESTIC WATER
PROPOSED RECYCLED WATER
PROPOSED SANITARY SEWER
PROPOSED STORM DRAIN
TRACT BOUNDARY
PROPOSED STREET IMPROVEMENTS
PROPOSED PARK
PROPOSED IMPROVEMENTS PER TTM 20265
ABBREVIATIONS
DW DOMESTIC WATER
LAT. LATERAL
PROP. PROPOSED
RW RECYCLED WATER
SD STORM DRAIN
SS SANITARY SEWER
INFRASTRUCTURE IMPROVEMENTS
1 CONNECT TO EXISTING DOMESTIC WATER
2 CONNECT TO EXISTING RECYCLED WATER
3 CONNECT TO EXISTING SEWER
4 CONNECT TO EXISTING STORM DRAIN
5 CONNECTION FOR FUTURE IMPROVEMENTS
6 CONNECT TO PROPOSED TRACT 20157 IMPROVEMENTS
7 CONNECTION TO ONTARIO RANCH
FUSCOE ENGINEERING
2850 Inland Empire Blvd. Suite B
Ontario, California 91764
tel 909.581.0676 • fax 909.581.0696
www.fuscoe.com
DATE: 2/10/2021
SCALE: 1"=100'
EXHIBIT "F-1"
ONSITE INFRASTRUCTURE

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP, TO DEFER THE COMMENCEMENT OF CERTAIN STREET IMPROVEMENTS AND ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20265, A 21.10 ACRE PROPERTY LOCATED ON THE EAST SIDE OF MILL CREEK AVENUE, APPROXIMATELY 670 FEET SOUTH OF ONTARIO RANCH ROAD, WITHIN THE STANDALONE RESIDENTIAL LAND USE DISTRICT OF THE RICH-HAVEN SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-652-27.

WHEREAS, GDCI-RCCD 2, LP ("Applicant") has filed an Application for the approval of a First Amendment to the Development Agreement, File No. PDA16-003, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 21.10 acres of land generally located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan, and is presently vacant; and

WHEREAS, on December 4, 2007, the City Council approved the Rich-Haven Specific Plan, File No. PSP05-004 (the “Specific Plan”), and certified the related Environmental Impact Report (State Clearinghouse No. 2006051081), which addressed the potential development of residential units and commercial/office uses; and

WHEREAS, on April 4, 2017, the City Council adopted Ordinance No. 3071, approving a Development Agreement (File No. PDA16-003) to establish the terms and conditions for the development of Tentative Parcel Map Nos. 19725 (File No. PMTT16-010) and 19741 (File No. PMTT16-001). To date, no development has occurred for either parcel map, and the properties remain vacant; and

WHEREAS, on March 19, 2019, the Owner submitted Tentative Tract Map 20265 (File No. PMTT19-006), which proposes to subdivide Lots 3 and 4 of the previously approved Tentative Parcel Map 19725. Tentative Tract Map 20265 subdivides approximately 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) for residential, public/private streets, landscaped neighborhood edges, and common open space purposes; and

WHEREAS, as part of the development of Tentative Tract Map 20265, the Owner has requested to defer the landscape improvements along Mill Creek Avenue and Street “A”, respectively, and the landscape, side walk, and multi-purpose trail improvements on Ontario Ranch Road (collectively, the “Deferred Street Improvements”); and

WHEREAS, per The Ontario Plan (“TOP”) and Rich-Haven Specific Plan, Tentative Tract Map 20265 is deficient in meeting the minimum density requirement of 14 dwelling units per acre, and Applicant shall maintain the minimum density requirement of 14 dwelling units per acre over the remainder of Planning Area 8A, within the Standalone Residential land use district of the Rich-Haven Specific Plan, unless the minimum density is amended; and

WHEREAS, the new tract map and deferment of certain street improvements necessitates an amendment (the “First Amendment”) to the Development Agreement; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which a(n) Environmental Impact Report – State Clearinghouse No. 2006051081 – (hereinafter referred to as “Certified EIR”) was adopted by the City Council on December 4, 2007, and this Application introduces no new significant environmental impacts; 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 review and act 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 (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 ONT 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; 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 March 23, 2021, 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 No. PC21-011 recommending the City Council approve the Application; and

WHEREAS, on April 20, 2021, 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 Resolution 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 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 this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which a Certified EIR was adopted by the City Council on December 4, 2007; 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; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

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, and with approval of the related Specific Plan Amendment (File No. PSPA19-006) the proposed project will be consistent with the number of dwelling units and density (minimum 14 dwelling units per acre) within Planning Area 8A, as 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 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 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 First Amendment to the Development Agreement applies to approximately 21.10 acres of land, located on the east side of Mill Creek Avenue, approximately 670 feet south of Ontario Ranch road, within the Standalone Residential land use district of the Rich-Haven Specific Plan; and

(b) The First Amendment to the Development Agreement continues to establish parameters for the development within the Standalone Residential land use district of the Rich-Haven Specific Plan. The First Amendment also grants the Applicant, the right to develop, the ability to quantify 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 Merrill Commerce Center Specific Plan; and

(c) The Applicant has submitted a new Tentative Tract Map 20265 (File No. PMTT19-006), which proposes to subdivide Lots 3 and 4 of the previously approved Tentative Parcel Map 19725. Tentative Tract Map 20265 subdivides approximately 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) for residential, public/private streets, landscaped neighborhood edges, and common open space purposes; and

(d) As part of the development of Tentative Tract Map 20265, the Applicant has requested to defer the landscape improvements along Mill Creek Avenue and Street “A”, respectively, and the landscape, sidewalk, and multi-purpose trail improvements on Ontario Ranch Road (collectively, the “Deferred Street Improvements”); and

(e) Per The Ontario Plan (TOP) and Rich-Haven Specific Plan, Tentative Tract Map 20265 is deficient in meeting the minimum density of 14 dwelling units per acre, and the Applicant shall maintain the minimum density requirement of 14 dwelling units per acre over the remainder of Planning Area 8A, within the Standalone Residential land use district of the Rich-Haven Specific Plan, unless the minimum density is amended; and

(f) The new tract map and deferment of certain street improvements necessitates the First Amendment to the Development Agreement. The key points of the First Amendment are as follows:

(i) The Applicant shall make a cash security deposit with the City for the Deferred Street Improvements, which shall be the greater of $655,458 or based on the latest Engineer's Cost Estimate approved by the City Engineer, prior to the Applicant's request for the 100th certificate of occupancy for Tentative Tract Map 20265 or, 3 years following the approval of the First Amendment, whichever occurs first.

(ii) The Deferred Street Improvements shall be constructed, completed, and operational prior to Owner requesting the first occupancy for a non-residential unit or production unit for any such parcel map or tract map outside the limits of Tentative Tract Map 20265, but within the limits of Tentative Parcel Map 19725.

(iii) Per The Ontario Plan and Specific Plan, Owner shall maintain the minimum density requirement of 14 dwelling units per acre over the residential component, unless the density range is amended; and

(g) The First Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

(h) The First Amendment to 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

(i) This First Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

(j) This First Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environmental or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan, for which an EIR (State Clearinghouse No. 2006051081) was adopted by the City Council on December 4, 2007. 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; and

(k) The terms of the original Development Agreement shall remain in full force and effect. The City and Applicant hereby re-affirm and ratify all other provisions of the original Development Agreement as amended.

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 First Amendment to the Development Agreement (File No. PDA16-003), 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 ____ day of _____ 2021.

_____
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 April 20, 2021 and adopted at the regular meeting held _____, 2021 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)

ATTACHMENT A:

File No. PDA16-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO
a California municipal corporation

and

GDCI-RCCD 2, LP
a Delaware limited partnership

(First Amendment to the Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

Space above this line for Recorder's Use Exempt from Fees Per Gov. Code § 6103

File No. PDA16-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO
a California municipal corporation

and

GDCI-RCCD 2, LP
a Delaware limited partnership

_____, 2021

San Bernardino County, California

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD 2, LP FILE NO. PDA16-003

This First Amendment to the Development Agreement (hereinafter the "First Amendment") is entered into effective as of the _____ day of _____ 2021 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and GDCI-RCCD 2, LP, a Delaware limited partnership company, (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement (File No. PDA16-003) dated April 4, 2017 and recorded in San Bernardino County, California on May 10, 2017 as Instrument No. 2017-0191865 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "**Development Agreement**"); and

WHEREAS, OWNER has submitted a new Tentative Tract Map 20265 (File No. PMTT19-006) to subdivide 21.10 acres of land into 147 parcels (111 numbered lots and 36 lettered lots) located on the east side of Mill Creek Avenue, approximately 670 feet below Ontario Ranch Road, within the Standalone Residential land use district of the Rich-Haven Specific Plan; and

WHEREAS, Tentative Tract Map 20265, subdivides Lots 3 and 4, respectively, of the previously approved Tentative Parcel Map 19725 (File No. PMTT16-010) of the Development Agreement; and

WHEREAS, pursuant to Section 3.7.3 of the Development Agreement, OWNER is required to construct Street Improvements, which include the Last Lane, Neighborhood Edge, Landscape, Sidewalk, and Multi-Purpose Trail Improvements, on Ontario Ranch Road and Mill Creek Avenue, respectively, and two (2) signalized intersections on Ontario Ranch Road, in conjunction with Tentative Parcel Map 19725; and

WHEREAS, in conjunction with Tentative Tract Map 20265, OWNER has requested to defer the Landscape Improvements along Mill Creek Avenue and Street "A", respectively, and the Landscape, Side Walk, and Multi-Purpose Trail Improvements on Ontario Ranch Road (collectively, the "**Deferred Street Improvements**"), as depicted in the revised Exhibit F-1, attached hereto and incorporated by reference herein; and

WHEREAS, the revised Exhibit F-1 attached hereto and incorporated by reference herein shall supersede and replace the original Exhibit F-1 in the Development Agreement; and

WHEREAS, OWNER and CITY agree and acknowledge that the postponement of the Deferred Street Improvements will allow for orderly development of Tentative Tract Map 20265 and Tentative Parcel Map 19725; and

WHEREAS, per The Ontario Plan (TOP) and Rich-Haven Specific Plan, Tentative Tract Map 20265 is deficient in meeting the minimum of fourteen (14) dwelling units per acre, and OWNER shall maintain the minimum density requirement of fourteen (14) dwelling units per acre over the remainder of Planning Area 8A, within the Standalone Residential land use district of the Rich-Haven Specific Plan, unless the minimum density is amended.

AGREEMENTS

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

1. Section 1.2, reference to Exhibit “F-1” of the Development Agreement is amended to read as follows:

“1.2 Exhibits. Exhibit “F-1” – Infrastructure Improvements Exhibit for Parcel Map No. 19725 and Tentative Tract Map No. 20265.”

2. Section 3.4.1 of the Development Agreement is amended to read as follows:

“3.4.1 Attached hereto as Exhibit "F-1" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19725 and Tentative Tract Map No. 20265. Also, attached hereto as Exhibit "F-2" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19741 (collectively, the “Infrastructure Improvement Exhibits").”

3. Section 3.4.2 shall be added to the Development Agreement to read as follows:

“3.4.2 The TOP and Rich Haven Specific Plan require that for the residential component of Planning Area 8A, density requirements of 14.0 to 50 dwelling units per acre be maintained. The proposed Tentative Tract Map No. 20265 is on a portion of Planning Area 8A and is currently proposing 204 units and is required to construct 253 units based on a minimum of 14 dwelling units per acre for that portion of Planning Area 8A. Since the proposed Tentative Tract Map No. 20265 is deficient in meeting the minimum of 14 dwelling units per acre, any future development of the Property, whether residential, commercial, mixed-use, industrial, or any combination thereof, for the remainder of Planning Area 8A, shall be required to maintain the minimum density requirement of 14 dwelling units per acre over the residential component, unless the

density range is amended."

4. Section 3.7 of the Development Agreement is amended to read as follows:

"3.7 Public Infrastructure and Utilities. OWNER is required by this Agreement 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 in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval of the portion of the Property covered by Parcel Map No. 19725, OWNER shall connect the portion of the Project covered by Parcel Map No. 19725 to all utilities necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19725. Also, as a condition of development approval OWNER shall connect the portion of the Project covered by Parcel Map No. 19741 to all utilities, necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19741. Furthermore, as a condition of development approval of the portion of the Property covered by Tentative Tract Map No. 20265, OWNER shall connect the portion of the Project covered by Tentative Tract Map No. 20265 to all utilities necessary as shown on Exhibit F-1, to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Tentative Tract Map No 20265. OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the infrastructure improvements required for the respective Parcel or Tract Map, as described in the attached Exhibit F- 1 for Parcels within the boundaries of Parcel Map No. 19725 and Tentative Tract Map No. 20265 or, the attached Exhibit F-2 for Parcels within the boundaries of Parcel Map No. 19741."

5. The following Sections 3.7.11 and 3.7.12 shall be added to the Development Agreement to read as follows:

"3.7.11 OWNER agrees that development of the portion of the Project within the boundaries of Tentative Tract Map No. 20265 shall require the construction, at OWNER's sole cost and expense, the street, water, recycled water, sewer, storm drain, fiber optic, and multi-purpose trail improvements as depicted in the attached Exhibit F-1. OWNER may defer the Landscape Improvements along Mill Creek Avenue and Street "A", respectively, and the Landscape, Sidewalk, and Multi-Purpose Trail Improvements on Ontario Ranch Road (collectively, the "**Deferred Street Improvements**"), as depicted in the revised Exhibit F-1. OWNER shall make a cash security deposit with CITY for the Deferred Street Improvements:

(i) Prior to the OWNER's request for the 100th certificate of occupancy for Tentative Tract Map No. 20265; or

(ii) Three (3) years after the approval of this First Amendment, whichever occurs first.

The cash deposit amount shall be the greater of (i) $655,458.22 or (ii) the latest Engineer's Cost Estimate approved by the City Engineer and may be used by CITY to construct the Deferred Street Improvements, at the discretion of the City Engineer. If OWNER or its assignee receives Subsequent Development Approvals and enters into a Subdivision Improvement Agreement for any parcels outside of Tentative Tract Map No. 20265, and CITY has not initiated construction of the Deferred Street Improvements, the CITY shall refund the total amount of the cash deposit to the entity who posted the cash security deposit within 90 days of approval of the Subdivision Improvement Agreement. OWNER shall be required to construct and complete the Deferred Street Improvements prior to OWNER's request for the first certificate of occupancy for any parcel outside of Tentative Tract Map No. 20265, but within the limits of Tentative Parcel Map No. 19725.

"3.7.12 OWNER agrees that development of the portion of the Project within the boundaries of Tentative Tract Map No. 20265 shall require the construction and completion of water improvements from at least two (2) points of connection, at OWNER's sole cost and expense, as depicted in the attached Exhibit F-1. OWNER shall select either of the following options in order to satisfy the requirement for two (2) points of connection:

(i) OWNER shall construct the water improvements through a public utility easement across Lot 2 of Tentative Parcel Map No. 19725, as depicted in the attached Exhibit F-1. OWNER may relocate the water improvements, and vacate the public utility easement, only if an alternative second point of connection is provided that is acceptable to the CITY; or

(ii) OWNER shall extend the water improvements on Mill Creek Avenue, south to the existing point of connection available at the time of construction.

In either case, the ultimate pipe size and location of the offsite and onsite water improvements shall be subject to technical studies and consistent with the Conditions of Approval."

6. Section 4.3.1 of the Development Agreement is amended to read as follows:

"4.3.1 Timely Construction of Public Infrastructure. The phasing of the area-wide infrastructure construction within the Ontario Ranch area will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map No. 19725 and Tentative Tract Map No. 20265, as shown on the attached Exhibit "F-1"

and OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map 19741 as shown on the attached Exhibit "F-2". OWNER shall also be responsible for the construction and completion of any and all tentative parcel or tract map conditions. Unless otherwise specified in the Subdivision Agreement/Parcel/Tract Map conditions, all other required Improvements for each Tract or Parcel Map, and all subsequent Parcel or Tract Maps for the Property shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel/Tract Map conditions for Parcel Map Nos. 19725 and 19741 and as required by Tentative Tract Map No. 20265 and any future Tract Maps for the Property. Notwithstanding the above, OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the conditions of approval for the respective Parcel Map. The construction and completion of the Deferred Street Improvements shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first occupancy for a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map outside of the limits of Tentative Tract Map No. 20265, but within the limits of Tentative Parcel Map No. 19725."

7. Miscellaneous.

7.1 Integration. All remaining Sections of the Development Agreement and the Exhibits thereto shall not be affected by this First Amendment. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Development Agreement, this First Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement as amended.

7.2 Additional Documents/Actions. The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this First Amendment to the Development Agreement.

7.3 Defined Terms/Other Provisions. Unless otherwise defined herein, capitalized terms contained in this First Amendment shall have the meanings ascribed to them in the Development Agreement. Except as expressly amended herein, all provisions of the Development Agreement, as supplemented, restated and amended, shall remain.

7.4 Indemnification. OWNER hereby agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, agents, contractors and volunteers from and against any and all claims, suits or proceedings arising from or related to CITY's entering into, or carrying out, this First Amendment. This indemnification includes the

payment of all penalties, fines, judgments, awards, decrees, attorney's fees and related costs or expenses incurred by the CITY.

{signature page to follow}

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date below, the ("Effective Date").

SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
PDA16-003

"OWNER"

GDCI-RCCD 2, LP
A Delaware limited partnership company

By: GDC Holdings, LLC, a California limited liability company
Its: General Partner

By:_____
Name:_____
Title: Authorized Representative
Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa, City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST BEST KREIGER LLP

_____
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate isattached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

EXHIBIT "A"

Legal Description of Property

THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF, APPROVED BY THE SURVEYOR GENERAL, DATED DECEMBER 30, 1881.

TOGETHER WITH THAT PORTION OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 13 LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 13, SAID CORNER ALSO BEING A POINT ON THE CENTERLINE INTERSECTION OF ONTARIO RANCH ROAD AND THE FUTURE MILL CREEK AVENUE.

THENCE SOUTH 00°17'30" EAST ALONG THE WEST LINE OF SAID NORTH ONE-HALF AND SAID MILL CREEK AVENUE CENTERLINE A DISTANCE OF 633.60 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE BEING DESCRIBED HEREIN;

THENCE LEAVING SAID WEST LINE NORTH 89°39'24" EAST 1221.87 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 38.00 FEET;

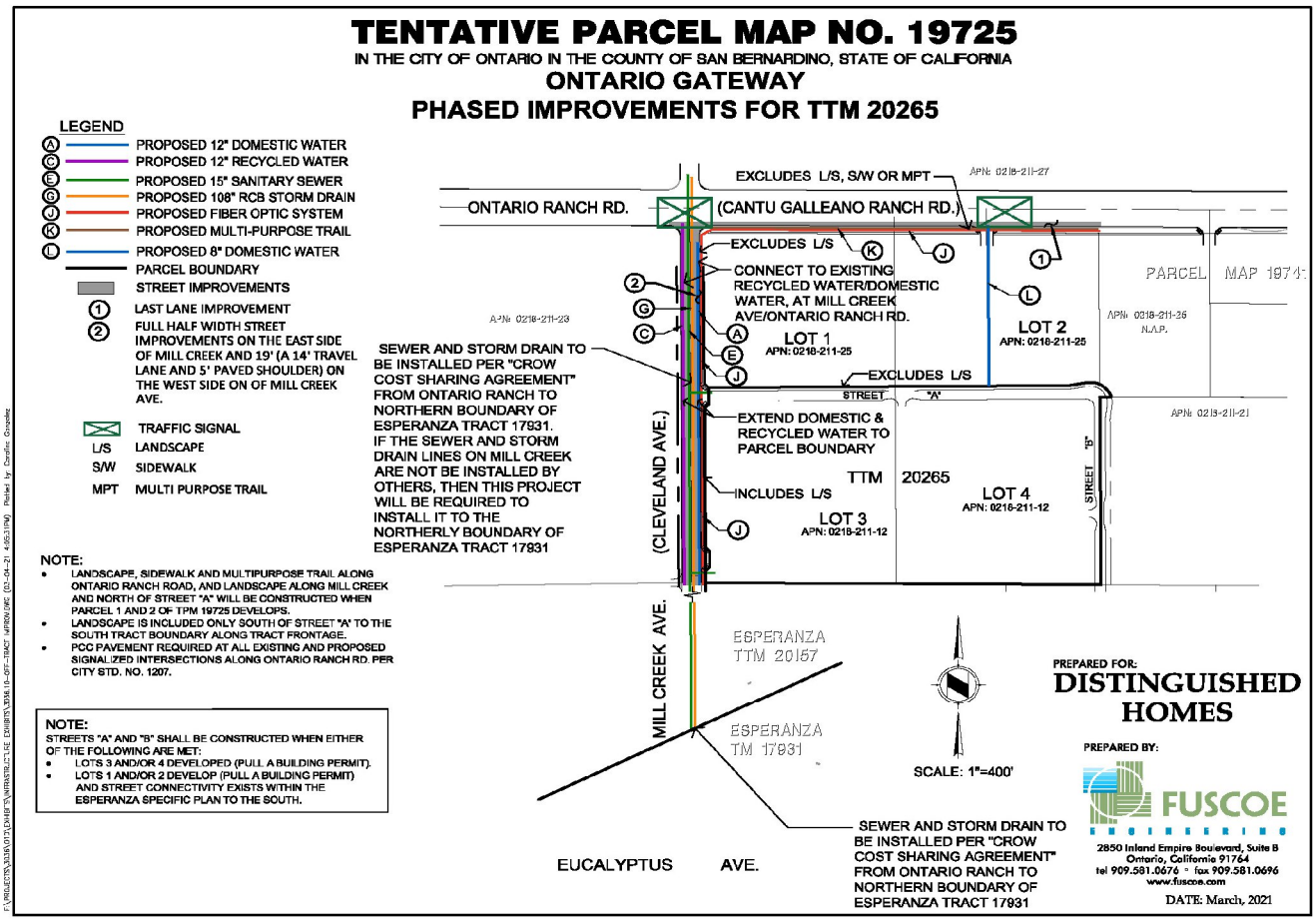
THENCE EASTERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE, FROM AN INITIAL RADIAL BEARING OF NORTH 00°20'36" WEST THROUGH A CENTRAL ANGLE OF 09°43'36", AN ARC LENGTH OF 6.45 FEET;

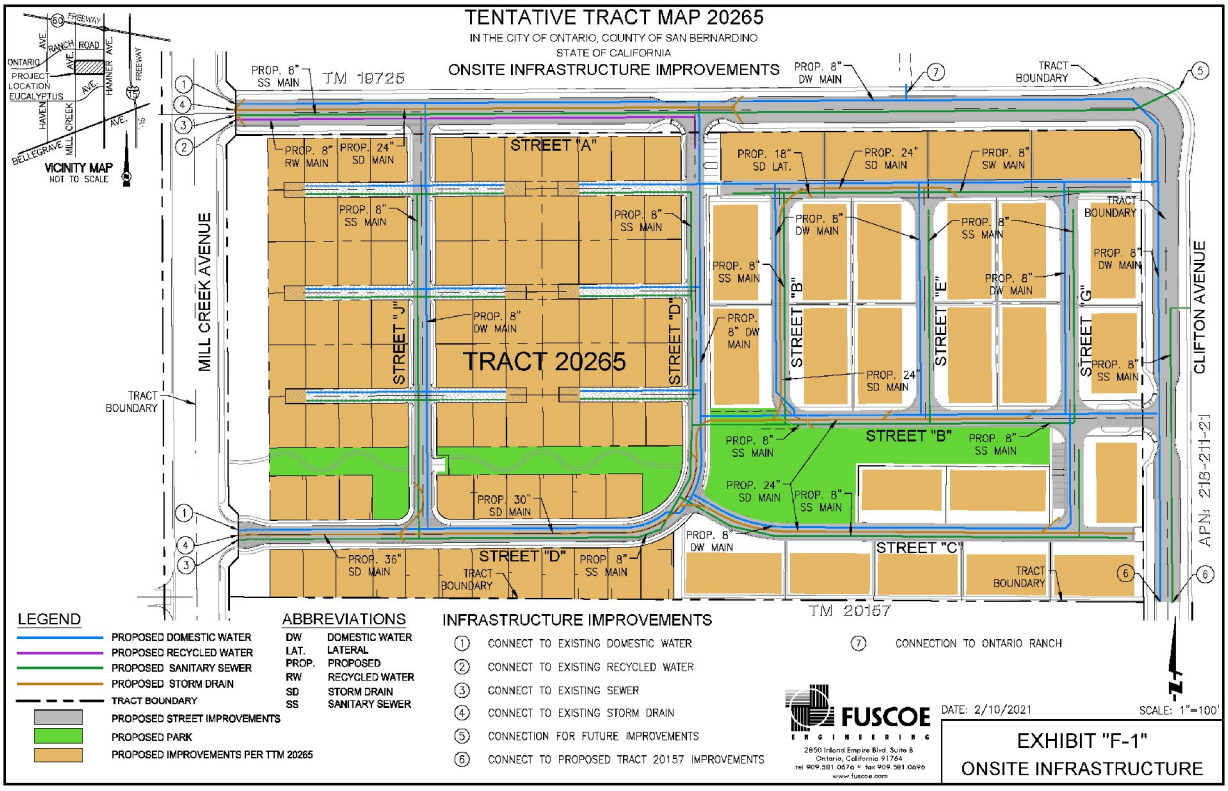
THENCE NORTH 79°55'47" EAST 53.13 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 70.00 FEET;

THENCE EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, FROM AN INITIAL RADIAL BEARING OF SOUTH 10°01'17" EAST THROUGH A CENTRAL ANGLE OF 83°45'45" AN ARC LENGTH OF 102.33 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID NORTH ONE-HALF, SAID POINT OF INTERSECTION BEING THE TERMINUS OF THE DESCRIBED LINE.

EXHIBIT "F-1"
TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements




TENTATIVE TRACT MAP 20265
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
ONSITE INFRASTRUCTURE IMPROVEMENTS
VICINITY MAP
NOT TO SCALE
PROJECT LOCATION
ONTARIO
EUCALYPTUS
HAVEN AVE.
MILL CREEK
BELLEGRAVE
RANCH ROAD
HAMNER AVE.
FREEWAY
TRACT 20265
TM 19725
TM 20157
STREET "A"
STREET "B"
STREET "C"
STREET "D"
STREET "E"
STREET "F"
STREET "G"
STREET "J"
MILL CREEK AVENUE
CLIFTON AVENUE
TRACT BOUNDARY
APN: 218-211-21
PROP. 8" SS MAIN
PROP. 8" RW MAIN
PROP. 24" SD MAIN
PROP. 8" DW MAIN
PROP. 18" SD LAT.
PROP. 8" SW MAIN
PROP. 30" SD MAIN
PROP. 36" SD MAIN
PROP. 8" DW MAIN
LEGEND
PROPOSED DOMESTIC WATER
PROPOSED RECYCLED WATER
PROPOSED SANITARY SEWER
PROPOSED STORM DRAIN
TRACT BOUNDARY
PROPOSED STREET IMPROVEMENTS
PROPOSED PARK
PROPOSED IMPROVEMENTS PER TTM 20265
ABBREVIATIONS
DW DOMESTIC WATER
LAT. LATERAL
PROP. PROPOSED
RW RECYCLED WATER
SD STORM DRAIN
SS SANITARY SEWER
INFRASTRUCTURE IMPROVEMENTS
1 CONNECT TO EXISTING DOMESTIC WATER
2 CONNECT TO EXISTING RECYCLED WATER
3 CONNECT TO EXISTING SEWER
4 CONNECT TO EXISTING STORM DRAIN
5 CONNECTION FOR FUTURE IMPROVEMENTS
6 CONNECT TO PROPOSED TRACT 20157 IMPROVEMENTS
7 CONNECTION TO ONTARIO RANCH
FUSCOE ENGINEERING
2850 Inland Empire Blvd. Suite B
Ontario, California 91764
tel 909.581.0676 • fax 909.581.0696
www.fuscoe.com
DATE: 2/10/2021
SCALE: 1"=100'
EXHIBIT "F-1"
ONSITE INFRASTRUCTURE

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **PUBLIC HEARINGS**
Department: Development Administration Prepared By: Derrick E Womble Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: **A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA18-004) BETWEEN THE CITY OF ONTARIO AND MERRILL COMMERCE CENTER EAST, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20273 (FILE NO. PMTT20-010), A 366.65-ACRE PROPERTY GENERALLY BORDERED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE EAST, AND GROVE AVENUE TO THE WEST, WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF THE MERRILL COMMERCE CENTER SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - (APNS: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06)**

RECOMMENDATION: That the City Council introduce and waive further the reading of an ordinance approving the Development Agreement (File No. PDA18-004) between the City of Ontario and Merrill Commerce Center East, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 20273 (File No. PMTT20-010), a 366.65-acre property generally bordered by Eucalyptus Avenue to the north, Merrill Avenue to the south, Carpenter Avenue to the east, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce 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
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 proposed Development Agreement (File No. PDA18-004) will not have a

direct impact on the City's budget. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Merrill Commerce Center Specific Plan development, thereby mitigating the increased costs associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No General Fund revenue will be used to support the Ontario Ranch development.

BACKGROUND & ANALYSIS: On February 2, 2021, the City Council approved the Environmental Impact Report ("EIR")(SCH#2019049079), and Merrill Commerce Center Specific Plan, File No. PSP18-001 ("Specific Plan") which addressed the potential development of approximately 8,455,000 square feet of Business Park and Industrial uses.

The Ontario Ranch financial commitments required for construction of properties within a specific plan 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, Merrill Commerce Center East, 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 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. Pursuant to these procedures and requirements, staff entered into negotiations with the Owner to create a Development Agreement for consideration by the Planning Commission and City Council.

The Agreement (File No. PDA18-004) is the second development agreement to be proposed outside of the NMC Builders' Construction Agreement development area and was established in coordination between the City Attorney and the Owner's legal counsel. The provisions of the Agreement are consistent with the commitments to assure adequate public infrastructure improvements are constructed or funded by the Owner. The Agreement proposes to include 366.65 acres of land within the Business Park and Industrial land use districts of the Specific Plan, as shown on the attached Exhibit "A". The Agreement grants the Owner a vested right to develop Tentative Parcel Map 20273 (File No. PMTT20-010), provided the Owner complies with the terms and conditions of the Specific Plan and EIR. The Tentative Parcel Map 20273 (see Exhibit "B") proposes to subdivide 366.65 acres of land into 22 lots and is bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Specific Plan.

The term of the Agreement is for ten (10) years with a five (5) year option to renew. The main points of the agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); funding a portion of Phase 2 Water Improvements; Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); and, the creation of a Community Facilities District (CFD) for the maintenance of public facilities. Additionally, the Agreement will allow the Owner to phase the development of the Project, subject to approval by the City.

In considering the application at their meeting on March 23, 2021, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, and the City's Development Agreement policies previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC21-014, recommending City Council approval of the Development Agreement with a 6-0 vote.

HOUSING ELEMENT COMPLIANCE: Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority 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 as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

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. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan, for which an EIR (SCH#2019049079) was adopted by the City Council on February 2, 2021. 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.

Exhibit "A"
Merrill Commerce Center Specific Plan Land Use Map

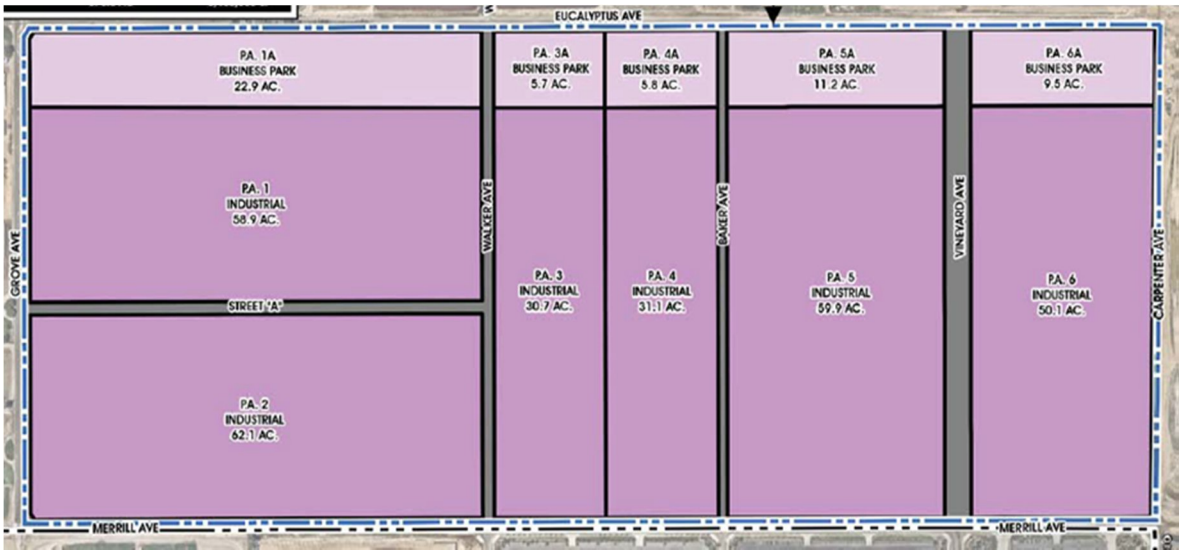
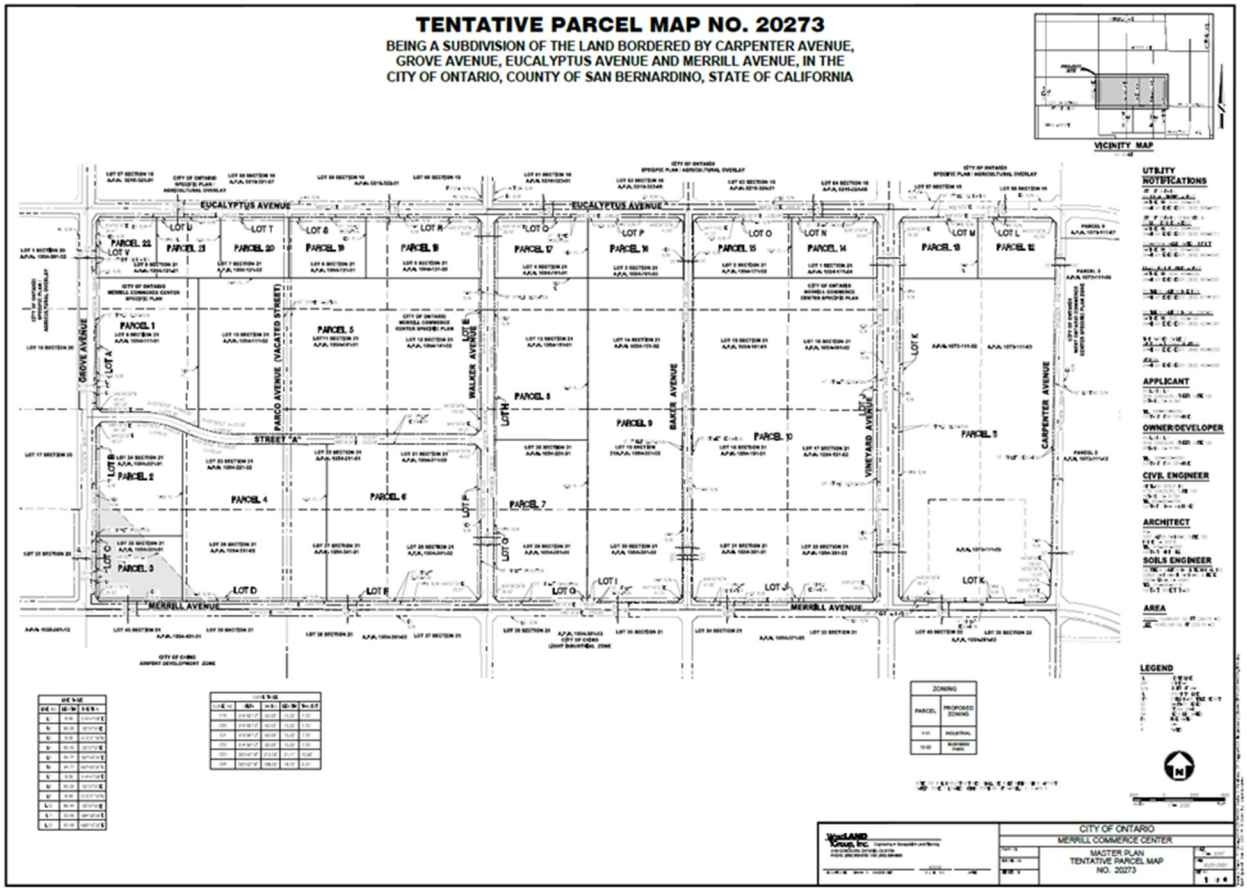


Exhibit "B"
Tentative Parcel Map 20273



CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

March 23, 2021

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

FILE NO: PDA18-004

SUBJECT: A Development Agreement (File No. PDA18-004) between the City of Ontario and Merrill Commerce Center East LLC, to establish the terms and conditions for the development of Tentative Parcel Map 20273 (File No. PMTT20-010), a 366.65 acre property generally bordered by Eucalyptus Avenue to the north, Merrill Avenue to the south, Carpenter Avenue to the east, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan (APNs: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06). **Submitted by Merrill Commerce Center East, LLC. City Council action is required.**

PROPERTY OWNER: Prologis L.P.; Joseph and Doleen Borba Administrative Trust; Minaberry Family, LLC.

RECOMMENDED ACTION: That the Planning Commission consider and recommend City Council adoption of an ordinance approving the Development Agreement (File No. PDA18-004) between the City of Ontario and Merrill Commerce Center East LLC., pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The project site is comprised of 366.65 acres of land, generally bordered by Eucalyptus Avenue to the north, Merrill Avenue to the south, Carpenter Avenue to the east, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center

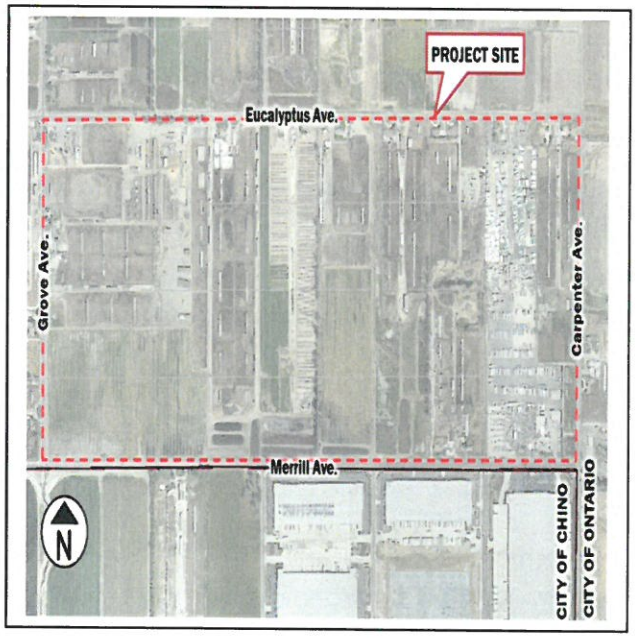


Figure 1: Project Location

Case Planner:	Derrick Womble, Administrative Officer
Planning Director Approval:	
Submittal Date:	06/20/2018

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	03/23/2021	Approval	Recommend
CC	04/20/2021		Final

Specific Plan and is depicted in Figure 1: Project Location.

PROJECT ANALYSIS:

(1) Background — On February 2, 2021, the City Council approved the Environmental Impact Report (EIR) SCH#2019049079, and Merrill Commerce Center Specific Plan, File No. PSP18-001 (the "Specific Plan") which addressed the potential development of approximately 8,455,000 square feet of Business Park and Industrial uses.

The Ontario Ranch financial commitments required for construction of properties within a specific plan 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, Merrill Commerce Center East, 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 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. Pursuant to these procedures and requirements, staff entered into negotiations with the Owner to create a Development Agreement for consideration by the Planning Commission and City Council.

The Agreement (File No. PDA18-004) is the second development agreement to be proposed outside of the NMC Builders' Construction Agreement development area and was established in coordination between the City Attorney and the Owner's legal counsel. The provisions of the Agreement are consistent with the commitments to assure adequate public infrastructure improvements are constructed or funded by the Owner.

(2) Staff Analysis – The Agreement proposes to include 366.65 acres of land within the Business Park and Industrial land use districts of the Specific Plan, as shown on the attached Exhibit "A". The Agreement grants the Owner a vested right to develop Tentative Parcel Map 20273 (File No. PMTT20-010), provided the Owner complies with the terms and conditions of the Specific Plan and EIR. The Tentative Parcel Map 20273 (see Exhibit "B") proposes to subdivide 366.65 acres of land into 22 lots and is bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Specific Plan.

The term of the Agreement is for ten (10) years, with a five (5) year option to renew. The main points of the agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public

improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); funding a portion of Phase 2 Water Improvements; Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); and the creation of a Community Facilities District (CFD) for the maintenance of public facilities. Additionally, the Agreement will allow the Owner to phase the development of the Project, subject to approval by the City.

Staff finds that the Agreement is 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 Agreement is 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
- 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 the New Model Colony

(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.

Community Economics Element:

- 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:

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

➢ CD1-3 Neighborhood Improvement. We require viable existing residential and non-residential neighborhoods to be preserved, protected, and enhanced in accordance with our land use policies.

▪ 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;
- Traffic calming measures to slow traffic and promote walkability while maintaining acceptable fire protection and traffic flows;
- Landscaped parkways, with sidewalks separated from the curb.

➢ 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: Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

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. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics

ENVIRONMENTAL REVIEW: The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts. On the

basis of the initial study, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of insignificance, a Mitigated Negative Declaration was prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines. Furthermore, to ensure that the mitigation measures are implemented, a Mitigation Monitoring and Reporting Program has been prepared for the Project pursuant to CEQA Guidelines Section 15097, which specifies responsible agencies/departments, monitoring frequency, timing and method of verification and possible sanctions for non-compliance with mitigation measures. The environmental documentation for this project is available for review at the Planning Department public counter.

The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan, for which a(n) EIR (SCH#2019049079) was adopted by the City Council on February 2, 2021. 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.

Exhibit "A"
Merrill Commerce Center Specific Plan Land Use Map

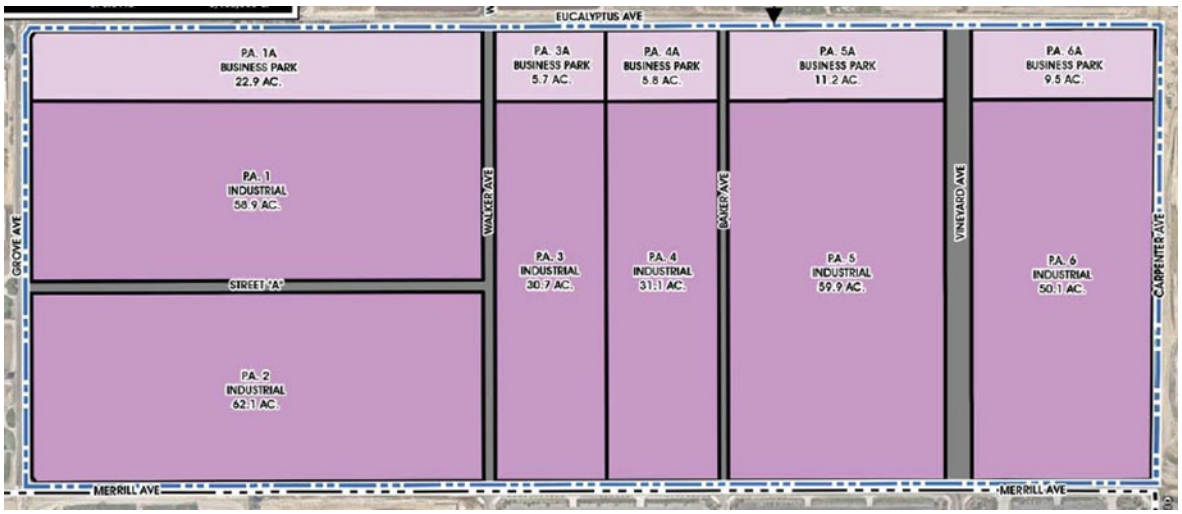
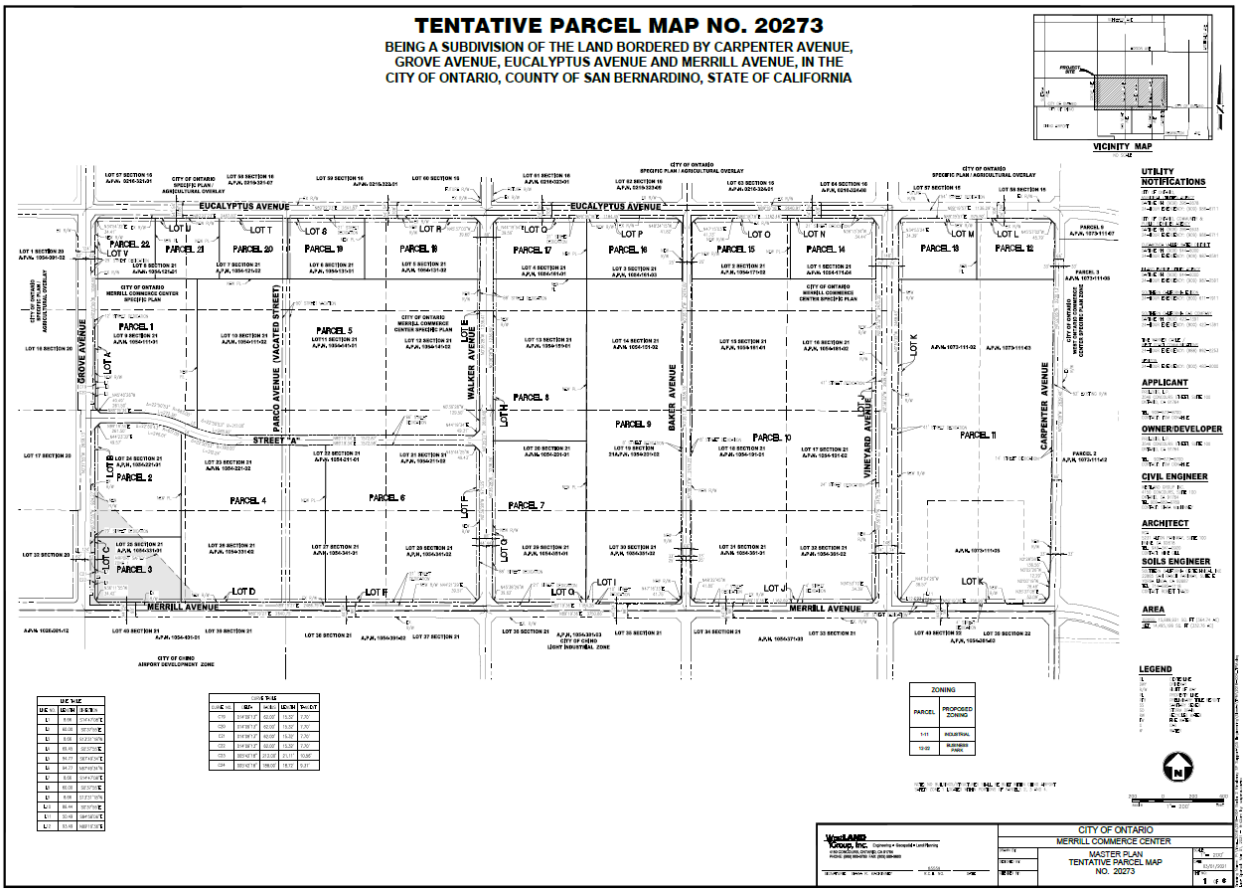


Exhibit "B"
Tentative Parcel Map 20273



RESOLUTION NO. PC21-014

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE A DEVELOPMENT AGREEMENT (FILE NO. PDA18-004), BETWEEN THE CITY OF ONTARIO AND MERRILL COMMERCE CENTER EAST LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20273 (FILE NO. PMTT 20-010), A 366.65 ACRE PROPERTY GENERALLY BORDERED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE EAST, AND GROVE AVENUE TO THE WEST, WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF THE MERRILL COMMERCE CENTER SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06).

WHEREAS, Merrill Commerce Center East LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA18-004, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 366.65 acres of land generally bordered by Eucalyptus Avenue to the north, Merrill Avenue to the south, Carpenter Avenue to the east, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan; and

WHEREAS, on February 2, 2021, the City Council adopted Ordinance No. 3178, approving the Environmental Impact Report (SCH#2019049079) and Merrill Commerce Center Specific Plan (“Specific Plan”), which addressed the potential development of up to 8,455,000 square feet of Industrial and Business Park land uses; and

WHEREAS, a Tentative Parcel Map 20273 (File No. PMTT20-010) to subdivide approximately 366.65 acres of land into 22 lots was submitted in conjunction with the Application; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to

as "CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan (File No. PSP18-001), for which an Environmental Impact Report — State Clearinghouse No. 2019049079 — (hereinafter referred to as "Certified EIR") was adopted by the City Council on February 2, 2021, and this Application introduces no new significant environmental impacts; 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 a recommendation 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, the Project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics; 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 March 23, 2021, 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 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 this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan (File No. PSP18-001), for which a Certified EIR was adopted by the City Council on February 2, 2021.

(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

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

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 authority 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

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 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, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

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 366.65 acres of land, generally bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan; and

(b) The Development Agreement establishes parameters for the development of the proposed Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify 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 Merrill Commerce Center Specific Plan; and

(c) The Development Agreement grants the Applicant a vested right to develop Tentative Parcel Map 20273 (File No. PMTT20-010) so long as the Applicant, complies with the terms and conditions of the Merrill Commerce Center Specific Plan and EIR. Tentative Parcel Map 20273 is generally bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, and proposes to subdivide 366.65 acres of land into 22 lots; and

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

(e) 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

(f) This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

(g) This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environmental or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan, for which an EIR (SCH#2019049079) was adopted by the City Council on February 2, 2021. 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. PDA18-004) 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.

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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 23rd day of March 2021, 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. PC21-014, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on March 23, 2021, by the following roll call vote, to wit:

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

NOES: None

ABSENT: None

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA18-004

DEVELOPMENT AGREEMENT

By and Between

City of Ontario,
a California municipal corporation,

and

Merrill Commerce Center East LLC.,
a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

Space above this line for Recorder's Use Only Exempt from Fees Per Gov. Code § 6103

File No. PDA18-004

DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO,
a California municipal corporation,

and

MERRILL COMMERCE CENTER EAST LLC,
a Delaware limited liability company

_____, 2021

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA18-004

This Development Agreement (hereinafter "Agreement") is dated for reference purposes only as of the ____ day of _____, 2021 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Merrill Commerce Center East, LLC, a Delaware limited liability company (hereinafter "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 Section 4.01.015 of the Ontario Development Code; 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, all of the procedures of the California Environmental Quality Act, Pub. Res. Code § 21000, et seq. ("CEQA") have been met with respect to the Project and the Agreement in that certain Merrill Commerce Center Specific Plan Environmental Impact Report (State Clearinghouse No. 2019049079) (the "FEIR").

WHEREAS, on February 2, 2021, the City Council found and determined that the FEIR was prepared in accordance with the requirements of CEQA and adequately describes the impacts of the Project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Merrill Commerce Center Specific Plan; 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, development of the Project Site, as more particularly described and depicted in **Exhibits A** and **B**, respectively (the "Property") in accordance with this

Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Section 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

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

1.1.3 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.4 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) general plans and general plan amendments; and specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review.

1.1.5 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee 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, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include 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.

1.1.7 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.8 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.9 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.10 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of the first reading of the ordinance adopting and approving this Agreement.

Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on such date.

1.1.11 "General Plan" means The Ontario Plan adopted on January 26, 2010, as amended up to the date of the first reading of the ordinance adopting and approving this Agreement.

1.1.12 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 20273 ("Parcel Map") as further described in Exhibit "E" and depicted in Exhibit “F”(together, the "Infrastructure Improvements Exhibit").

1.1.13 "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;

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

1.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.15 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.16 "Owner Affiliate" shall mean, (i) any entity that directly or indirectly controls, is controlled by, or is under common control with OWNER, or (ii) an entity at least a majority of whose economic interest is owned by OWNER. For purposes of this definition, the term “control” means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

1.1.17 “Phase” means the development area described in the Infrastructure Improvements Exhibit to this Agreement.

1.1.18 “Phase 2 Water Participation Fee” means the fee paid to the CITY for the Project, to fund the Property’s respective share of the project costs of the design and construction of the Phase 2 Water Improvements by the CITY. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of square feet, acreage, and land use category for non-residential square footage of the Project.

1.1.19 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.20 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.21 "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 3.4 of this Agreement.

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Merrill Commerce Center Specific Plan."

1.1.23 "Subsequent Development Approvals" means all discretionary Development Approvals required subsequent to the Effective Date in connection with development of the Property. Subsequent Development Approvals shall be deemed to be subject to the provisions of this Agreement, without any further action needed on the part of either the CITY or OWNER.

1.1.24 "Subsequent Land Use Regulations" means any discretionary Land Use Regulations adopted and effective after the Effective Date of this Agreement.

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 Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Description of Required Infrastructure Improvements

Exhibit "F" — Depiction of Infrastructure Improvements Exhibits

Exhibit "G" – Form of Certificate of DIF Credit to be issued by CITY

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 shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of fee simple title or the lessee or an optionee of the Property or a portion(s) thereof. . To the extent applicable, OWNER has obtained written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation 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. Upon approval by the City Manager, without the need for City Council approval, 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; and

(b) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign 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 with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) Except as expressly provided for herein, 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 a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, 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.

(c) 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 (b) 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 section 2.4.

(d) Notwithstanding the foregoing, OWNER shall have the right to assign this Agreement to an Owner Affiliate subject to the notice requirements to CITY as described in Paragraph (b) of this Section 2.4.1, above.

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 the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed an agreement as required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.1 and notwithstanding the release provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 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.

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one (1) year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one (1) year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the parcel, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. Within thirty (30) days following such complete submittal, CITY shall review, and if the above conditions are satisfied, may approve the partial assignment and release and notify the purchasor, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. 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. 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.

2.6 Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the City Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.7 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.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

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 obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and service mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within ten (10) business days.

2.8 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:

Tyson Chave
Merrill Commerce Center East LLC
3546 Concours Street, Suite 100
Ontario, CA 91764
tchave@prologis.com

With a copy to:
Thomas Donahue
3546 Concours Street, Suite 100
Ontario, CA 91764
tdonahue@prologis.com

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

With a copy to :
John A. Ramirez
Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612

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 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority in Section 3.4, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. 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 Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority in Section 3.4, 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 phases of the Property 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 Cal. 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 the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits “E” and "F" are a description and depiction, respectively, of the Improvements needed for the development of the Property. In the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4 Reservations of Authority.

3.4.1 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 costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(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 and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on OWNER or the Project;

(f) Regulations that may conflict with this Agreement but to which the OWNER consents.

3.4.2 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 Plan and/or the Existing Development Approvals, 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 Plan and/or the Existing Development Approvals.

3.4.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, 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. 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 3.4.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.4.4 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.

3.5 Public Works; Utilities. If OWNER is required by this Agreement or a condition of Project 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 in the same manner and subject to the same standards as 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 services necessary for the Project, as further described and depicted in the Infrastructure Improvements Exhibit. As a further condition of development approval, OWNER shall to the extent possible 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. As a further condition of development approval, to the extent OWNER does not own the Property in fee simple, OWNER will provide to CITY the written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof, pursuant to Section 2.2.

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property as described in Exhibit E and depicted in Exhibit F. OWNER shall be responsible for the construction of the necessary extension of storm drain facilities, as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the storm drain Improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the construction of street Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request, and CITY shall not issue a final occupancy permit for any buildings on the Property prior to Substantial Completion of the street Improvements as described in Exhibit E and depicted in Exhibit F. For purposes of the foregoing, street Improvements shall be deemed "Substantially Complete" even if the final lift of pavement has not been completed (i.e., OWNER may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion and subject to final acceptance by CITY of the street Improvements. OWNER agrees that the street improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street improvements. OWNER and CITY agree that a portion of the street Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such street Improvements are constructed by others, or in cooperation with others, and are

completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those street Improvements constructed and completed by others and accepted by CITY.

3.5.3 OWNER agrees that development of the Property shall require the construction of water utility Improvements as described in Exhibit E and depicted in Exhibit F consisting generally of the construction of the potable water Improvements to serve the Property as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water improvements to serve the Property from at least two points of connection. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER. OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings on the Property until the completion of the potable water improvements described in Exhibit E and depicted in Exhibit F. City agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the water improvements if there is available permanent water service from a minimum of two (2) points of connection and sufficient water is available for fire protection purposes for any buildings while under construction. OWNER and CITY agree that a portion of the water Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such water Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those water Improvements constructed and completed by others and accepted by CITY.

3.5.4 OWNER agrees that development of the Property shall require the construction of sewer Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that a portion of the sewer Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such sewer Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then

OWNER shall not be required to construct those sewer Improvements constructed and completed by others and accepted by CITY.

3.5.5 OWNER agrees that development of the Property shall require the construction of recycled water utility improvements to serve the Property, consisting generally of the construction of recycled water utility Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that the CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection and OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permit for any buildings on the Property until the completion of the water improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the extension of permanent master planned recycled water utility Improvements to serve the Property that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of recycled water improvements if there is available permanent recycled water service connection and sufficient recycled water is available. OWNER and CITY agree that all, or a portion of, the permanent master planned recycled water utility Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others. If such recycled water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER'S request to CITY of the required grading, building, or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those permanent master planned recycled water utility Improvements.

3.5.6 OWNER agrees that development of the Property shall require the construction of fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit E and depicted in Exhibit F consisting generally of the construction of fiber optic communications infrastructure to serve the Property. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F.

3.6 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") as described below in Section 3.7. This Section 3.6 is not intended by the parties to impose upon the OWNER an enforceable

duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.7 Real Property Interests.

3.7.1 CITY Acquisition of Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, Sections 3.7.1 and 3.7.2 shall control the acquisition of the Offsite Property. If the OWNER is unable to acquire such Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY may, initiate proceedings utilizing its power of eminent domain to acquire the Offsite Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Offsite Property, subject to the conditions set forth in this Section 3.7.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.7.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.7.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Offsite Property, whereupon CITY shall cease such proceedings. CITY may provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY's intent to consider the adoption of a resolution of necessity as to any Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY may institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Offsite Property.

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 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 Tentative Parcel Maps. With respect to applications by OWNER for tentative parcel maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the expiration, cancellation, or termination of this Agreement.

3.10 Specific Plan Charge. Pursuant to Government Code section 65456, the City Council may consider adopting a specific plan charge upon persons seeking CITY approvals that are required to be consistent with the Specific Plan. Any such charges shall, in the aggregate, defray, but not exceed, the estimated cost of preparation, adoption, and administration of the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.). As nearly as can be estimated, the charges shall be a prorated amount in accordance with the applicant's relative benefit derived from the Specific Plan. If such charges are adopted, the CITY shall use such charges to reimburse the OWNER who originally paid the cost of preparing the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent the OWNER paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

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 Plan 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 Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact

Fees or amend the amounts of existing Development Impact Fees. Additionally, 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.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Section 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable building (subject to the application/use of available fee deferrals or credits), except for the Species, Habitat Conservation, and Open Space Mitigation Development Impact Fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the vicinity of the Project shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as described and depicted in the Infrastructure Improvements Exhibit and any and all parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.5 and 3.6, all other required Improvements for each parcel map and each development Phase (*i.e.*, Phase A, Phase B, Phase C), shall be substantially completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property within the applicable phase as specified in the Phasing Plan set forth in Section 4.3.2. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No. 20273.

4.3.2 Phasing Plan. CITY and OWNER agree and acknowledge that the Phasing Plan, attached as Exhibit F, reflects the anticipated phasing schedule. Notwithstanding this anticipated phasing schedule, the parties agree that the order of the development may necessitate a different order due to any number of conditions including, but not limited to, business judgment, state or federal permitting issues, etc. In such case, OWNER may reorder the Phases of development, subject to approval by CITY, which approval shall not be unreasonably delayed, conditioned, or denied. OWNER shall have substantially completed all improvements for a Phase before requesting and receiving a certificate of occupancy for any part of said Phase of the development.

4.3.3 Construction of Public Infrastructure by Third Parties. CITY and OWNER acknowledge that a portion of the Improvements described in Exhibit E and depicted in Exhibit F are necessary for the development of surrounding properties within the Ontario Ranch and the other property owners are also obligated to construct the Improvements or portions thereof. As such, CITY agrees that OWNER's obligation to construct the Improvements may be satisfied by third party owners pursuant to separate written agreements between OWNER and said third party undertaking the construction of the Improvements. Nothing in this Agreement shall be construed to prohibit the coordination

of the construction of the Improvements between private parties, including the allocation of costs for the construction of the Improvements. Notwithstanding anything to the contrary herein, any applicable DIF Credits may be transferred and assigned from one (1) party to another with respect to the construction of the Improvements and such transfer or assignment shall not require the conveyance of any real property.

4.3.4 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER.

4.3.5 Construction of DIF Program Infrastructure. To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may be eligible to receive DIF Credit from OWNER's construction of DIF Program Infrastructure. Any such DIF Credit shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Public Services Funding Fee.

4.4.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to each Project in a timely manner, OWNER shall pay to CITY a "Public Services Funding Fee." The Public Services Funding Fee shall apply to residential and non-residential uses as set forth below.

4.4.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in a single installment payment in the amount of Sixty-Four Cents ($.64) per square foot of each non-residential building. The single installment for non-residential uses shall be due and payable on a building-by-building basis prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2022. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.5 Water Availability.

4.5.1 Water Availability. The Property requires the completion of the Phase 2 Water Improvements (Phase 2A and 2B) for permanent water system capacity and supply. Until the Phase 2 Water Improvements are fully constructed and completed, OWNER acknowledges that the Project shall have sufficient water capacity and supply on an interim basis made available through the construction of the Potable Water Improvements (as described in Exhibit E), the Phase 2A Water Improvements, and the Interim Chino Avenue Loop depicted in Exhibit F. OWNER acknowledges and agrees that the CITY shall not issue final certificates of occupancy for the Project until the completion of the Potable Water Improvements (as described in Exhibit E), the Phase 2A Water Improvements and the Interim Chino Avenue Loop, as depicted in Exhibit F. OWNER further acknowledges and agrees that all Phases within the Property require the Phase 2 Water Improvements as depicted in Exhibit F.

4.5.2 Phase 2 Water Construction Fee. Prior to CITY's issuance of a grading permit for any Phase of development of the Property (each, a "Grading Permit"), OWNER shall pay to CITY the applicable Phase 2 Water Construction Fee. The Phase 2 Water Construction Fee shall be calculated based on the following formula: (a) the regional water development impact fee, based on the square footage of developable property and the approved land use category for each Phase of the Project (the "Base Regional Water DIF"), PLUS (b) OWNER's pro rata share of the difference between the total projected cost of construction of the Phase 2 Water Improvements (the "Pro Rata Share") and the Base Regional Water DIF. To determine the Pro Rata Share, which may fluctuate over time, CITY shall, at the time OWNER applies for a Grading Permit, calculate the total projected cost of construction of the Phase 2 Water Improvements and subtract from that amount (y) all Phase 2 Water Construction Fees previously collected and (z) the aggregate Base Regional Water DIF to be paid by OWNER and all developers then at that time obligated to pay a Base Regional Water DIF specifically for use of the Phase 2 Water Improvements (together, the "Phase 2 Water Developers"). If the difference is zero or a number less than zero, then there is no Pro Rata Share and the Phase 2 Water Construction Fee shall equal the sum of all Base Regional Water DIF to be paid by all Phase 2 Water Developers. If the difference results in a positive number, the funding gap (the "Funding Gap") shall be divided by the total acreage of land to be developed by the Phase 2 Water Developers to obtain a Funding Gap "per acre" amount (the "Funding Gap Per Acre Amount"). Each Phase 2 Water Developer's respective total acreage to be developed shall then be multiplied by the Funding Gap Per Acre Amount to obtain each Phase 2 Water Developer's Pro Rata Share, which will then be added to each Phase 2 Water Developer's Base Regional Water DIF to obtain the Phase 2 Water Construction Fee due and payable at the time of issuance of the applicable Grading Permit.

4.5.3 DIF Credit for Phase 2 Water Construction Fees. Within thirty (30) days of OWNER's payment of each Phase 2 Water Construction Fee, CITY shall issue a certificate of DIF Credit which may be used to offset OWNER's DIF obligations in the Regional Water DIF Category. The form of the Certificate of DIF Credit shall be as described in Exhibit G, attached hereto and incorporated herein. OWNER acknowledges that any Regional Water DIF Credit issued to OWNER shall not be used to satisfy Phase

2 Water Construction Fees and may only be used to offset OWNER's DIF obligations in the Regional Water DIF Category.

4.5.4 Additional Contributions for Phase 2 Water Improvements. OWNER acknowledges and agrees that, as of the Effective Date of this Agreement, the CITY does not have sufficient funding to construct and complete the Phase 2 Water Improvements. OWNER agrees to provide the CITY with additional contributions for the Phase 2 Water Improvements prior to the issuance of a Grading Permit for any Phase within the Project, pursuant to the Pro Rata Share calculation as set forth in Section 4.5.2 above. OWNER acknowledges and agrees that the CITY has the right to conduct subsequent reviews of the available funding for the construction of, or continuation of the construction of, the Phase 2 Water Improvements. If at any time outside of OWNER's submission of a request for a Grading Permit the CITY determines that there is not sufficient funding for the construction of, or continuation of the construction of, the Phase 2 Water Improvements necessary to support current and anticipated future development within the Ontario Ranch area served by the Phase 2 Water Improvements, OWNER agrees to pay such subsequent additional contribution payment necessary from the OWNER (on a pro rata basis with other Phase 2 Water Developers then existing at the time) to the CITY to initiate construction of, or continue construction of, the Phase 2 Water Improvements. The CITY shall determine OWNER's additional contribution amount (above and beyond OWNER's Pro Rata Share) and such amount shall be due and payable to the CITY within thirty (30) days of written notice from the CITY to OWNER.

4.5.5 Future Reimbursement of Pro Rata Share of Phase 2 Water Construction Fees. OWNER agrees that the CITY will be responsible for the construction and completion of the Phase 2 Water Improvements, as depicted in Exhibit F. Subject to the successful completion of the Phase 2 Water Improvements, CITY and OWNER shall meet periodically and/or as needed from the date of completion of the Phase 2 Water Improvements, to jointly develop a plan and mutually enter into an agreement for the reimbursement of OWNER's Pro Rata Share of Phase 2 Water Construction Fees that may be reimbursed from future development in the 925 Zone as depicted in the City's Domestic Water Master Plan, following any reallocation of each Phase 2 Water Developer's Pro Rata Share, CITY's collection of additional Regional Water DIF in connection with construction of the Phase 2 Water Improvements, and after the completion of the Phase 2 Water Improvements. Such agreement shall be approved at the sole discretion of the Ontario City Council.

4.6 Compliance with Public Benefits Requirements.

4.6.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement, thereby entitling CITY to any and all remedies available to it, including, without limitation, the right of CITY to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability. Nothing herein shall waive OWNER's right to assert a default

(or failure to perform) by CITY has excused OWNER's performance under this Agreement.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Parcel Map, the property subject to such Parcel Map shall be included in a CFD to finance CITY services through annual special taxes that will initially be Thirty-One Cents ($.31) per square foot for non-residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.1 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit CITY’s ability to take any and all necessary steps requisite to the formation of the CFD to finance CITY services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district.

6. [OMITTED]

7. REVIEW FOR COMPLIANCE.

7.1 Periodic and Special Reviews.

7.1.1 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. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City

Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, 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 7.1.2 through 7.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

7.1.2 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:

(a) Recommendation of the Planning staff;

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

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

7.1.3 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.

7.1.4 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.

7.1.5 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.

7.1.6 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 may recommend to the City Council to modify or terminate this Agreement.

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

7.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 7.1.6(b), the CITY determines to proceed with modification or 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 or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

7.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or 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 this Agreement 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.

7.4 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.

8. [OMITTED]

9. DEFAULT AND REMEDIES.

9.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that (i) CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages and (ii) OWNER shall not be liable in damages

to CITY, or to any other person, and CITY covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

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

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

9.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY and OWNER as provided in Section 9.1 above.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

9.3 Release. Except for non-damage remedies, including the remedies of judicial review and of specific performance as provided for in Sections 7.3 and 9.2, respectively,, OWNER, for itself, its successors and assignees, hereby releases the CITY, 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.

9.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Sections 7.2 and 7.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of

default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

10. THIRD PARTY LITIGATION.

10.1 General Plan Litigation. CITY has determined that this Agreement is consistent with the General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. 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 Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

10.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees 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 CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

10.3 Indemnity. In addition to the provisions of Section 10.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, to the extent relating to or in any

way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action. OWNER's indemnity obligation shall terminate following CITY's legal acceptance of (i.e. taking of title to) the Improvements.

10.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, to the extent based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and 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 during OWNER'S period of ownership of the Property, including, but not limited to, soil and groundwater conditions caused by OWNER, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees 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.

10.5 Reservation of Rights. With respect to Sections 10.2, 10.3 and 10.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

10.6 Survival. The provisions of this Sections 10.1 through 10.6, inclusive, shall survive the termination of this Agreement.

11. MORTGAGEE PROTECTION.

11.1 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. 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. 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 mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, 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 during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of 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 by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement

(e) In the event of a default by OWNER, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 9.4 above, or (ii) the expiration of the period provided herein for OWNER to remedy or cure such default, and CITY shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by OWNER; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently prosecutes the cure to completion and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

12. MISCELLANEOUS PROVISIONS.

12.1 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 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 or modifies the 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.

12.2 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.

12.3 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, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

12.4 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.

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

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

12.7 Joint and Several Obligations. Pursuant to Section 2.4, if at any time during the term of this Agreement the Property is subsequently 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. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate

user shall have any obligation under this Agreement except as provided under Section 4 hereof.

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

12.9 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.

12.10 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. No other person shall have any right of action based upon any provision of this Agreement.

12.11 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, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, governmental orders related to statewide or national pandemics, any third party court actions challenging the Project (including but not limited to writs of mandate, restraining orders or injunctions), or other causes beyond the party's control. 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 may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

12.12 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.

12.13 Successors in Interest. 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.

12.14 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.

12.15 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.

12.16 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.

12.17 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.

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

12.19 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.

12.20 Estoppel Certificate. Within thirty (30) business 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 costs incurred by CITY in connection with the issuance of estoppel certificates requested by OWNER under this Section 12.20 prior to CITY's issuance of such certificates.

12.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT
FILE NO. PDA18-004

"OWNER"
MERRILL COMMERCE CENTER EAST LLC
a Delaware limited liability company

By: _____
Name:
Title: _____
Date: _____

"CITY"
CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

BEST BEST & KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate isattached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same inhis/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoingparagraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate isattached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same inhis/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoingparagraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

(SEE ATTACHED LEGAL DESCRIPTION)

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-820460-SF)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 1, 2, 15, 16, 18 AND 31, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPT THE EASTERLY 165 FEET OF THE WESTERLY 263 FEET OF THE NORTHERLY 150 FEET OF LOT 2 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPT THE WESTERLY 185 FEET OF THE NORTHERLY 150 FEET OF LOT 1 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPTING FROM PARCEL A ABOVE: MINERALS, OIL, GAS AND KINDRED SUBSTANCES AS CONTAINED IN INSTRUMENTS RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82; JUNE 24, 1968, AS INSTRUMENT NO. 322, IN BOOK 7047, PAGE 994; AND JUNE 24, 1968 AS INSTRUMENT NO. 321, IN BOOK 7047, PAGE 993; ALL OF OFFICIAL RECORDS.

PARCEL B:

LOTS 17 AND 32, IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAID

PARCEL C:

THE EASTERLY 165 FEET OF THE WESTERLY 263 FEET OF THE NORTHERLY 150 FEET OF LOT 2 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPTING THEREFROM: MINERALS, OIL, GAS AND KINDRED SUBSTANCES AS CONTAINED IN INSTRUMENTS RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82; JUNE 24, 1968, AS INSTRUMENT NO. 322, IN BOOK 7047, PAGE 994; AND JUNE 24, 1968 AS INSTRUMENT NO. 321, IN BOOK 7047, PAGE 993; ALL OF OFFICIAL RECORDS.

PARCEL D:

THE WESTERLY 185 FEET OF THE NORTHERLY 150 FEET OF LOT 1 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPTING THEREFROM: MINERALS, OIL, GAS AND KINDRED SUBSTANCES AS CONTAINED IN INSTRUMENTS RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82; JUNE 24, 1968, AS INSTRUMENT NO. 322, IN BOOK 7047, PAGE 994; AND JUNE 24, 1968 AS INSTRUMENT NO. 321, IN BOOK 7047, PAGE 993; ALL OF OFFICIAL RECORDS.

PARCEL E:

AN UNDIVIDED 3/5 INTEREST IN AND TO A PUMP SITE LOCATED ON THE NORTH 63.00 FEET OF THE EAST 30.00 FEET OF THE WEST 230.00 FEET OF LOT 3 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO A MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS UPON SAID PROPERTY FOR THE PURPOSE OF OPERATING AND MAINTAINING SAID PUMPING PLANT AND IRRIGATING LINES.

FOR CONVEYANCE PURPOSES ONLY: APN 1054-171-02-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-171-04-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-181-01-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-181-02-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-191-01-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-361-01-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-191-02-0-000 (AFFECTS: PORTION OF PARCEL B)
1054-361-02-0-000 (AFFECTS: PORTION OF PARCEL B)
1054-171-01-0-000 (AFFECTS: PARCEL C)
1054-171-03-0-000 (AFFECTS: PARCEL D)
1054-161-02-0-000 (AFFECTS: PARCEL E)

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4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabeny SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-1017181-SF)

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 3, 14, 19 AND 30, OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A 3/5THS INTEREST IN AND TO A PUMP SITE LOCATED ON THE NORTH 63.00 FEET OF THE EAST 30.00 FEET OF THE WEST 230.00 FEET OF LOT 3 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, PURSUANT TO GRANT DEED RECORDED AUGUST 2, 1968, IN BOOK 7070, PAGE 513, OFFICIAL RECORDS.

EXCEPTING 25% OF ALL MINERAL, OIL, GAS AND KINDRED SUBSTANCES LYING IN, UPON AND UNDER THE PREMISES DESCRIBED ABOVE, AS CONTAINED IN THE DEED FROM WESTERN CONSUMERS FEED RECORDED SEPTEMBER 1, 1965 IN BOOK 6464, PAGE 563, OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED QUARTER INTEREST IN AND TO ALL MINERAL, OIL, GAS AND KINDRED SUBSTANCES LYING IN, UPON AND UNDER THE PREMISES DESCRIBED ABOVE, TOGETHER WITH THE RIGHT OF ENTRY THEREON FOR THE PURPOSE OF DEVELOPING, EXTRACTING AND REMOVING SAID SUBSTANCES THEREFROM, AS CONTAINED IN THE DEED FROM POMONA COLLEGE, RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82, OFFICIAL RECORDS. (FOR cONVEYANCING PURPOSES ONLY):
1054-151-02-0-000 (AFFECTS LOT 14)
1054-161-02-0-000 (AFFECTS A PORTION OF LOT 3)
1054-161-03-0-000 (AFFECTS A PORTION OF LOT 3)
1054-201-02-0-000 (AFFECTS LOT 19)
1054-351-02-0-000 (AFFECTS LOT 30)

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Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabeny SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-972996-SF)

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THAT PORTION OF LOTS 7, 8, 9, 10, 23, 24 AND 26, AND THE SOUTHERLY 1/2 OF EUCALYPTUS AVENUE VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY JUNE 6, 1922, ADJOINING SAID LOTS 7 AND 8 ON THE NORTH, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, RECORDS OF SAID COUNTY, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE); THENCE NORTH 89 DEGREES 56' 33" EAST 568.52 FEET ALONG THE NORTH LINE OF MERRILL AVENUE TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 20' 16" EAST 2606.28 FEET TO A POINT ON THE CENTER LINE OF EUCALYPTUS AVENUE (VACATED) WHICH IS NORTH 89 DEGREES 56' 26" EAST 616.91 FEET FROM THE INTERSECTION OF THE CENTER LINE OF SAID VINEYARD AVENUE WITH THE CENTER LINE OF SAID EUCALYPTUS AVENUE.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF MERRILL AVENUE (66 FEET WIDE) WITH THE SOUTHERLY PROJECTION OF THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY, RECORDED IN BOOK 25, PAGE 15, RECORDS OF SURVEY; THENCE NORTH 0 DEGREES 20' 16" EAST ALONG SAID WEST LINE 726.00 FEET; THENCE NORTH 89 DEGREES 56' 33" EAST 300.00 FEET PARALLEL WITH THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 0 DEGREES 20' 16" WEST 726.00 FEET PARALLEL WITH THE SAID WEST LINE OF PARCEL 2, TO THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 89 DEGREES 56' 33" WEST 300.00 FEET TO THE POINT OF BEGINNING.

NOTE: SAID LAND IS ALSO SHOWN ON LICENSED LAND SURVEYORS MAP FILED MARCH 29, 1966, IN BOOK 25, PAGE 15, RECORDS OF SURVEY.

PARCEL NO. 2

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE ABOVE FOR INGRESS AND EGRESS PURSUANT TO THAT CERTAIN GRANT DEED BY AND BETWEEN GEORGE V. VANDERHAM AND ALICE M. VANDERHAM, HUSBAND AND WIFE, AND ALFRED V. HIGHSTREET AND EVADA V. HIGHSTREET, HUSBAND AND WIFE, RECORDED MAY 20, 1966 IN BOOK 6631 PAGE 577, SAN BERNARDINO COUNTY OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THE NORTH 33 FEET OF LOT 8, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6 PAGE 15, RECORDS OF SAID COUNTY.
APN: (FOR CONVEYANCING PURPOSES ONLY): 0218-261-27-0-000, 0218-261-28-0-000, 0218-261-34-0-000

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Drawing Name: P:\Year_2018\2018-004 Barba 2 Miraberry SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-1017182-SF)

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

A PORTION OF LOTS 23, 24, 25 AND 26 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST OF MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS FILED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF MERRILL AVENUE (66 FEET WIDE) WITH THE SOUTHERLY PRoJECTION OF THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY, RECORDED IN BOOK 25 PAGE 15 OF RECORDS OF SURVEYS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA; THENCE NORTH 0° 20' 16" EAST ALONG SAID WEST LINE 726.00 FEET; THENCE NORTH 89° 56' 33" EAST 300.00 FEET PARALLEL WITH THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 0° 20' 16" WEST 726.00 FEET PARALLEL WITH THE SAID WEST LINE OF PARCEL 2, TO THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 89° 56' 33" WEST 300.00 FEET TO THE POINT OF BEGINNING. TOGETHER WITH THE PARCEL OF LAND DESCRIBED AS FOLLOWS:
THAT PORTION OF LOTS 24 AND 25 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS OF THE COUNTY OF SAN BERNARDINO, CALIFORNIA.
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE); THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF SAID MERRILL AVENUE A DISTANCE OF 568.52 FEET TO THE POINT OF BEGINNING, BEING ALSO A POINT ON THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 25, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY LYING 33 FEET NORTH OF THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE NORTH 0° 20' 16" EAST ALONG THE WEST LINE OF SAID PARCEL 2, ALSO BEING THE WEST LINE OF THE PARCEL JOINED HEREWITH, A DISTANCE OF 693.00 FEET, TO THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE SOUTH 89° 56' 33" WEST AND PARALLEL WITH THE CENTER LINE OF MERRILL AVENUE A DISTANCE OF 334.13 FEET; THENCE SOUTH 0° 20' 16" WEST A DISTANCE OF 693.00 FEET TO THE NORTH LINE OF SAID MERRILL AVENUE; THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE) A DISTANCE OF 334.13 FEET TO THE POINT OF BEGINNING.
THE LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE APPROVING A LOT LINE ADJUSTMENT NO. W90-147S/99, RECORDED AUGUST 11, 1999 AS INSTRUMENT NO. 19990340741, OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOTS 8, 9, 24 AND 25, AND THE SOUTHERLY ONE-HALF OF EUCALYPTUS AVENUE VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY DATED JUNE 6, 1922 ADJOINING SAID LOT 8 ON THE NORTH, ALL IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE);
THENCE NORTH 89° 56' 33" EAST 568.52 FEET ALONG THE NORTH LINE OF MERRILL AVENUE TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 20' 16" EAST 2606.28 FEET TO A POINT ON THE CENTERLINE OF EUCALYPTUS AVENUE (VACATED) WHICH IS NORTH 89° 56' 26" EAST 616.91 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SAID VINEYARD AVENUE WITH THE CENTERLINE OF SAID EUCALYPTUS AVENUE.
EXCEPT THAT PORTION OF LOTS 24 AND 25 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS OF THE COUNTY OF SAN BERNARDINO, CALIFORNIA.
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE); THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF SAID MERRILL AVENUE A DISTANCE OF 568.52 FEET TO THE POINT OF BEGINNING, BEING ALSO A POINT ON THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 25, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY LYING 33 FEET NORTH OF THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE NORTH 0° 20' 16" EAST ALONG THE WEST LINE OF SAID PARCEL 2, ALSO BEING THE WEST LINE OF THE PARCEL JOINED HEREWITH, A DISTANCE OF 693.00 FEET, TO THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE SOUTH 89° 56' 33" WEST AND PARALLEL WITH THE CENTER LINE OF MERRILL AVENUE A DISTANCE OF 334.13 FEET; THENCE SOUTH 0° 20' 16" WEST A DISTANCE OF 693.00 FEET TO THE NORTH LINE OF SAID MERRILL AVENUE;
THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE) A DISTANCE OF 334.13 FEET TO THE POINT OF BEGINNING.

THE LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE APPROVING A LOT LINE ADJUSTMENT NO. W90-147/99, RECORDED AUGUST 11, 1999 AS INSTRUMENT NO. 19990340742, OF OFFICIAL RECORDS.
APN: (FOR CONVEYANCING PURPOSES ONLY): 0218-261-29-0-000 AND 0218-261-35-0-000 AND 0218-261-37-0-000

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

Drawing Name: P:\Year_2018\2018-004 Borba 2 Minaberry SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (012-25002097-5-SG2)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 4 THROUGH 13, INCLUSIVE, AND LOTS 20 THROUGH 29, INCLUSIVE, IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAID COUNTY.

TOGETHER WITH THE STREET ADJOINING LOTS 4, 13, 20 AND 29 ON THE WEST, AND LOTS 5, 12, 21 AND 28 ON THE EAST, AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED APRIL 17, 1947, IN BOOK 2026, PAGE 464, OFFICIAL RECORDS.
EXCEPT THAT PORTION OF LOT 8, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, SAID PORTION OF BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF GROVE AVENUE, 66.00 FEET WIDE, WITH THE CENTERLINE OF EUCALYPTUS AVENUE, 66.00 FEET WIDE, AS SHOWN ON SAID MAP; THENCE EASTERLY ALONG SAID CENTERLINE OF EUCALYPTUS AVENUE, A DISTANCE OF 85.00 FEET; THENCE SOUTHWESTERLY, A DISTANCE OF 153.24 FEET, MORE OR LESS, TO A POINT ON THE CENTERLINE OF SAID GROVE AVENUE, SAID POINT BEING SITUATE THEREON, SOUTH 127.50 FEET FROM THE POINT OF BEGINNING; THENCE NORTH ALONG SAID CENTERLINE OF GROVE AVENUE, A DISTANCE OF 127.50 FEET TO THE POINT OF BEGINNING.

APN(s): 1054–111–01, 02; 1054–121–01, 02; 1054–131–01 AND 02; 1054–141–01, 02; 1054–151–01; 1054–161–01; 1054–201–01; 1054–211–01 AND 02; 1054–221–01 AND 02; 1054–331–01 AND 02; 1054–341–01, 02 AND
1054–351–01

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Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabery SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

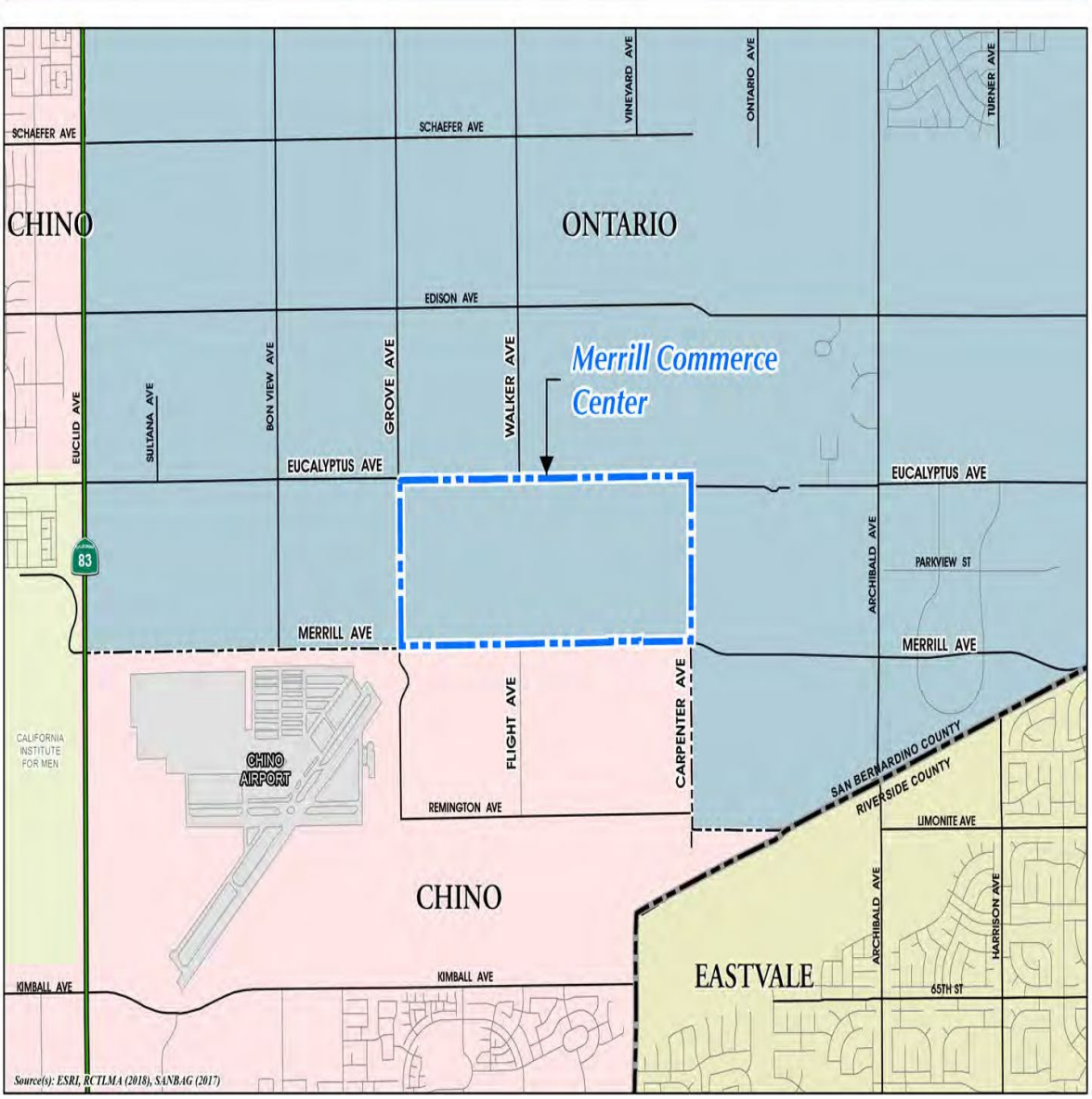

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On December 22, 2020, the Planning Commission:

a) Approved Resolution No. PC20-094, recommending the City Council certify the Environmental Impact Report (SCH #2019049079) for the Merrill Commerce Center Specific Plan (File No. PSP18-001).

b) Approved Resolution No. PC20-095, recommending the City Council approve the General Plan Amendment (File No. PGPA18-003).

c) Approved Resolution No. PC20-096, recommending the City Council approve the Merrill Commerce Center Specific Plan (File No. PSP18-001).

On February 2, 2021, the City Council:

a) Adopted Resolution No. 2021-011, certifying the Environmental Impact Report (SCH #2019049079) for the Merrill Commerce Center Specific Plan (File No. PSP18-001).

b) Adopted Resolution No. 2021-012, approving a General Plan Amendment (File No. PGPA18-003)

On February 16, 2021, the City Council:

a) Adopted Ordinance No. 3178, approving the Merrill Commerce Center Specific Plan (File No. PSP18-001).

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. General Plan Amendment (File No. PGPA18-003)

2. Merrill Commerce Center Specific Plan (File No. PSP18-001), Ordinance No. 3178

3. Merrill Commerce Center Environmental Impact Report (SCH#2019049079)

4. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO THE DEVELOPMENT AGREEMENT

DESCRIPTION OF REQUIRED IMPROVEMENTS

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within Phase A.

PHASE A – STREETS (ST)

a) ST improvements along Eucalyptus Avenue from Carpenter Avenue to westerly boundary of Phase A with street pavement transition.
b) ST improvements along Merrill Avenue from Carpenter Avenue to westerly boundary of Phase A with street pavement transition.
c) ST improvements along Vineyard Avenue from Merrill Avenue to Eucalyptus Avenue.
d) ST improvements along Baker Avenue from Merrill Avenue to Eucalyptus Avenue.
e) Traffic Signal at Eucalyptus Avenue/Carpenter Avenue.
f) Traffic Signal at Eucalyptus Avenue/Vineyard Avenue.
g) Traffic Signal at Eucalyptus Avenue/Baker Avenue.
h) Traffic Signal Modification at Merrill Avenue/Carpenter Avenue.
i) Traffic Signal at Merrill Avenue/Vineyard Avenue.
j) Traffic signal at Merrill Avenue/Baker Avenue.
k) Traffic Signal at Baker Avenue between Eucalyptus Avenue and Merrill Avenue.
l) Traffic Signal at Vineyard Avenue between Eucalyptus Avenue and Merrill Avenue.

PHASE A – SEWER (SS) (Subject to results of Sewer Technical Studies)

a) 12" SS along Eucalyptus Avenue from Walker Avenue to west of Vineyard Avenue.
b) 15" SS along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
c) 8" SS along Baker Avenue from south of Eucalyptus Avenue to Merrill Avenue.
d) 10" SS along Merrill Avenue from Carpenter Avenue to Vineyard Avenue.
e) 8" SS in Merrill Avenue from Baker Avenue going east.
f) 12" SS in Merrill Avenue from Baker Avenue going west to Walker Avenue.
g) 21"-30" SS in Walker Avenue from Eucalyptus Avenue to Merrill Avenue.
h) 24" – 30" SS in Merrill Avenue from Walker Avenue to Grove Avenue.
i) 30" SS in Merrill Avenue from Grove Avenue to Euclid Avenue.

j) 36” SS in Euclid Avenue from Merrill Avenue to the point of connection in Kimball Avenue.

PHASE A – STORM DRAIN (SD)

a) SD along Eucalyptus Avenue from Vineyard Avenue going west to the boundary of Phase A.
b) SD along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) SD along Merrill Avenue from Carpenter Avenue going west to the boundary of Phase A.
d) SD along Baker Avenue from Merrill Avenue to south of Eucalyptus Avenue.

PHASE A – POTABLE WATER (PW)

a) 24” PW along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue
b) 12” PW along Merrill Avenue from Carpenter to Vineyard Avenue.
c) 16” PW along Merrill Avenue from Vineyard Avenue going west to the boundary of Phase A.
d) 16” PW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue
e) 12” PW along Baker Avenue from Eucalyptus Avenue to Merrill Avenue.

PHASE A – RECYCLED WATER (RW)

a) 16” RW along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue
b) 12” RW along Eucalyptus Avenue from Vineyard Avenue going west to the boundary of Phase A.
c) 8” RW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
d) 16” RW along Carpenter Avenue from Eucalyptus Avenue to Merrill Avenue.
e) 16” RW along Merrill Avenue from Carpenter Avenue going west to the boundary of PA 4.

PHASE A – FIBER OPTIC (FO)

a) FO along Eucalyptus Avenue from Carpenter going west to the boundary of Phase A.
b) FO along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) FO along Baker Avenue from Eucalyptus Avenue to Merrill Avenue.
d) FO along Merrill Avenue from Carpenter Avenue going west to the boundary of Phase A.

EXHIBIT "E" Continued
TO THE DEVELOPMENT AGREEMENT

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within Phase B.

PHASE B – STREETS (ST)

a) ST improvements along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue with street pavement transition.
b) ST improvements along Walker Avenue from Edison Avenue to Merrill Avenue.
c) ST improvements along Street "A" from Walker Avenue to Grove Avenue.
d) ST improvements along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
e) ST improvements along Merrill Avenue from Euclid Avenue to Grove Avenue.
f) Traffic Signal at Eucalyptus Avenue/Carpenter Avenue
g) Traffic Signal at Eucalyptus Avenue/Vineyard Avenue.
h) Traffic Signal at Eucalyptus Avenue/Baker Avenue.
i) Traffic Signal at Eucalyptus Avenue between Walker Avenue and Grove Avenue.
j) Traffic Signal at Eucalyptus Avenue/Walker Avenue
k) Traffic Signal at Eucalyptus Avenue/Grove Avenue.
l) Traffic Signal at Walker Avenue/Street "A".
m) Traffic Signal at Grove Avenue/Street "A".
n) Traffic Signal at Street "A" between Walker Avenue and Grove Avenue.
o) Traffic Signal Modification at Merrill Avenue/Carpenter Avenue.
p) Traffic Signal at Merrill Avenue/Vineyard Avenue.
q) Traffic Signal at Merrill Avenue/Baker Avenue.
r) Traffic Signal at Merrill Avenue/Grove Avenue.
s) Traffic Signal at Merrill Avenue between Walker Avenue and Grove Avenue.
t) Traffic Signal at Merrill Avenue/Walker Avenue.
u) Traffic Signal Modification at Merrill Avenue/Euclid Avenue.

PHASE B – SEWER (SS) (Subject to results of Sewer Technical Studies)

a) 12" SS along Eucalyptus Avenue from west of Walker Avenue to Grove Avenue.
b) 12" SS along Eucalyptus Avenue from west of Walker Avenue to west of Vineyard Avenue.
c) 15" SS along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
d) 18" SS along Grove Avenue from Eucalyptus Avenue to Merrill Avenue

e) 21” – 30” SS along Walker Avenue from Eucalyptus Avenue to Merrill Avenue
f) 10” SS along Merrill Avenue from Carpenter Avenue to Vineyard Avenue.
g) 8” SS along Merrill Avenue from Baker Avenue going east.
h) 12” SS along Merrill Avenue from Baker Avenue to Walker Avenue.
i) 24” – 30” SS along Merrill Avenue from Walker Avenue to Grove Avenue.
j) 30” SS along Merrill Avenue from Grove Avenue to Euclid Avenue.
k) 36” SS along Euclid Avenue from Merrill Avenue to point of connection in Kimball Avenue.

PHASE B – STORM DRAIN (SD)

a) SD along Eucalyptus Avenue from Vineyard Avenue to Grove Avenue.
b) SD along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) SD along Merrill Avenue from Carpenter Avenue to west of Walker Avenue.
d) SD along Grove Avenue from Merrill Avenue to Eucalyptus Avenue.
e) SD along Grove Avenue from Merrill Avenue going south to daylight point on Chino Airport property.
f) SD along Walker Avenue from Merrill Avenue to the north of Street “A”.

PHASE B – POTABLE WATER (PW)

a) 24” PW along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue.
b) 12” PW along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
c) 16” PW along Merrill Avenue from Grove Avenue to Vineyard Avenue.
d) 12” PW along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.
e) 12” PW along Street “A” from Grove Avenue to Walker Avenue.
f) 16” PW along Walker Avenue from Merrill Avenue to Eucalyptus Avenue.

PHASE B – RECYCLED WATER (RW)

a) 12” RW along Eucalyptus Avenue from Grove Avenue to Vineyard Avenue.
b) 16” RW along Eucalyptus Avenue from Vineyard Avenue to Carpenter Avenue.
c) 8” RW along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
d) 8” RW along Merrill Avenue from Grove Avenue to Walker Avenue.
e) 16” RW along Merrill Avenue from Walker Avenue to Carpenter Avenue.
f) 16” RW along Carpenter Avenue from Merrill Avenue to Eucalyptus Avenue.
g) 8” RW along Street “A” from Grove Avenue to Walker Avenue.
h) 8” RW along Walker Avenue from Merrill Avenue to Eucalyptus Avenue.

PHASE B - FIBER OPTC (FO)

a) FO along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue.
b) FO along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
c) FO along Merrill Avenue from Grove Avenue to Carpenter Avenue.
d) FO along Street “A” from Grove Avenue to Walker Avenue.
e) FO along Walker Avenue from Merrill Avenue to Eucalyptus Avenue.

EXHIBIT "E" Continued
TO THE DEVELOPMENT AGREEMENT

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within Phase C.

PHASE C - STREETS (ST)

a) ST improvements along Eucalyptus Avenue from Carpenter to Vineyard Avenue with street pavement transition.
b) ST improvements along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) ST improvements along Merrill Avenue from Vineyard Avenue to Carpenter Avenue with street pavement transition.
d) ST improvements along Carpenter Avenue from Merrill Avenue to Eucalyptus Avenue.
e) Traffic Signal at Eucalyptus Avenue/Vineyard Avenue.
f) Traffic Signal at Merrill Avenue/Vineyard Avenue.
g) Traffic Signal Modification at Merrill Avenue/Carpenter Avenue.
h) Traffic Signal at Eucalyptus Avenue/Carpenter Avenue.
i) Traffic Signal at Vineyard Avenue between Eucalyptus Avenue and Merrill Avenue.
j) Traffic Signal at Carpenter Avenue between Eucalyptus Avenue and Merrill Avenue.

PHASE C – SEWER (SS) (Subject to results of the Sewer Technical Study)

a) 15" SS along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
b) 10" SS along Merrill Avenue from Carpenter Avenue to Vineyard Avenue.

PHASE C – STORM DRAIN (SD)

a) SD along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
b) SD along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.

PHASE C – POTABLE WATER (PW)

a) 24 "PW along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue.
b) 16" PW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) 12" PW along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.

PHASE C – RECYCLYED WATER (RW)

a) 16" RW along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
b) 8" RW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.

c) 16” RW along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.
d) 16” RW along Carpenter Avenue from Merrill Avenue to Eucalyptus Avenue.

PHASE C – FIBER OPTIC (FO)

a) FO along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
b) FO along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) FO along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.

EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements

(SEE ATTACHED EXHIBITS)

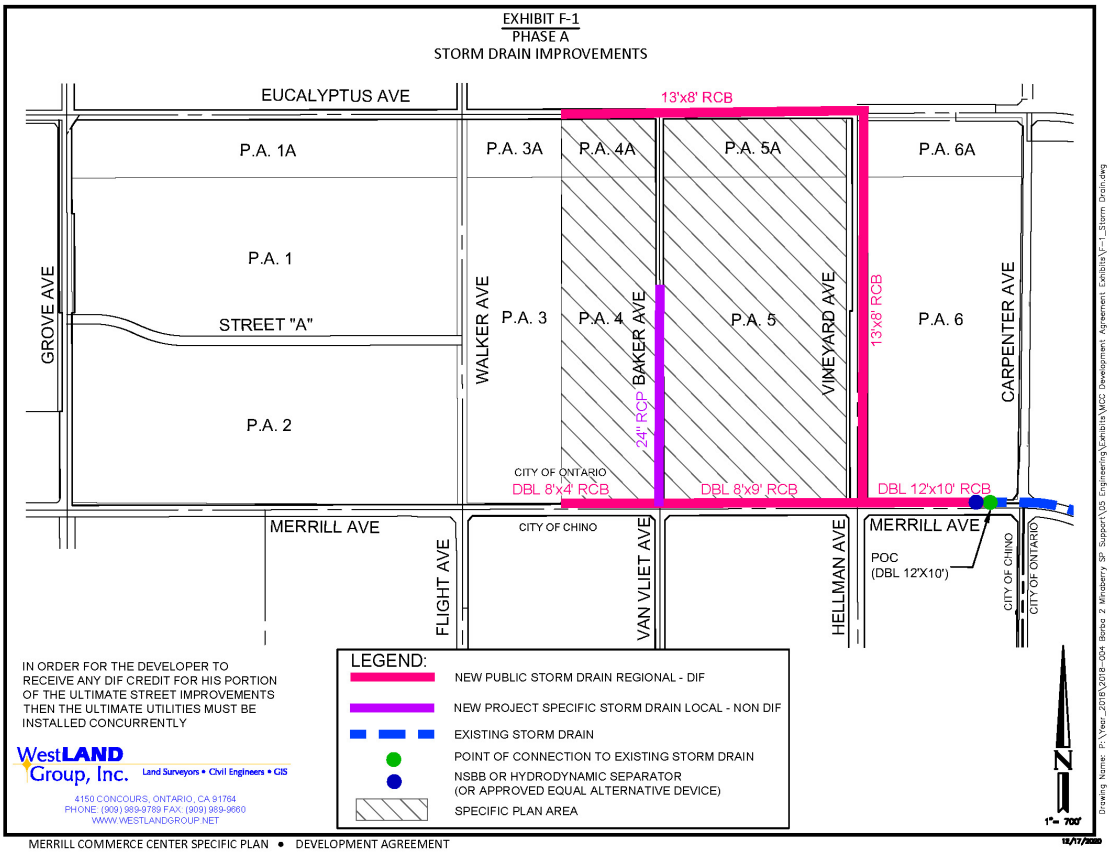
EXHIBIT F-1
PHASE A
STORM DRAIN IMPROVEMENTS
EUCALYPTUS AVE
13'x8' RCB
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
24" RCP
13'x8' RCB
CITY OF ONTARIO
DBL 8'x4' RCB
DBL 8'x9' RCB
DBL 12'x10' RCB
MERRILL AVE
CITY OF CHINO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
MERRILL AVE
POC
(DBL 12'X10')
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
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Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET
LEGEND:
NEW PUBLIC STORM DRAIN REGIONAL - DIF
NEW PROJECT SPECIFIC STORM DRAIN LOCAL - NON DIF
EXISTING STORM DRAIN
POINT OF CONNECTION TO EXISTING STORM DRAIN
NSBB OR HYDRODYNAMIC SEPARATOR
(OR APPROVED EQUAL ALTERNATIVE DEVICE)
SPECIFIC PLAN AREA
N
1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

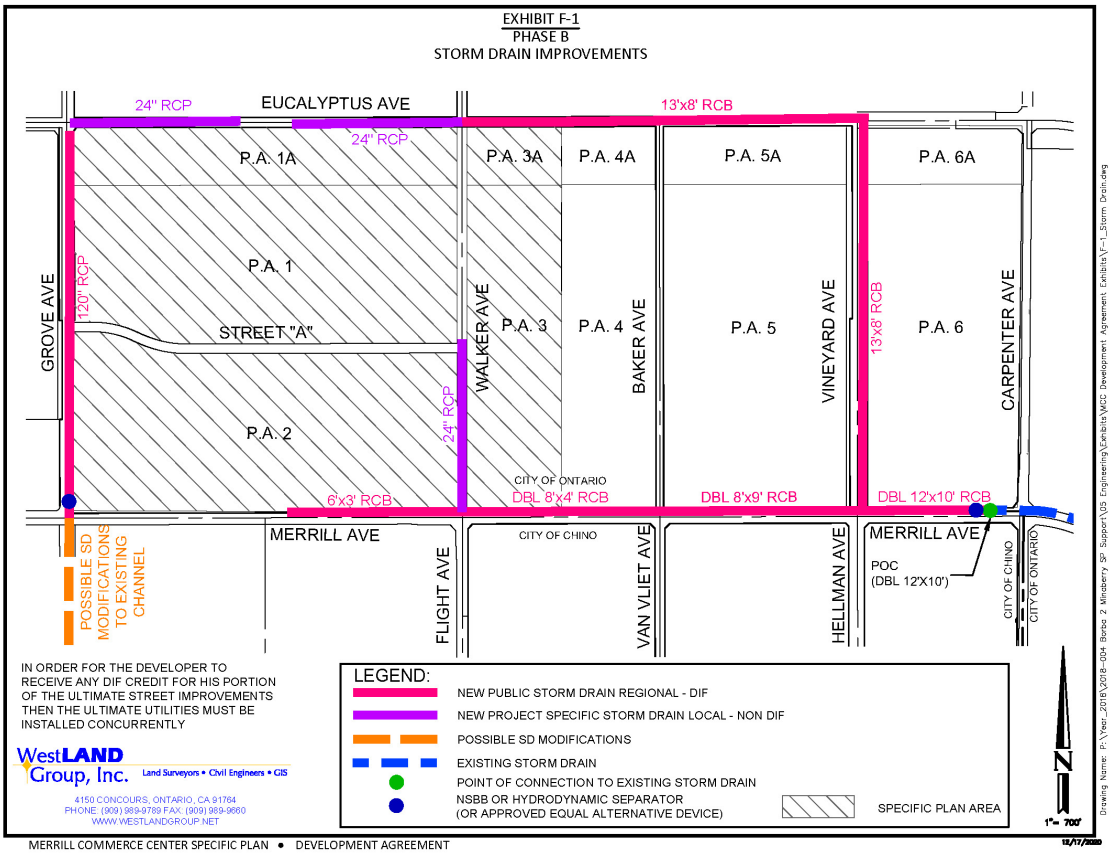
EXHIBIT F-1
PHASE B
STORM DRAIN IMPROVEMENTS
24" RCP
EUCALYPTUS AVE
13'x8' RCB
24" RCP
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
GROVE AVE
120" RCP
P.A. 1
STREET "A"
WALKER AVE
P.A. 3
P.A. 4
BAKER AVE
P.A. 5
VINEYARD AVE
13'x8' RCB
P.A. 6
CARPENTER AVE
P.A. 2
24" RCP
CITY OF ONTARIO
6'x3' RCB
DBL 8'x4' RCB
DBL 8'x9' RCB
DBL 12'x10' RCB
POSSIBLE SD MODIFICATIONS TO EXISTING CHANNEL
MERRILL AVE
CITY OF CHINO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
MERRILL AVE
POC
(DBL 12'X10')
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
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LEGEND:
NEW PUBLIC STORM DRAIN REGIONAL - DIF
NEW PROJECT SPECIFIC STORM DRAIN LOCAL - NON DIF
POSSIBLE SD MODIFICATIONS
EXISTING STORM DRAIN
POINT OF CONNECTION TO EXISTING STORM DRAIN
NSBB OR HYDRODYNAMIC SEPARATOR
(OR APPROVED EQUAL ALTERNATIVE DEVICE)
SPECIFIC PLAN AREA
N
1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

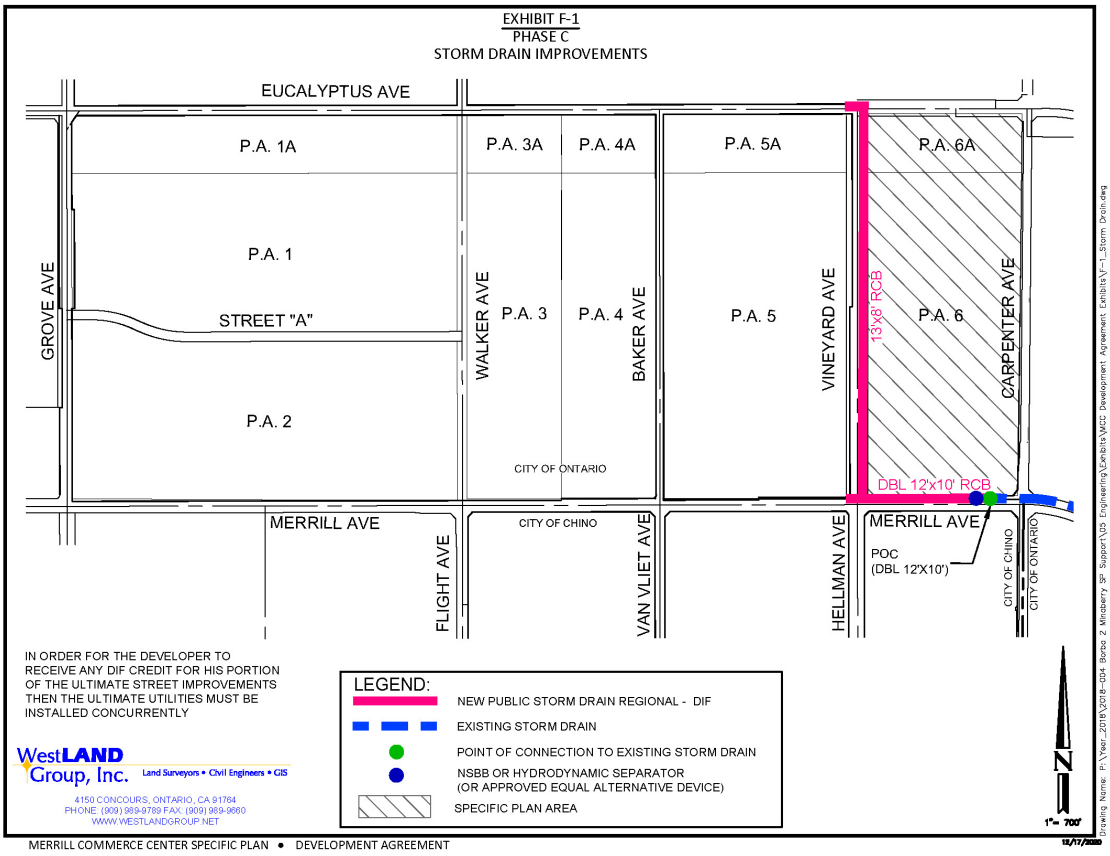
EXHIBIT F-1
PHASE C
STORM DRAIN IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
13'x8' RCB
DBL 12'x10' RCB
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
POC
(DBL 12'X10')
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW PUBLIC STORM DRAIN REGIONAL - DIF
EXISTING STORM DRAIN
POINT OF CONNECTION TO EXISTING STORM DRAIN
NSBB OR HYDRODYNAMIC SEPARATOR
(OR APPROVED EQUAL ALTERNATIVE DEVICE)
SPECIFIC PLAN AREA
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

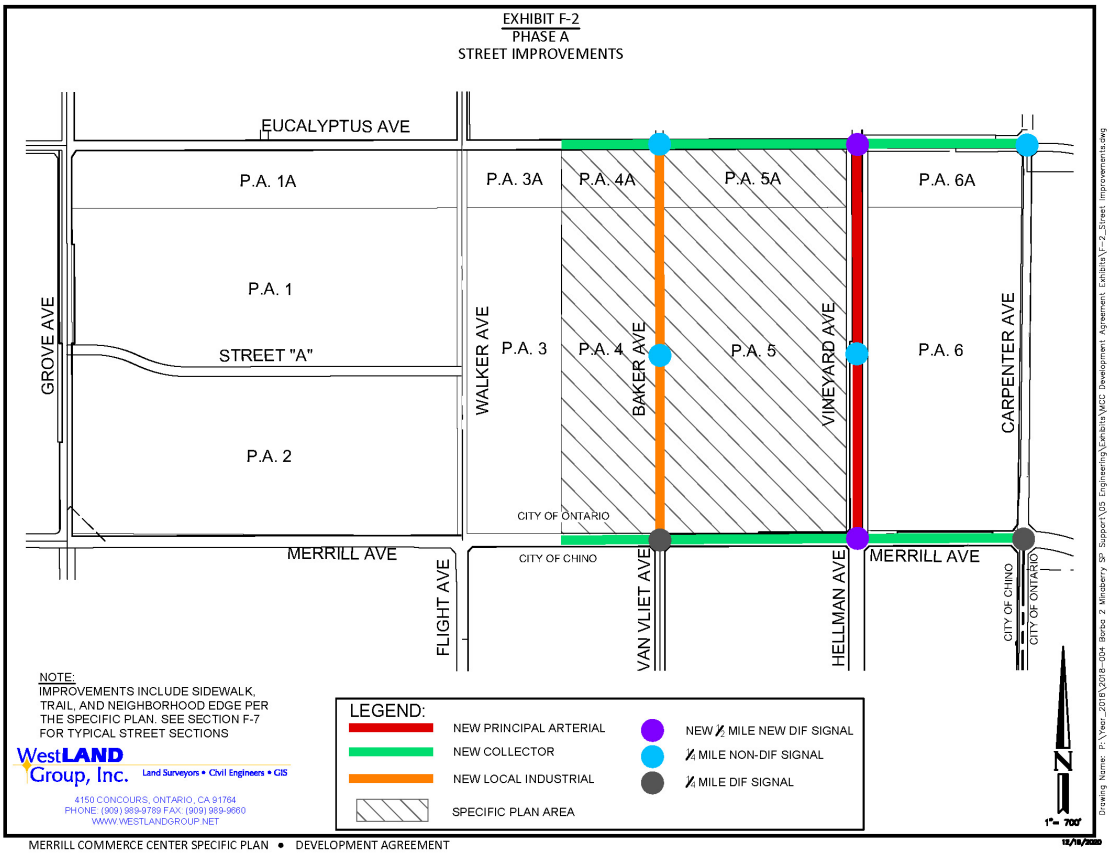
EXHIBIT F-2
PHASE A
STREET IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
NOTE:
IMPROVEMENTS INCLUDE SIDEWALK, TRAIL, AND NEIGHBORHOOD EDGE PER THE SPECIFIC PLAN. SEE SECTION F-7 FOR TYPICAL STREET SECTIONS
LEGEND:
NEW PRINCIPAL ARTERIAL
NEW COLLECTOR
NEW LOCAL INDUSTRIAL
SPECIFIC PLAN AREA
NEW ½ MILE NEW DIF SIGNAL
¼ MILE NON-DIF SIGNAL
¼ MILE DIF SIGNAL
N
1"= 700'
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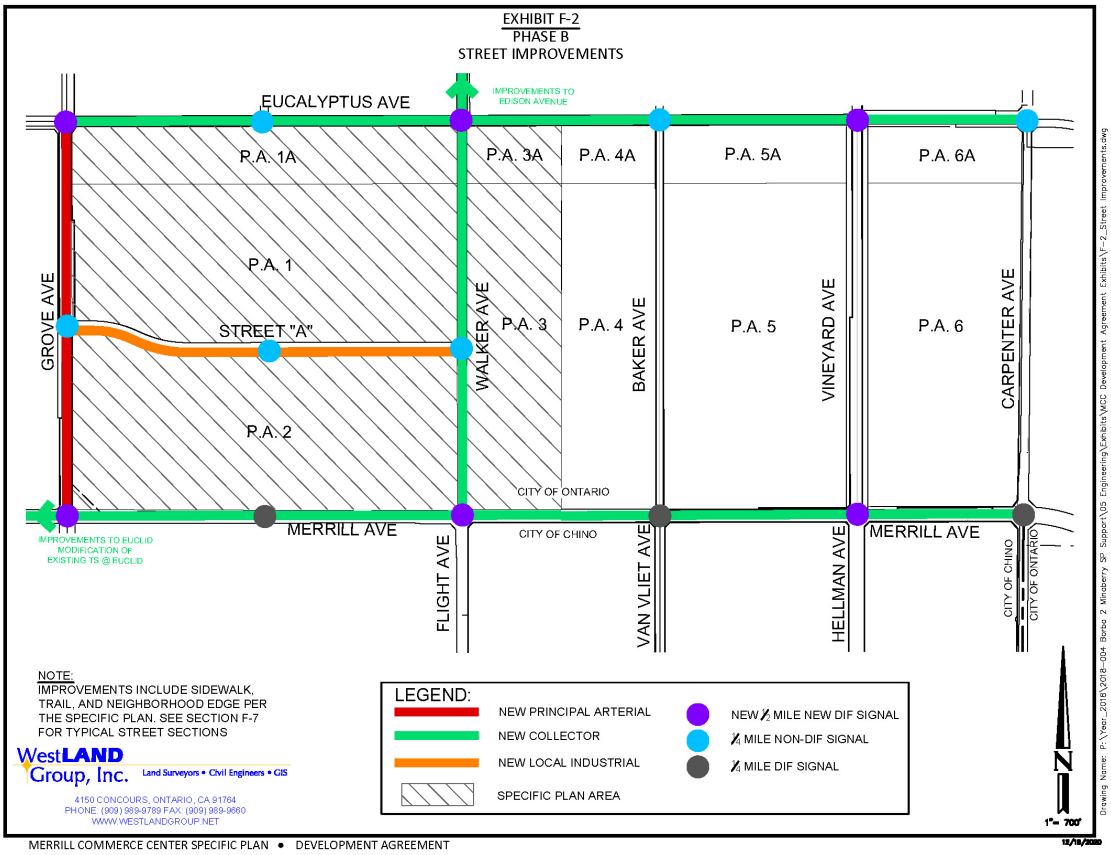
EXHIBIT F-2
PHASE B
STREET IMPROVEMENTS
EUCALYPTUS AVE
IMPROVEMENTS TO EDISON AVENUE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
MERRILL AVE
IMPROVEMENTS TO EUCLID
MODIFICATION OF
EXISTING TS @ EUCLID
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
NOTE:
IMPROVEMENTS INCLUDE SIDEWALK, TRAIL, AND NEIGHBORHOOD EDGE PER THE SPECIFIC PLAN. SEE SECTION F-7 FOR TYPICAL STREET SECTIONS
LEGEND:
NEW PRINCIPAL ARTERIAL
NEW COLLECTOR
NEW LOCAL INDUSTRIAL
SPECIFIC PLAN AREA
NEW ½ MILE NEW DIF SIGNAL
½ MILE NON-DIF SIGNAL
½ MILE DIF SIGNAL
N
1"= 700'
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Land Surveyors • Civil Engineers • GIS
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WWW.WESTLANDGROUP.NET
Drawing Name: P:\Yes!_2018\2018-004 Bixby 2 Mindberry SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\F-2_Street Improvements.dwg

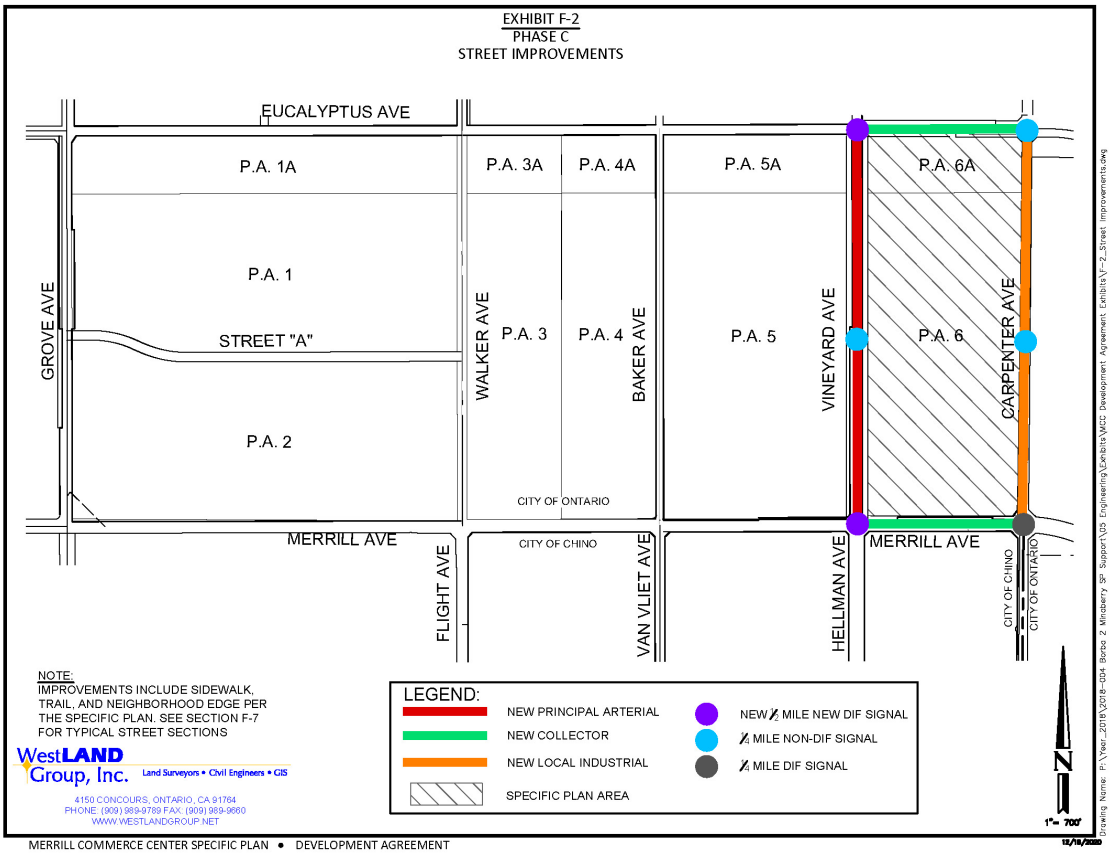
EXHIBIT F-2
PHASE C
STREET IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
STREET "A"
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
NOTE:
IMPROVEMENTS INCLUDE SIDEWALK, TRAIL, AND NEIGHBORHOOD EDGE PER THE SPECIFIC PLAN. SEE SECTION F-7 FOR TYPICAL STREET SECTIONS
LEGEND:
NEW PRINCIPAL ARTERIAL
NEW COLLECTOR
NEW LOCAL INDUSTRIAL
SPECIFIC PLAN AREA
NEW ½ MILE NEW DIF SIGNAL
½ MILE NON-DIF SIGNAL
½ MILE DIF SIGNAL
N
1"= 700'
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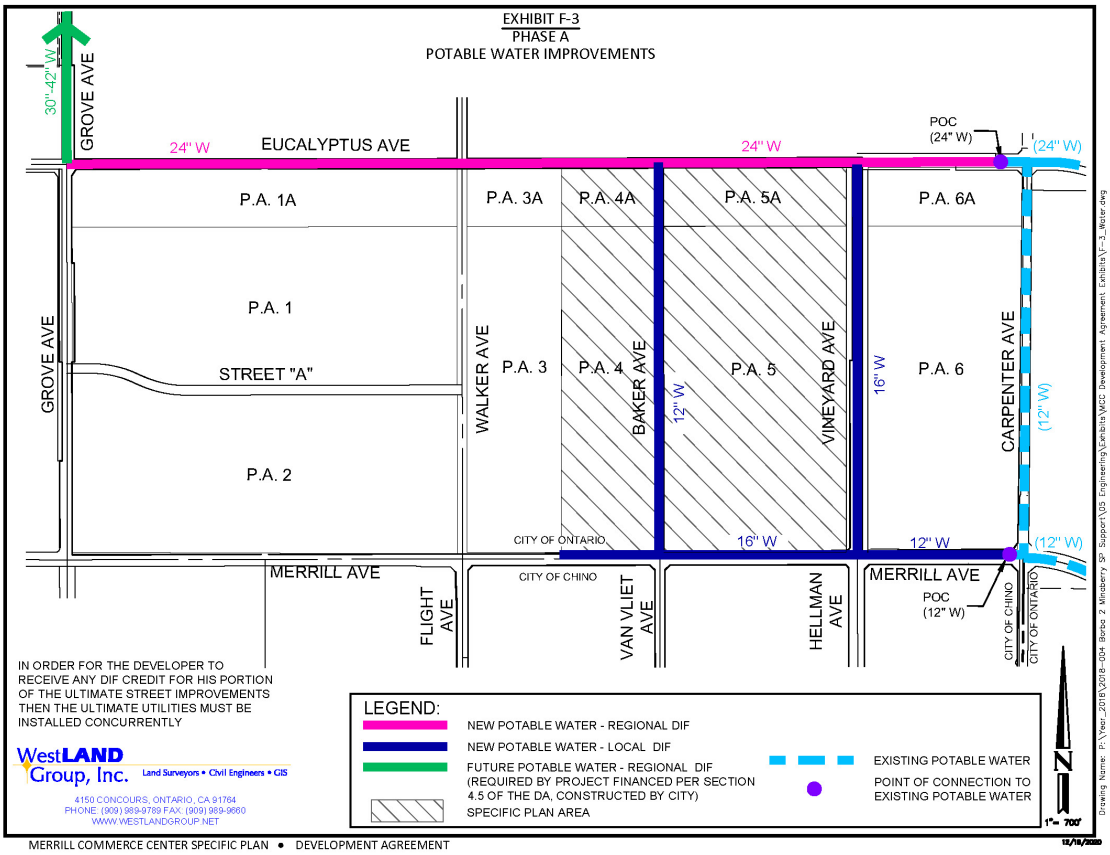
EXHIBIT F-3
PHASE A
POTABLE WATER IMPROVEMENTS
GROVE AVE
30"-42" W
EUCALYPTUS AVE
24" W
24" W
POC
(24" W)
(24" W)
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
STREET "A"
P.A. 2
GROVE AVE
WALKER AVE
P.A. 3
P.A. 4
BAKER AVE
12" W
P.A. 5
VINEYARD AVE
16" W
P.A. 6
CARPENTER AVE
(12" W)
CITY OF ONTARIO
16" W
12" W
(12" W)
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(12" W)
CITY OF CHINO
CITY OF ONTARIO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
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LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1"= 700'
Drawing Name: P:\Year_2018\2018-004 Bucks 2 Mindberry SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\F-3_Water.dwg
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

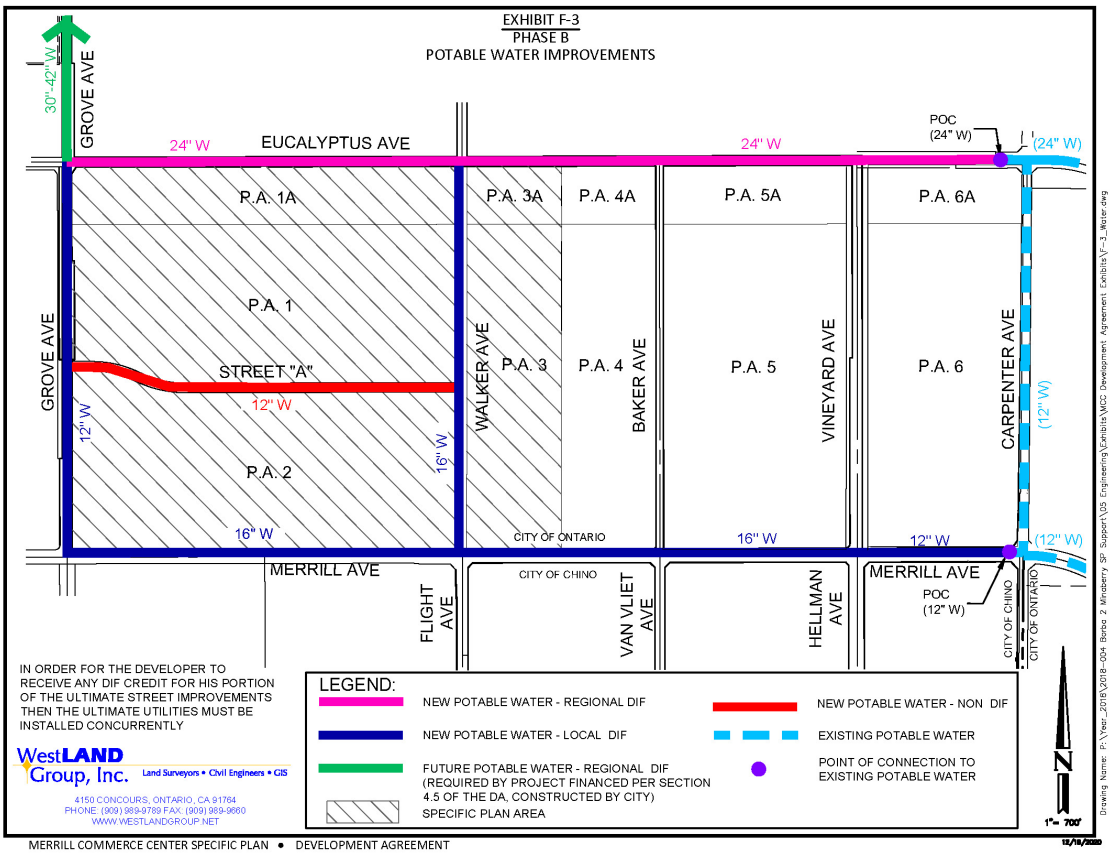
EXHIBIT F-3
PHASE B
POTABLE WATER IMPROVEMENTS
GROVE AVE
30"-42" W
EUCALYPTUS AVE
24" W
24" W
POC
(24" W)
(24" W)
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
12" W
12" W
16" W
16" W
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
(12" W)
CITY OF ONTARIO
16" W
12" W
(12" W)
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(12" W)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
NEW POTABLE WATER - NON DIF
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
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MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT
Drawing Name: P:\Yrec_2018\2018-004 Banks 2 Mndesrry SP Support\DS Engineering\Exhibits\MCC Development Agreement Exhibits\F-3_Water.dwg

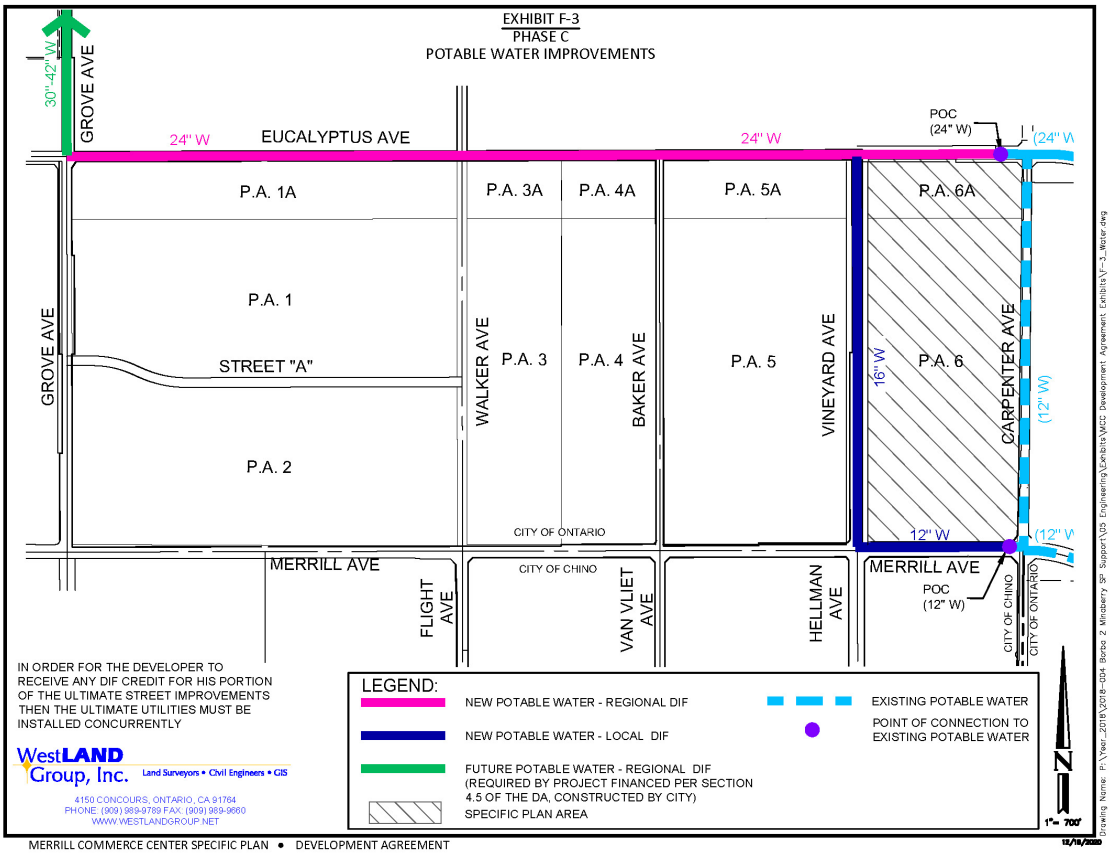
EXHIBIT F-3
PHASE C
POTABLE WATER IMPROVEMENTS
GROVE AVE
30"-42" W
EUCALYPTUS AVE
24" W
24" W
POC
(24" W)
(24" W
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
16" W
(12" W)
CITY OF ONTARIO
12" W
(12" W
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(12" W)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
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PHONE (909) 989-9789 FAX (909) 989-9660
WWW.WESTLANDGROUP.NET
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF
(REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

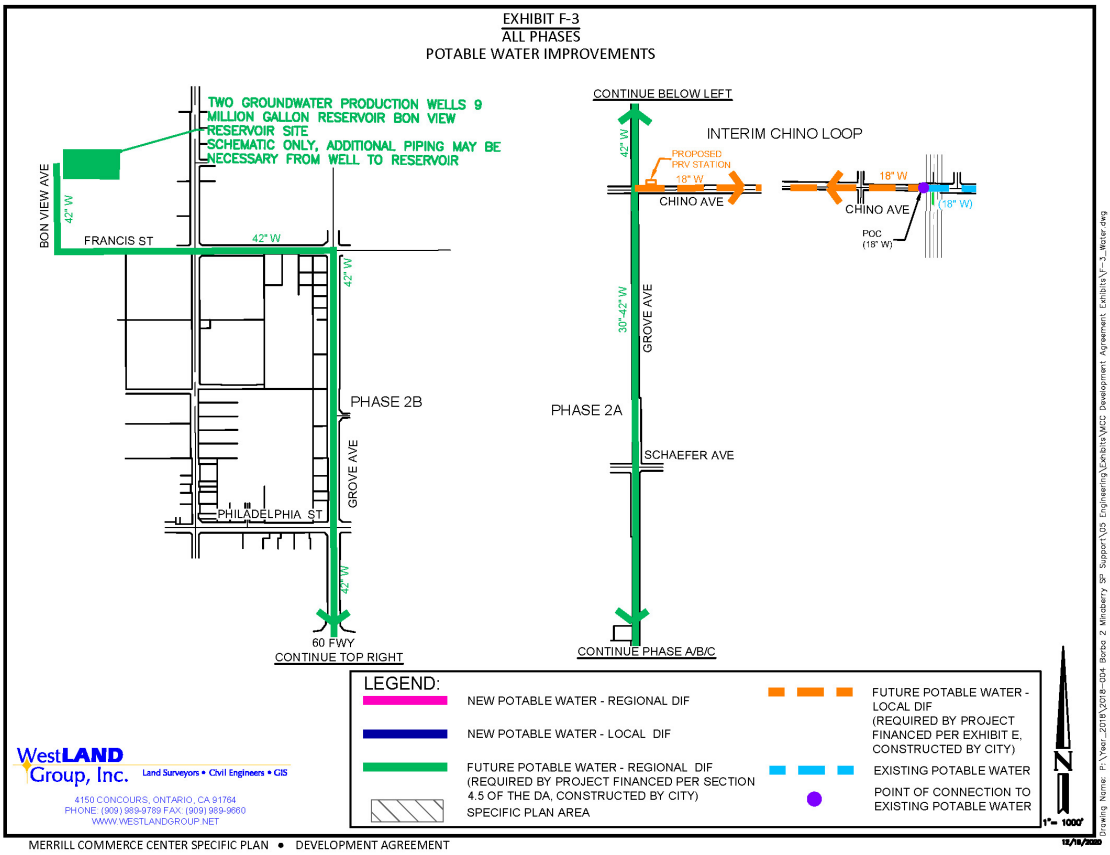
EXHIBIT F-3
ALL PHASES
POTABLE WATER IMPROVEMENTS
TWO GROUNDWATER PRODUCTION WELLS 9 MILLION GALLON RESERVOIR BON VIEW RESERVOIR SITE
SCHEMATIC ONLY, ADDITIONAL PIPING MAY BE NECESSARY FROM WELL TO RESERVOIR
BON VIEW AVE
42" W
FRANCIS ST
42" W
42" W
PHASE 2B
GROVE AVE
PHILADELPHIA ST
42" W
60 FWY
CONTINUE TOP RIGHT
CONTINUE BELOW LEFT
INTERIM CHINO LOOP
42" W
PROPOSED PRV STATION
18" W
CHINO AVE
18" W
CHINO AVE
(18" W)
POC (18" W)
30"-42" W
GROVE AVE
PHASE 2A
SCHAEFER AVE
CONTINUE PHASE A/B/C
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
FUTURE POTABLE WATER - LOCAL DIF (REQUIRED BY PROJECT FINANCED PER EXHIBIT E, CONSTRUCTED BY CITY)
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1" = 1000'
WestLAND Group, Inc.
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MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT
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12/18/2020

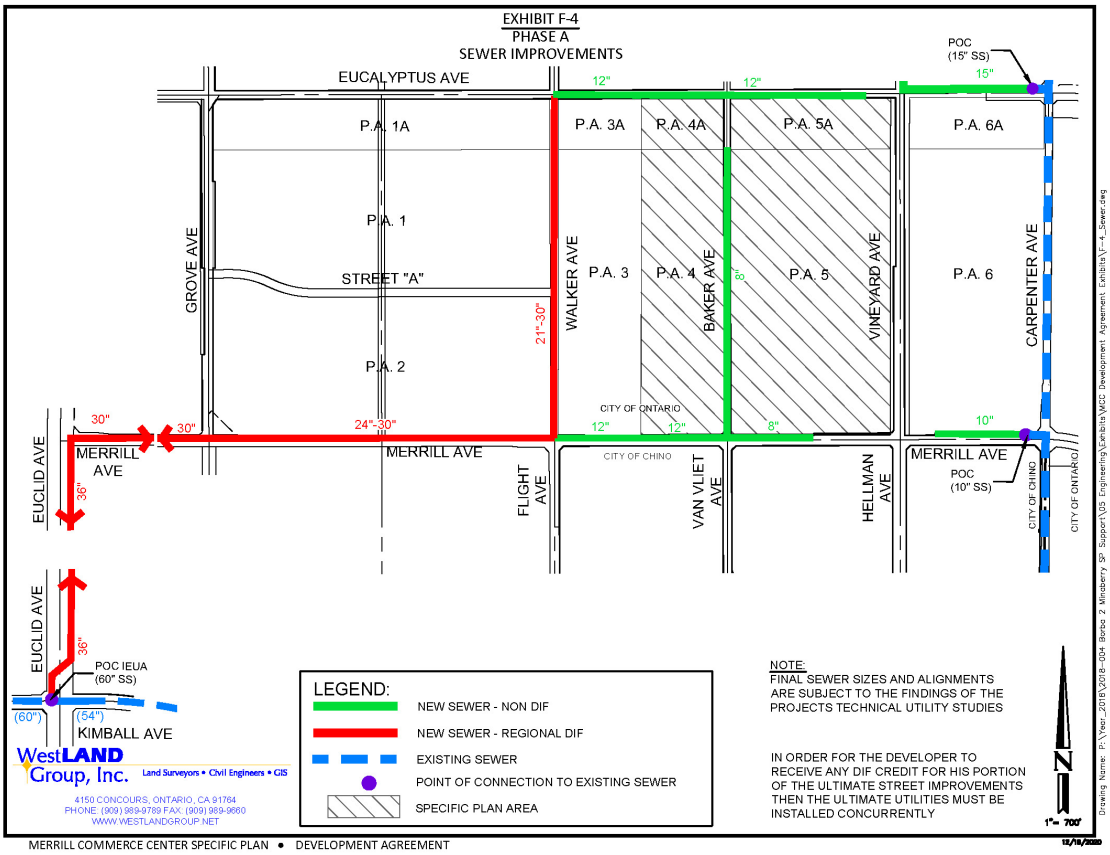
EXHIBIT F-4
PHASE A
SEWER IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 1
STREET "A"
P.A. 2
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
POC
(15" SS)
15"
12"
12"
21"-30"
CITY OF ONTARIO
CITY OF CHINO
10"
8"
EUCLID AVE
MERRILL AVE
30"
30"
24"-30"
36"
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
POC
(10" SS)
POC IEUA
(60" SS)
(60")
(54")
KIMBALL AVE
LEGEND:
NEW SEWER - NON DIF
NEW SEWER - REGIONAL DIF
EXISTING SEWER
POINT OF CONNECTION TO EXISTING SEWER
SPECIFIC PLAN AREA
NOTE:
FINAL SEWER SIZES AND ALIGNMENTS ARE SUBJECT TO THE FINDINGS OF THE PROJECTS TECHNICAL UTILITY STUDIES
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
N
1"= 700'
WestLAND Group, Inc.
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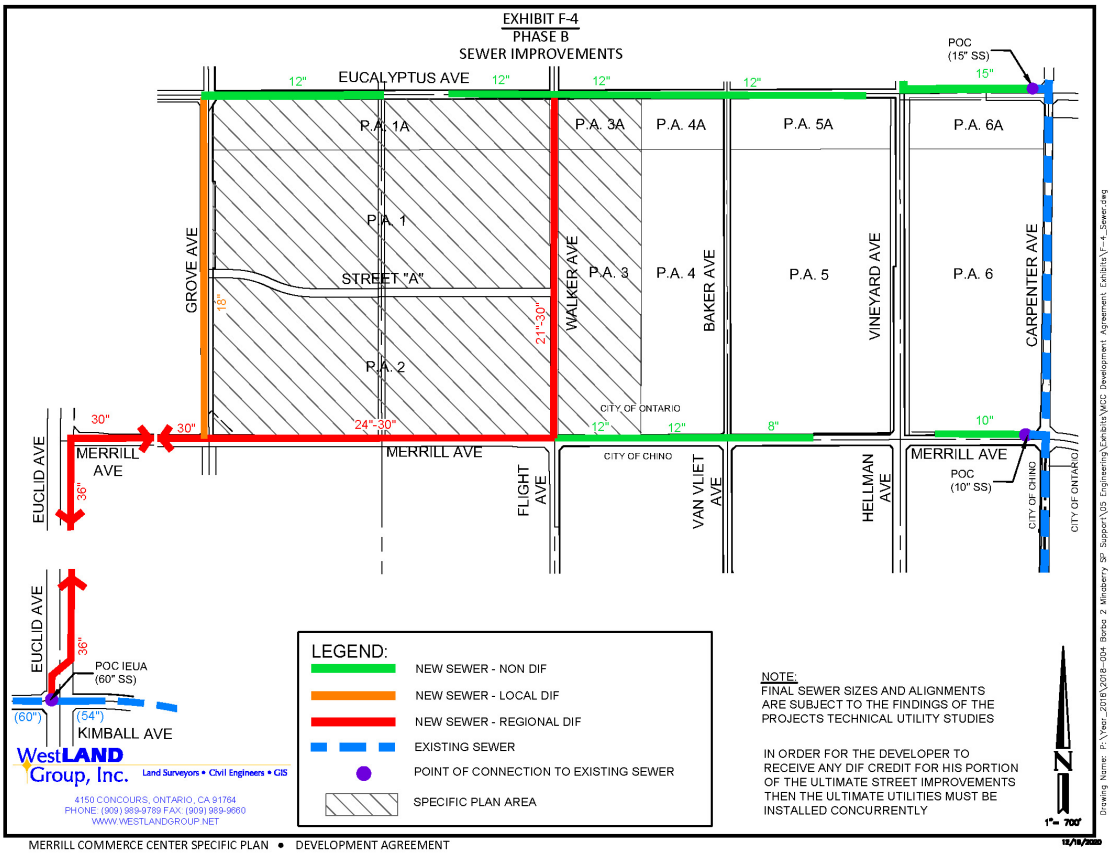
EXHIBIT F-4
PHASE B
SEWER IMPROVEMENTS
EUCALYPTUS AVE
12"
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
STREET "A"
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
POC
(15" SS)
15"
18"
21"-30"
24"-30"
30"
36"
MERRILL AVE
EUCLID AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF ONTARIO
CITY OF CHINO
8"
10"
POC
(10" SS)
POC IEUA
(60" SS)
(60")
(54")
KIMBALL AVE
LEGEND:
NEW SEWER - NON DIF
NEW SEWER - LOCAL DIF
NEW SEWER - REGIONAL DIF
EXISTING SEWER
POINT OF CONNECTION TO EXISTING SEWER
SPECIFIC PLAN AREA
NOTE:
FINAL SEWER SIZES AND ALIGNMENTS ARE SUBJECT TO THE FINDINGS OF THE PROJECTS TECHNICAL UTILITY STUDIES
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
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MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

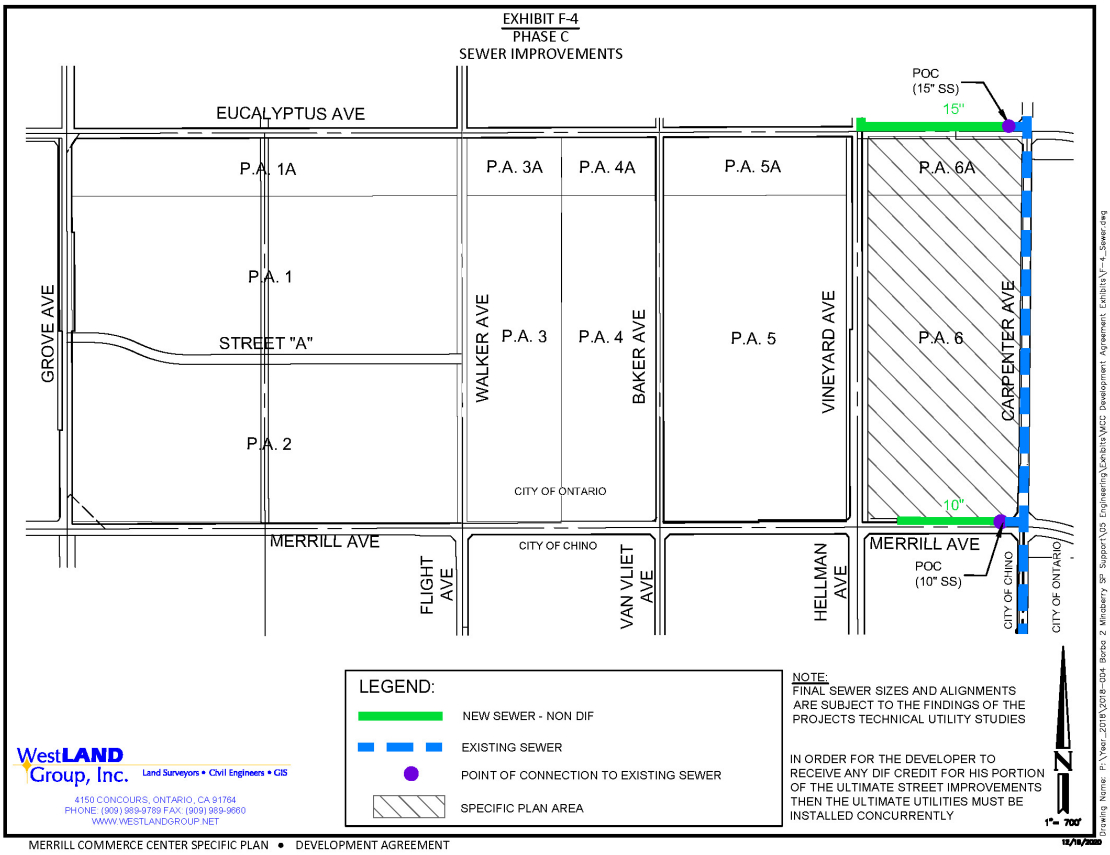
EXHIBIT F-4
PHASE C
SEWER IMPROVEMENTS
EUCALYPTUS AVE
POC
(15" SS)
15"
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
GROVE AVE
STREET "A"
WALKER AVE
P.A. 3
P.A. 4
BAKER AVE
P.A. 5
VINEYARD AVE
P.A. 6
CARPENTER AVE
P.A. 2
CITY OF ONTARIO
10"
MERRILL AVE
CITY OF CHINO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
MERRILL AVE
POC
(10" SS)
CITY OF CHINO
CITY OF ONTARIO
LEGEND:
NEW SEWER - NON DIF
EXISTING SEWER
POINT OF CONNECTION TO EXISTING SEWER
SPECIFIC PLAN AREA
NOTE:
FINAL SEWER SIZES AND ALIGNMENTS ARE SUBJECT TO THE FINDINGS OF THE PROJECTS TECHNICAL UTILITY STUDIES
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
N
1"= 700'
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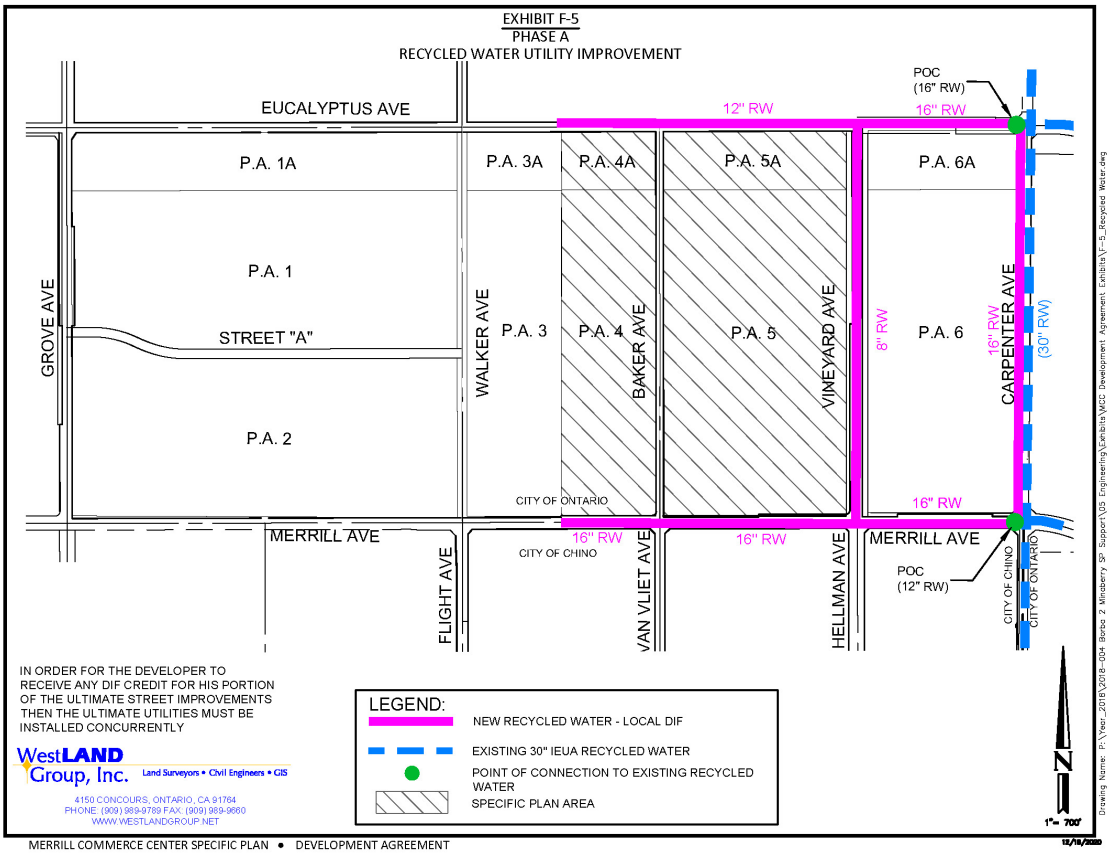
EXHIBIT F-5
PHASE A
RECYCLED WATER UTILITY IMPROVEMENT
EUCALYPTUS AVE
12" RW
16" RW
POC
(16" RW)
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
8" RW
16" RW
(30" RW)
CITY OF ONTARIO
16" RW
MERRILL AVE
16" RW
CITY OF CHINO
16" RW
MERRILL AVE
POC
(12" RW)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW RECYCLED WATER - LOCAL DIF
EXISTING 30" IEUA RECYCLED WATER
POINT OF CONNECTION TO EXISTING RECYCLED WATER
SPECIFIC PLAN AREA
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE (909) 989-9789 FAX (909) 989-9660
WWW.WESTLANDGROUP.NET
N
1"= 700'
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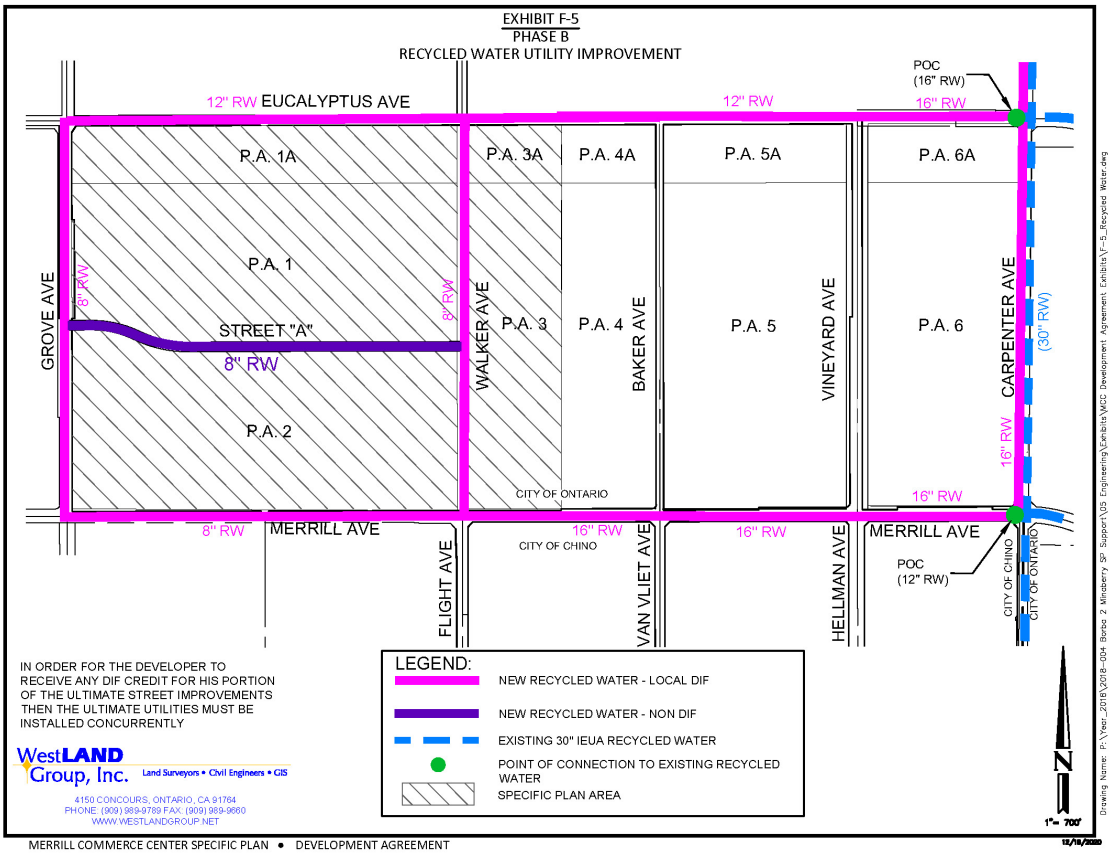
EXHIBIT F-5
PHASE B
RECYCLED WATER UTILITY IMPROVEMENT
12" RW EUCALYPTUS AVE
12" RW
POC
(16" RW)
16" RW
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
8" RW
STREET "A"
8" RW
8" RW
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
(30" RW)
16" RW
16" RW
CITY OF ONTARIO
8" RW
MERRILL AVE
16" RW
CITY OF CHINO
16" RW
MERRILL AVE
POC
(12" RW)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW RECYCLED WATER - LOCAL DIF
NEW RECYCLED WATER - NON DIF
EXISTING 30" IEUA RECYCLED WATER
POINT OF CONNECTION TO EXISTING RECYCLED WATER
SPECIFIC PLAN AREA
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE (909) 989-9789 FAX (909) 989-9660
WWW.WESTLANDGROUP.NET
Drawing Name: P:\Yes!_2018\2018-004 Bixby 2 Mindberry SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\F-5_Recycled Water.dwg

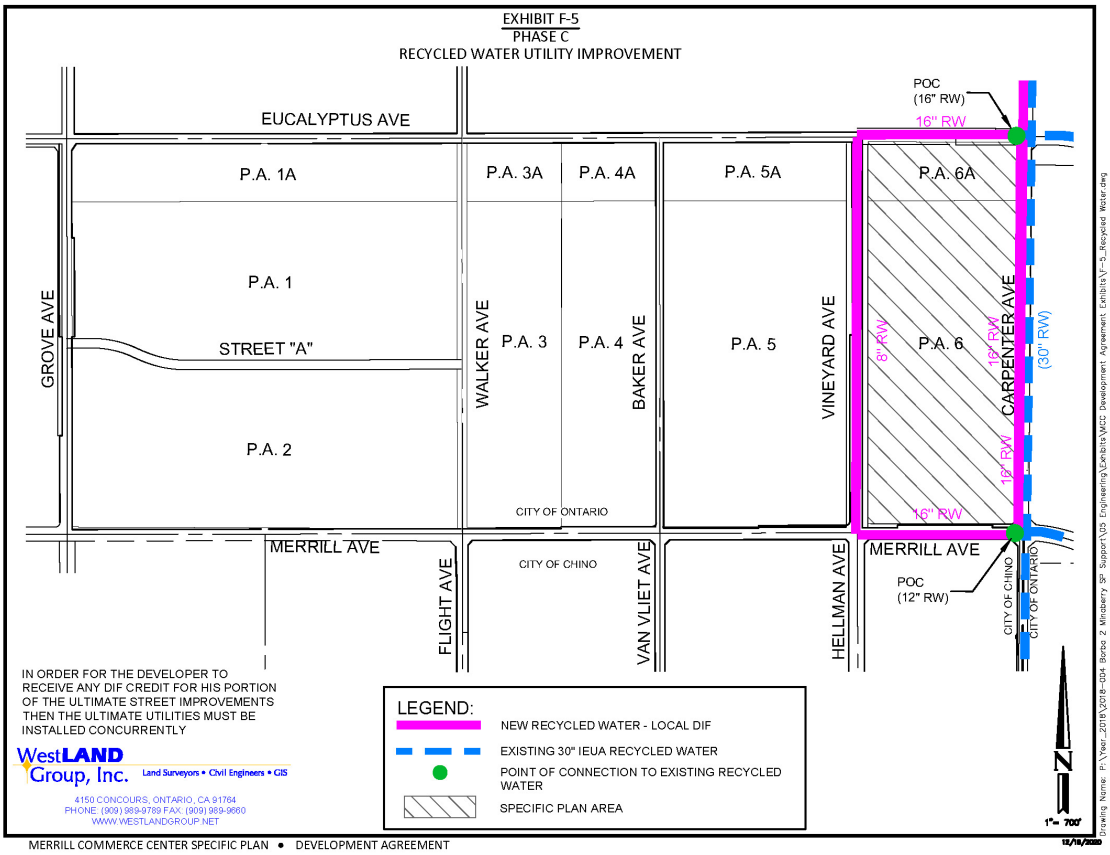
EXHIBIT F-5
PHASE C
RECYCLED WATER UTILITY IMPROVEMENT
EUCALYPTUS AVE
MERRILL AVE
P.A. 1A
P.A. 1
P.A. 2
P.A. 3A
P.A. 3
P.A. 4A
P.A. 4
P.A. 5A
P.A. 5
P.A. 6A
P.A. 6
STREET "A"
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF ONTARIO
CITY OF CHINO
POC
(16" RW)
16" RW
8" RW
18" RW
(30" RW)
POC
(12" RW)
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
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POINT OF CONNECTION TO EXISTING RECYCLED WATER
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1"= 700'
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MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

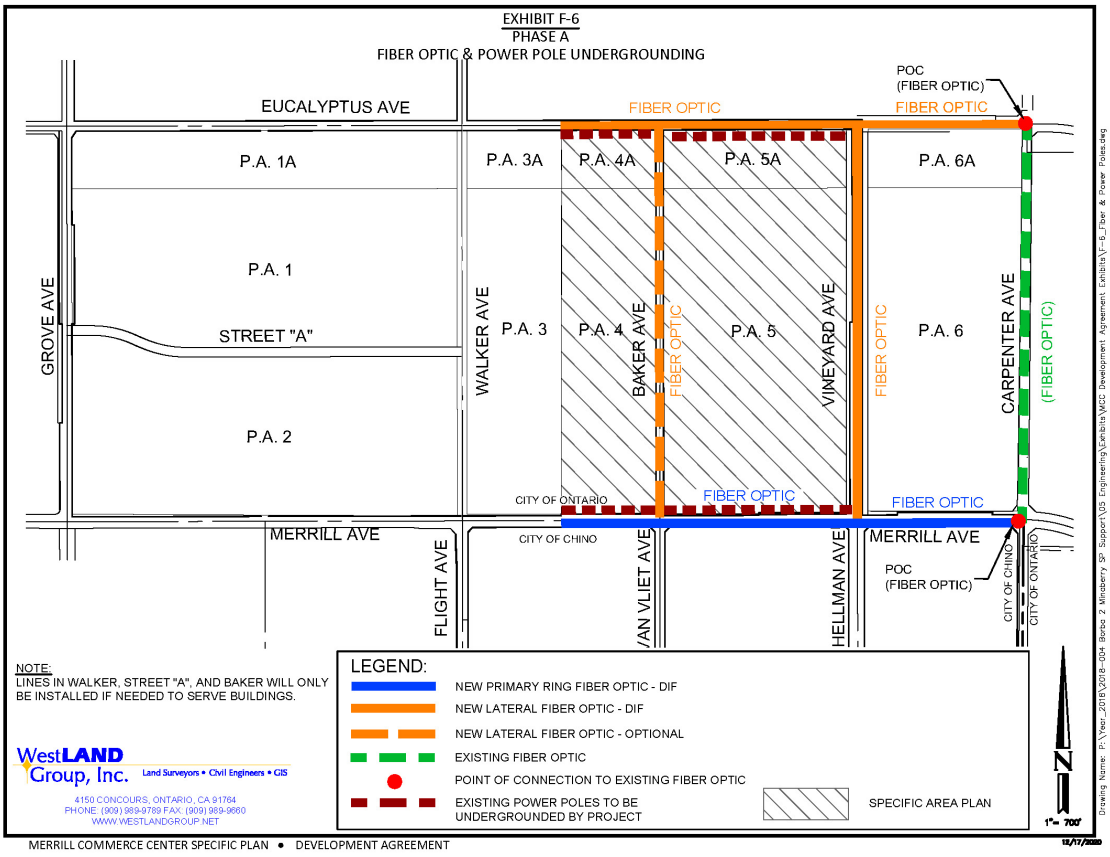
EXHIBIT F-6
PHASE A
FIBER OPTIC & POWER POLE UNDERGROUNDING
EUCALYPTUS AVE
FIBER OPTIC
POC
(FIBER OPTIC)
FIBER OPTIC
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
FIBER OPTIC
VINEYARD AVE
FIBER OPTIC
CARPENTER AVE
(FIBER OPTIC)
CITY OF ONTARIO
FIBER OPTIC
FIBER OPTIC
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(FIBER OPTIC)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
NOTE:
LINES IN WALKER, STREET "A", AND BAKER WILL ONLY BE INSTALLED IF NEEDED TO SERVE BUILDINGS.
LEGEND:
NEW PRIMARY RING FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - OPTIONAL
EXISTING FIBER OPTIC
POINT OF CONNECTION TO EXISTING FIBER OPTIC
EXISTING POWER POLES TO BE UNDERGROUNDED BY PROJECT
SPECIFIC AREA PLAN
N
1"= 700'
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MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

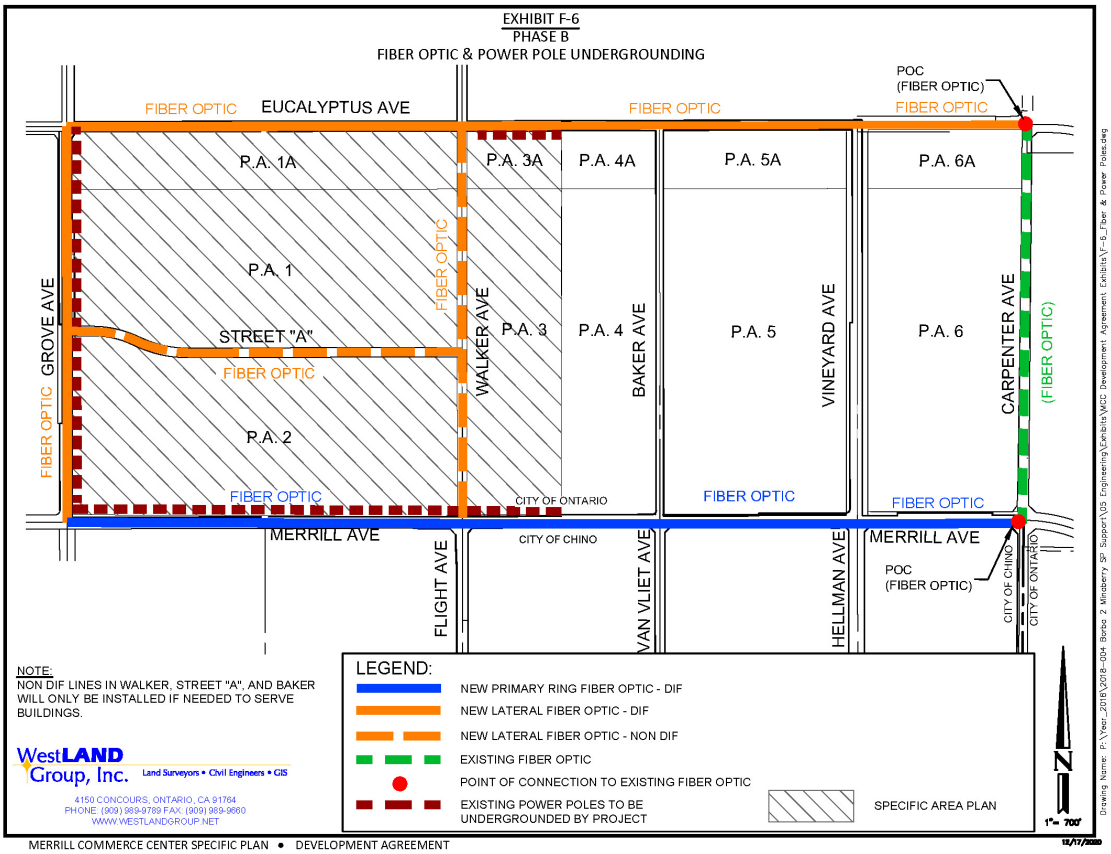
EXHIBIT F-6
PHASE B
FIBER OPTIC & POWER POLE UNDERGROUNDING
POC
(FIBER OPTIC)
FIBER OPTIC
EUCALYPTUS AVE
FIBER OPTIC
FIBER OPTIC
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
FIBER OPTIC
GROVE AVE
WALKER AVE
P.A. 3
P.A. 4
BAKER AVE
P.A. 5
VINEYARD AVE
P.A. 6
CARPENTER AVE
(FIBER OPTIC)
STREET "A"
FIBER OPTIC
FIBER OPTIC
P.A. 2
FIBER OPTIC
CITY OF ONTARIO
FIBER OPTIC
FIBER OPTIC
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(FIBER OPTIC)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
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4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET
LEGEND:
NEW PRIMARY RING FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - NON DIF
EXISTING FIBER OPTIC
POINT OF CONNECTION TO EXISTING FIBER OPTIC
EXISTING POWER POLES TO BE UNDERGROUNDED BY PROJECT
SPECIFIC AREA PLAN
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1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

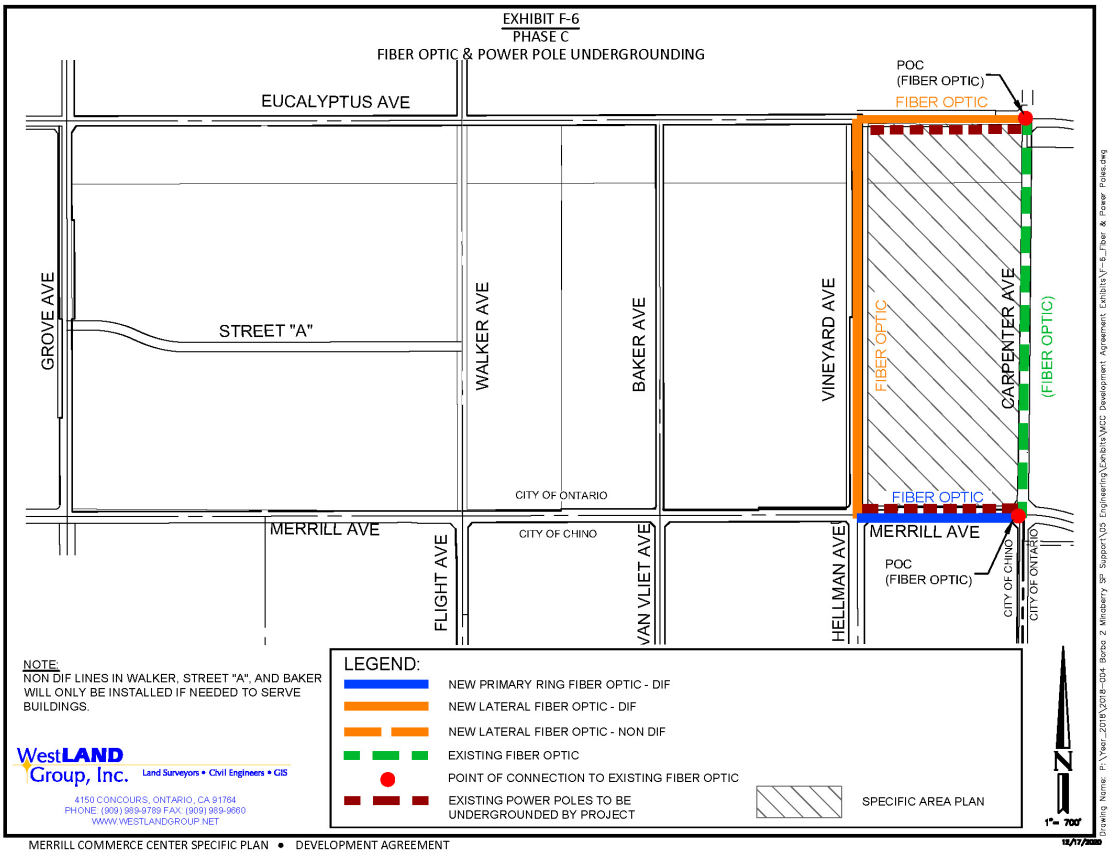
EXHIBIT F-6
PHASE C
FIBER OPTIC & POWER POLE UNDERGROUNDING
EUCALYPTUS AVE
POC
(FIBER OPTIC)
FIBER OPTIC
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
FIBER OPTIC
CARPENTER AVE
(FIBER OPTIC)
CITY OF ONTARIO
FIBER OPTIC
MERRILL AVE
CITY OF CHINO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
MERRILL AVE
POC
(FIBER OPTIC)
CITY OF CHINO
CITY OF ONTARIO
NOTE:
NON DIF LINES IN WALKER, STREET "A", AND BAKER WILL ONLY BE INSTALLED IF NEEDED TO SERVE BUILDINGS.
LEGEND:
NEW PRIMARY RING FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - NON DIF
EXISTING FIBER OPTIC
POINT OF CONNECTION TO EXISTING FIBER OPTIC
EXISTING POWER POLES TO BE UNDERGROUNDED BY PROJECT
SPECIFIC AREA PLAN
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PHONE (909) 989-9789 FAX: (909) 989-9660
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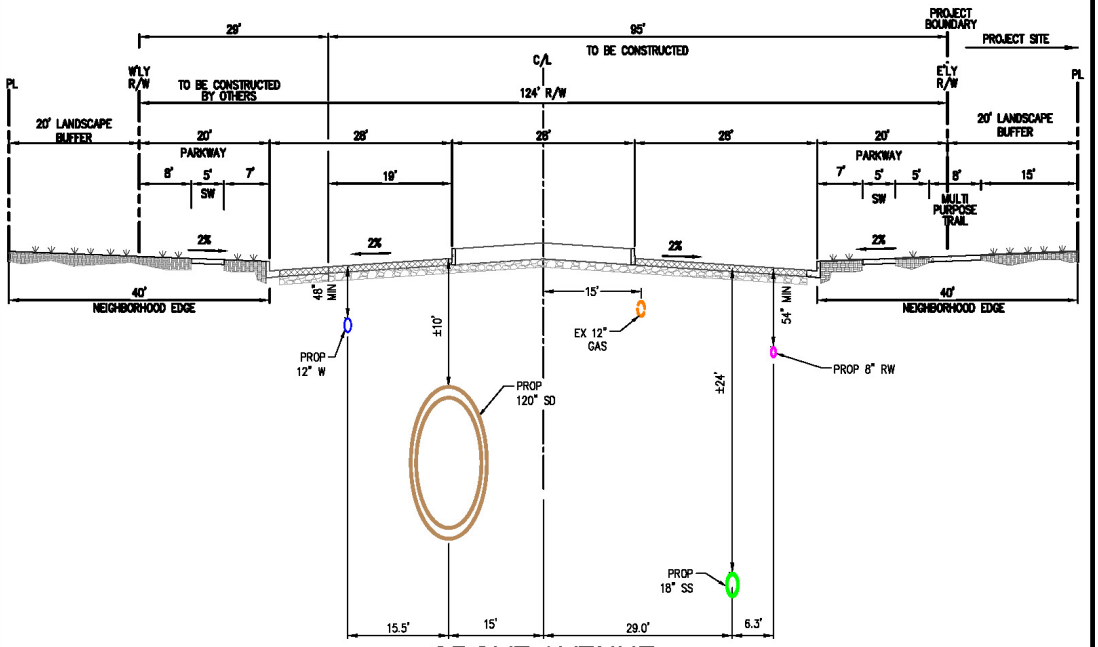
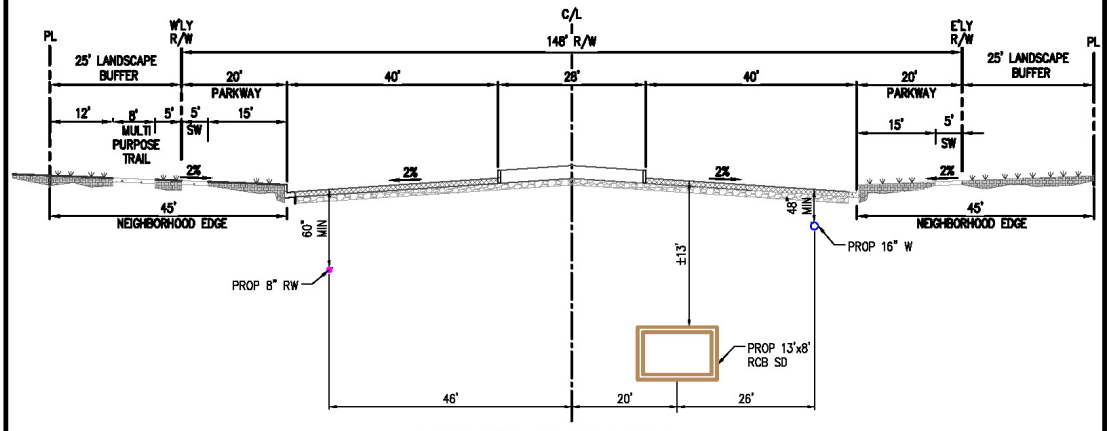
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

EXHIBIT F-7
STREET SECTIONS



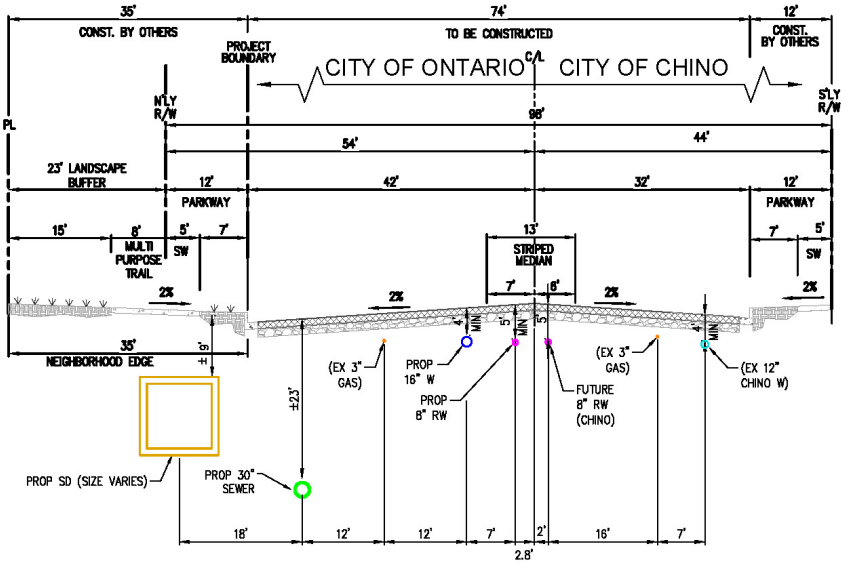
GROVE AVENUE
PRINCIPAL ARTERIAL
124' ROW



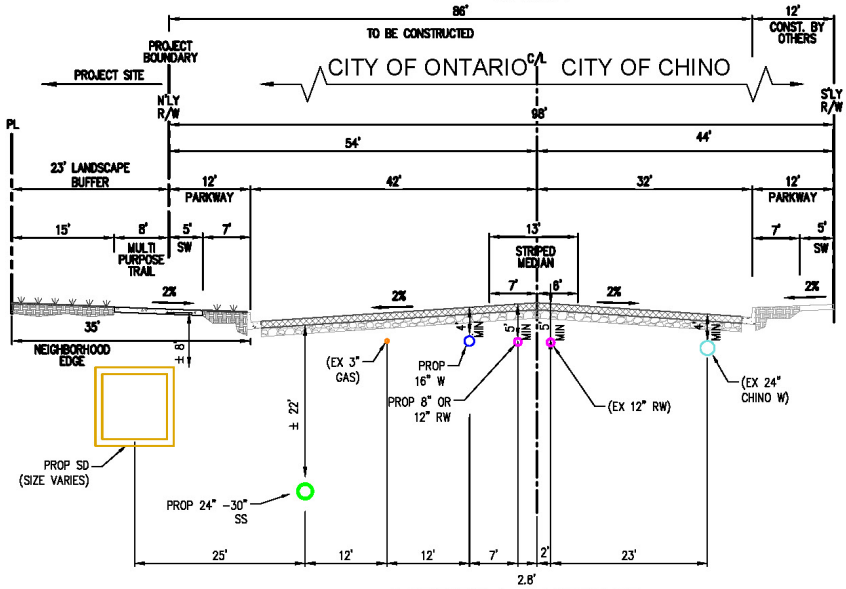
VINEYARD AVENUE
PRINCIPAL ARTERIAL
148' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

EXHIBIT F-7
STREET SECTIONS



MERRILL AVENUE
COLLECTOR
WEST OF GROVE TO EUCLID
98' ROW



MERRILL AVENUE
COLLECTOR
EAST OF GROVE TO CARPENTER
98' ROW

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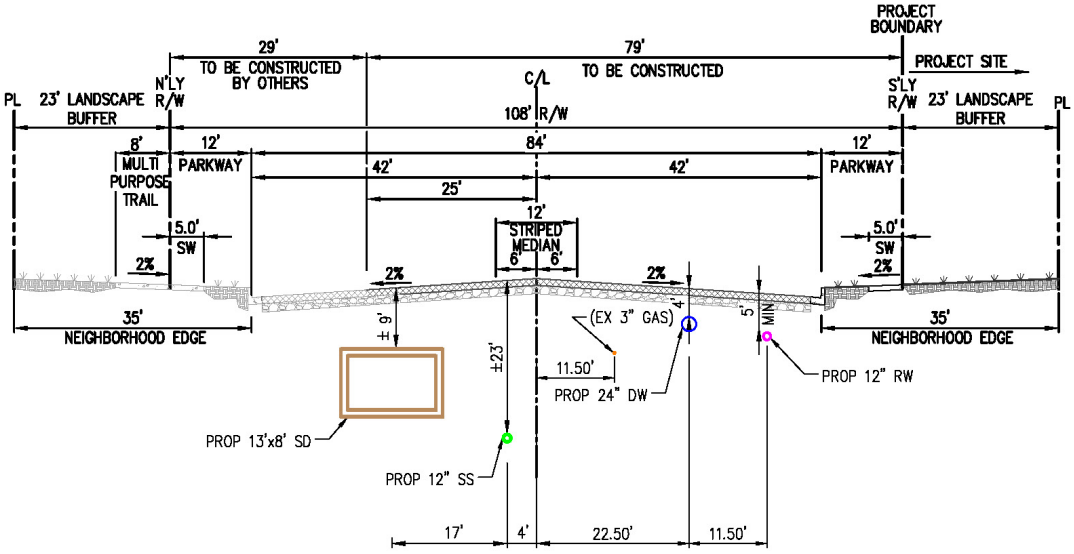
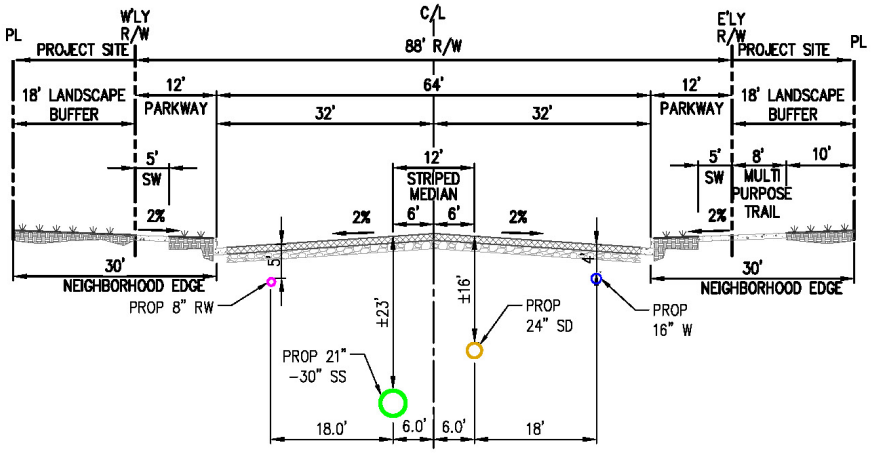
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

EXHIBIT F-7
STREET SECTIONS



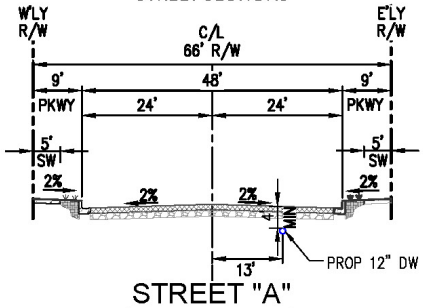
EUCALYPTUS AVENUE
COLLECTOR
108' ROW



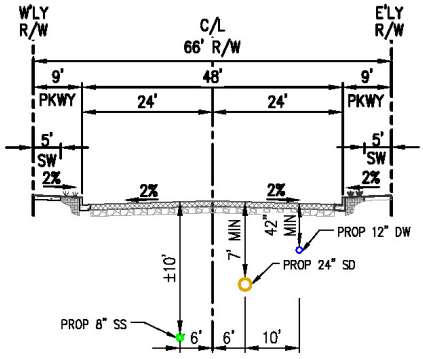
WALKER AVENUE
COLLECTOR
88' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

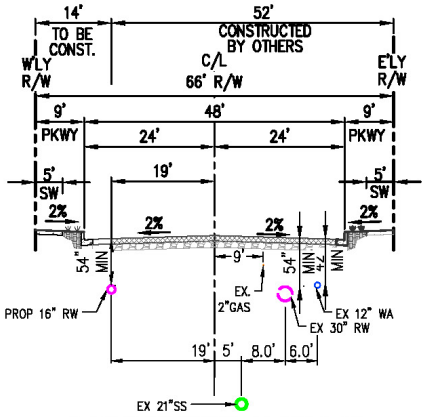
EXHIBIT F-7
STREET SECTIONS



STREET "A"
LOCAL INDUSTRIAL
66' ROW



BAKER AVENUE
LOCAL INDUSTRIAL
66' ROW



CARPENTER AVENUE
LOCAL INDUSTRIAL
66' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

MERRILL COMMERCE CENTER SPECIFIC PLAN DEVELOPMENT AGREEMENT

Exhibit "G"

FORM OF CERTIFICATE OF REGIONAL DIF CREDIT

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and _____, dated _____, 20__, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement', the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: $_____

_____
Scott Ochoa, City Manager

Dated:_____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA18-004, A DEVELOPMENT AGREEMENT, BETWEEN THE CITY OF ONTARIO AND MERRILL COMMERCE CENTER EAST, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20273 (FILE NO. PMTT20-010), A 366.65 ACRE PROPERTY GENERALLY BORDERED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE EAST, AND GROVE AVENUE TO THE WEST, WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF THE MERRILL COMMERCE CENTER SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06.

WHEREAS, Merrill Commerce Center East LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA18-004, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 366.65 acres of land generally bordered by Eucalyptus Avenue to the north, Merrill Avenue to the south, Carpenter Avenue to the east, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan; and

WHEREAS, on February 2, 2021, the City Council adopted Ordinance No. 3178, approving the Environmental Impact Report (SCH#2019049079) and Merrill Commerce Center Specific Plan (“Specific Plan”), which addressed the potential development of up to 8,455,000 square feet of Industrial and Business Park land uses; and

WHEREAS, a Tentative Parcel Map 20273 (File No. PMTT20-010) to subdivide approximately 366.65 acres of land into 22 lots was submitted in conjunction with the Application; 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 environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan (File No. PSP18-001), for which an Environmental Impact Report - State Clearinghouse No. 2019049079 -

(hereinafter referred to as "Certified EIR") was adopted by the City Council on February 2, 2021, and this Application introduces no new significant environmental impacts; 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 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 ONT 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; and

WHEREAS, the Project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics; 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 March 23, 2021, 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 No. PC21-014, recommending the City Council approve the Application; and

WHEREAS, on April 20, 2021, 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 Resolution 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 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 this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan (File No. PSP18-001), for which a Certified EIR was adopted by the City Council on February 2, 2021; 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; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

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 authority 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

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 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). The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics. 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 366.65 acres of land, generally bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan; and

(b) The Development Agreement establishes parameters for the development of the proposed Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify 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 Merrill Commerce Center Specific Plan; and

(c) The Development Agreement grants the Applicant a vested right to develop Tentative Parcel Map 20273 (File No. PMTT20-010) so long as the Applicant, complies with the terms and conditions of the Merrill Commerce Center Specific Plan and EIR. Tentative Parcel Map 20273 is generally bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, and proposes to subdivide 366.65 acres of land into 22 lots; and

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

(e) 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

(f) This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

(g) This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environmental or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan, for which an EIR (SCH#2019049079) was adopted by the City Council on February 2, 2021. 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 Development Agreement (File No. PDA18-004), 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 ____ day of _____ 2021.

_____
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 April 20, 2021 and adopted at the regular meeting held _____, 2021 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)

ATTACHMENT A:

File No. PDA18-004

DEVELOPMENT AGREEMENT

By and Between

City of Ontario,
a California municipal corporation,

and

Merrill Commerce Center East LLC.,
a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

Space above this line for Recorder's Use Only Exempt from Fees Per Gov. Code § 6103

File No. PDA18-004

DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO,
a California municipal corporation,

and

MERRILL COMMERCE CENTER EAST LLC,
a Delaware limited liability company

_____, 2021

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA18-004

This Development Agreement (hereinafter "Agreement") is dated for reference purposes only as of the ____ day of _____, 2021 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Merrill Commerce Center East, LLC, a Delaware limited liability company (hereinafter "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 Section 4.01.015 of the Ontario Development Code; 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, all of the procedures of the California Environmental Quality Act, Pub. Res. Code § 21000, et seq. ("CEQA") have been met with respect to the Project and the Agreement in that certain Merrill Commerce Center Specific Plan Environmental Impact Report (State Clearinghouse No. 2019049079) (the "FEIR").

WHEREAS, on February 2, 2021, the City Council found and determined that the FEIR was prepared in accordance with the requirements of CEQA and adequately describes the impacts of the Project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Merrill Commerce Center Specific Plan; 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, development of the Project Site, as more particularly described and depicted in **Exhibits A** and **B**, respectively (the "Property") in accordance with this

Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Section 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

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

1.1.3 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.4 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) general plans and general plan amendments; and specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review.

1.1.5 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee 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, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include 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.

1.1.7 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.8 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.9 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.10 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of the first reading of the ordinance adopting and approving this Agreement.

Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on such date.

1.1.11 "General Plan" means The Ontario Plan adopted on January 26, 2010, as amended up to the date of the first reading of the ordinance adopting and approving this Agreement.

1.1.12 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 20273 ("Parcel Map") as further described in Exhibit "E" and depicted in Exhibit “F”(together, the "Infrastructure Improvements Exhibit").

1.1.13 "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;

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

1.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.15 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.16 "Owner Affiliate" shall mean, (i) any entity that directly or indirectly controls, is controlled by, or is under common control with OWNER, or (ii) an entity at least a majority of whose economic interest is owned by OWNER. For purposes of this definition, the term “control” means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

1.1.17 “Phase” means the development area described in the Infrastructure Improvements Exhibit to this Agreement.

1.1.18 “Phase 2 Water Participation Fee” means the fee paid to the CITY for the Project, to fund the Property’s respective share of the project costs of the design and construction of the Phase 2 Water Improvements by the CITY. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of square feet, acreage, and land use category for non-residential square footage of the Project.

1.1.19 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.20 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.21 "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 3.4 of this Agreement.

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Merrill Commerce Center Specific Plan."

1.1.23 "Subsequent Development Approvals" means all discretionary Development Approvals required subsequent to the Effective Date in connection with development of the Property. Subsequent Development Approvals shall be deemed to be subject to the provisions of this Agreement, without any further action needed on the part of either the CITY or OWNER.

1.1.24 "Subsequent Land Use Regulations" means any discretionary Land Use Regulations adopted and effective after the Effective Date of this Agreement.

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 Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Description of Required Infrastructure Improvements

Exhibit "F" — Depiction of Infrastructure Improvements Exhibits

Exhibit "G" – Form of Certificate of DIF Credit to be issued by CITY

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 shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of fee simple title or the lessee or an optionee of the Property or a portion(s) thereof. . To the extent applicable, OWNER has obtained written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation 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. Upon approval by the City Manager, without the need for City Council approval, 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; and

(b) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign 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 with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) Except as expressly provided for herein, 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 a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, 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.

(c) 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 (b) 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 section 2.4.

(d) Notwithstanding the foregoing, OWNER shall have the right to assign this Agreement to an Owner Affiliate subject to the notice requirements to CITY as described in Paragraph (b) of this Section 2.4.1, above.

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 the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed an agreement as required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.1 and notwithstanding the release provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 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.

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one (1) year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one (1) year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the parcel, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. Within thirty (30) days following such complete submittal, CITY shall review, and if the above conditions are satisfied, may approve the partial assignment and release and notify the purchasor, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. 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. 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.

2.6 Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the City Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.7 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.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

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 obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and service mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within ten (10) business days.

2.8 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:

Tyson Chave
Merrill Commerce Center East LLC
3546 Concours Street, Suite 100
Ontario, CA 91764
tchave@prologis.com

With a copy to:
Thomas Donahue
3546 Concours Street, Suite 100
Ontario, CA 91764
tdonahue@prologis.com

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

With a copy to :
John A. Ramirez
Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612

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 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority in Section 3.4, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. 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 Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority in Section 3.4, 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 phases of the Property 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 Cal. 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 the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits “E” and "F" are a description and depiction, respectively, of the Improvements needed for the development of the Property. In the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4 Reservations of Authority.

3.4.1 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 costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(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 and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on OWNER or the Project;

(f) Regulations that may conflict with this Agreement but to which the OWNER consents.

3.4.2 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 Plan and/or the Existing Development Approvals, 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 Plan and/or the Existing Development Approvals.

3.4.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, 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. 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 3.4.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.4.4 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.

3.5 Public Works; Utilities. If OWNER is required by this Agreement or a condition of Project 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 in the same manner and subject to the same standards as 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 services necessary for the Project, as further described and depicted in the Infrastructure Improvements Exhibit. As a further condition of development approval, OWNER shall to the extent possible 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. As a further condition of development approval, to the extent OWNER does not own the Property in fee simple, OWNER will provide to CITY the written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof, pursuant to Section 2.2.

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property as described in Exhibit E and depicted in Exhibit F. OWNER shall be responsible for the construction of the necessary extension of storm drain facilities, as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the storm drain Improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the construction of street Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request, and CITY shall not issue a final occupancy permit for any buildings on the Property prior to Substantial Completion of the street Improvements as described in Exhibit E and depicted in Exhibit F. For purposes of the foregoing, street Improvements shall be deemed "Substantially Complete" even if the final lift of pavement has not been completed (i.e., OWNER may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion and subject to final acceptance by CITY of the street Improvements. OWNER agrees that the street improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street improvements. OWNER and CITY agree that a portion of the street Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such street Improvements are constructed by others, or in cooperation with others, and are

completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those street Improvements constructed and completed by others and accepted by CITY.

3.5.3 OWNER agrees that development of the Property shall require the construction of water utility Improvements as described in Exhibit E and depicted in Exhibit F consisting generally of the construction of the potable water Improvements to serve the Property as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water improvements to serve the Property from at least two points of connection. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER. OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings on the Property until the completion of the potable water improvements described in Exhibit E and depicted in Exhibit F. City agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the water improvements if there is available permanent water service from a minimum of two (2) points of connection and sufficient water is available for fire protection purposes for any buildings while under construction. OWNER and CITY agree that a portion of the water Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such water Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those water Improvements constructed and completed by others and accepted by CITY.

3.5.4 OWNER agrees that development of the Property shall require the construction of sewer Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that a portion of the sewer Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such sewer Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then

OWNER shall not be required to construct those sewer Improvements constructed and completed by others and accepted by CITY.

3.5.5 OWNER agrees that development of the Property shall require the construction of recycled water utility improvements to serve the Property, consisting generally of the construction of recycled water utility Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that the CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection and OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permit for any buildings on the Property until the completion of the water improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the extension of permanent master planned recycled water utility Improvements to serve the Property that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of recycled water improvements if there is available permanent recycled water service connection and sufficient recycled water is available. OWNER and CITY agree that all, or a portion of, the permanent master planned recycled water utility Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others. If such recycled water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER'S request to CITY of the required grading, building, or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those permanent master planned recycled water utility Improvements.

3.5.6 OWNER agrees that development of the Property shall require the construction of fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit E and depicted in Exhibit F consisting generally of the construction of fiber optic communications infrastructure to serve the Property. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F.

3.6 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") as described below in Section 3.7. This Section 3.6 is not intended by the parties to impose upon the OWNER an enforceable

duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.7 Real Property Interests.

3.7.1 CITY Acquisition of Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, Sections 3.7.1 and 3.7.2 shall control the acquisition of the Offsite Property. If the OWNER is unable to acquire such Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY may, initiate proceedings utilizing its power of eminent domain to acquire the Offsite Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Offsite Property, subject to the conditions set forth in this Section 3.7.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.7.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.7.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Offsite Property, whereupon CITY shall cease such proceedings. CITY may provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY's intent to consider the adoption of a resolution of necessity as to any Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY may institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Offsite Property.

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 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 Tentative Parcel Maps. With respect to applications by OWNER for tentative parcel maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the expiration, cancellation, or termination of this Agreement.

3.10 Specific Plan Charge. Pursuant to Government Code section 65456, the City Council may consider adopting a specific plan charge upon persons seeking CITY approvals that are required to be consistent with the Specific Plan. Any such charges shall, in the aggregate, defray, but not exceed, the estimated cost of preparation, adoption, and administration of the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.). As nearly as can be estimated, the charges shall be a prorated amount in accordance with the applicant's relative benefit derived from the Specific Plan. If such charges are adopted, the CITY shall use such charges to reimburse the OWNER who originally paid the cost of preparing the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent the OWNER paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

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 Plan 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 Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact

Fees or amend the amounts of existing Development Impact Fees. Additionally, 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.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Section 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable building (subject to the application/use of available fee deferrals or credits), except for the Species, Habitat Conservation, and Open Space Mitigation Development Impact Fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the vicinity of the Project shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as described and depicted in the Infrastructure Improvements Exhibit and any and all parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.5 and 3.6, all other required Improvements for each parcel map and each development Phase (*i.e.*, Phase A, Phase B, Phase C), shall be substantially completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property within the applicable phase as specified in the Phasing Plan set forth in Section 4.3.2. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No. 20273.

4.3.2 Phasing Plan. CITY and OWNER agree and acknowledge that the Phasing Plan, attached as Exhibit F, reflects the anticipated phasing schedule. Notwithstanding this anticipated phasing schedule, the parties agree that the order of the development may necessitate a different order due to any number of conditions including, but not limited to, business judgment, state or federal permitting issues, etc. In such case, OWNER may reorder the Phases of development, subject to approval by CITY, which approval shall not be unreasonably delayed, conditioned, or denied. OWNER shall have substantially completed all improvements for a Phase before requesting and receiving a certificate of occupancy for any part of said Phase of the development.

4.3.3 Construction of Public Infrastructure by Third Parties. CITY and OWNER acknowledge that a portion of the Improvements described in Exhibit E and depicted in Exhibit F are necessary for the development of surrounding properties within the Ontario Ranch and the other property owners are also obligated to construct the Improvements or portions thereof. As such, CITY agrees that OWNER's obligation to construct the Improvements may be satisfied by third party owners pursuant to separate written agreements between OWNER and said third party undertaking the construction of the Improvements. Nothing in this Agreement shall be construed to prohibit the coordination

of the construction of the Improvements between private parties, including the allocation of costs for the construction of the Improvements. Notwithstanding anything to the contrary herein, any applicable DIF Credits may be transferred and assigned from one (1) party to another with respect to the construction of the Improvements and such transfer or assignment shall not require the conveyance of any real property.

4.3.4 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER.

4.3.5 Construction of DIF Program Infrastructure. To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may be eligible to receive DIF Credit from OWNER's construction of DIF Program Infrastructure. Any such DIF Credit shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Public Services Funding Fee.

4.4.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to each Project in a timely manner, OWNER shall pay to CITY a "Public Services Funding Fee." The Public Services Funding Fee shall apply to residential and non-residential uses as set forth below.

4.4.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in a single installment payment in the amount of Sixty-Four Cents ($.64) per square foot of each non-residential building. The single installment for non-residential uses shall be due and payable on a building-by-building basis prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2022. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.5 Water Availability.

4.5.1 Water Availability. The Property requires the completion of the Phase 2 Water Improvements (Phase 2A and 2B) for permanent water system capacity and supply. Until the Phase 2 Water Improvements are fully constructed and completed, OWNER acknowledges that the Project shall have sufficient water capacity and supply on an interim basis made available through the construction of the Potable Water Improvements (as described in Exhibit E), the Phase 2A Water Improvements, and the Interim Chino Avenue Loop depicted in Exhibit F. OWNER acknowledges and agrees that the CITY shall not issue final certificates of occupancy for the Project until the completion of the Potable Water Improvements (as described in Exhibit E), the Phase 2A Water Improvements and the Interim Chino Avenue Loop, as depicted in Exhibit F. OWNER further acknowledges and agrees that all Phases within the Property require the Phase 2 Water Improvements as depicted in Exhibit F.

4.5.2 Phase 2 Water Construction Fee. Prior to CITY's issuance of a grading permit for any Phase of development of the Property (each, a "Grading Permit"), OWNER shall pay to CITY the applicable Phase 2 Water Construction Fee. The Phase 2 Water Construction Fee shall be calculated based on the following formula: (a) the regional water development impact fee, based on the square footage of developable property and the approved land use category for each Phase of the Project (the "Base Regional Water DIF"), PLUS (b) OWNER's pro rata share of the difference between the total projected cost of construction of the Phase 2 Water Improvements (the "Pro Rata Share") and the Base Regional Water DIF. To determine the Pro Rata Share, which may fluctuate over time, CITY shall, at the time OWNER applies for a Grading Permit, calculate the total projected cost of construction of the Phase 2 Water Improvements and subtract from that amount (y) all Phase 2 Water Construction Fees previously collected and (z) the aggregate Base Regional Water DIF to be paid by OWNER and all developers then at that time obligated to pay a Base Regional Water DIF specifically for use of the Phase 2 Water Improvements (together, the "Phase 2 Water Developers"). If the difference is zero or a number less than zero, then there is no Pro Rata Share and the Phase 2 Water Construction Fee shall equal the sum of all Base Regional Water DIF to be paid by all Phase 2 Water Developers. If the difference results in a positive number, the funding gap (the "Funding Gap") shall be divided by the total acreage of land to be developed by the Phase 2 Water Developers to obtain a Funding Gap "per acre" amount (the "Funding Gap Per Acre Amount"). Each Phase 2 Water Developer's respective total acreage to be developed shall then be multiplied by the Funding Gap Per Acre Amount to obtain each Phase 2 Water Developer's Pro Rata Share, which will then be added to each Phase 2 Water Developer's Base Regional Water DIF to obtain the Phase 2 Water Construction Fee due and payable at the time of issuance of the applicable Grading Permit.

4.5.3 DIF Credit for Phase 2 Water Construction Fees. Within thirty (30) days of OWNER's payment of each Phase 2 Water Construction Fee, CITY shall issue a certificate of DIF Credit which may be used to offset OWNER's DIF obligations in the Regional Water DIF Category. The form of the Certificate of DIF Credit shall be as described in Exhibit G, attached hereto and incorporated herein. OWNER acknowledges that any Regional Water DIF Credit issued to OWNER shall not be used to satisfy Phase

2 Water Construction Fees and may only be used to offset OWNER's DIF obligations in the Regional Water DIF Category.

4.5.4 Additional Contributions for Phase 2 Water Improvements. OWNER acknowledges and agrees that, as of the Effective Date of this Agreement, the CITY does not have sufficient funding to construct and complete the Phase 2 Water Improvements. OWNER agrees to provide the CITY with additional contributions for the Phase 2 Water Improvements prior to the issuance of a Grading Permit for any Phase within the Project, pursuant to the Pro Rata Share calculation as set forth in Section 4.5.2 above. OWNER acknowledges and agrees that the CITY has the right to conduct subsequent reviews of the available funding for the construction of, or continuation of the construction of, the Phase 2 Water Improvements. If at any time outside of OWNER's submission of a request for a Grading Permit the CITY determines that there is not sufficient funding for the construction of, or continuation of the construction of, the Phase 2 Water Improvements necessary to support current and anticipated future development within the Ontario Ranch area served by the Phase 2 Water Improvements, OWNER agrees to pay such subsequent additional contribution payment necessary from the OWNER (on a pro rata basis with other Phase 2 Water Developers then existing at the time) to the CITY to initiate construction of, or continue construction of, the Phase 2 Water Improvements. The CITY shall determine OWNER's additional contribution amount (above and beyond OWNER's Pro Rata Share) and such amount shall be due and payable to the CITY within thirty (30) days of written notice from the CITY to OWNER.

4.5.5 Future Reimbursement of Pro Rata Share of Phase 2 Water Construction Fees. OWNER agrees that the CITY will be responsible for the construction and completion of the Phase 2 Water Improvements, as depicted in Exhibit F. Subject to the successful completion of the Phase 2 Water Improvements, CITY and OWNER shall meet periodically and/or as needed from the date of completion of the Phase 2 Water Improvements, to jointly develop a plan and mutually enter into an agreement for the reimbursement of OWNER's Pro Rata Share of Phase 2 Water Construction Fees that may be reimbursed from future development in the 925 Zone as depicted in the City's Domestic Water Master Plan, following any reallocation of each Phase 2 Water Developer's Pro Rata Share, CITY's collection of additional Regional Water DIF in connection with construction of the Phase 2 Water Improvements, and after the completion of the Phase 2 Water Improvements. Such agreement shall be approved at the sole discretion of the Ontario City Council.

4.6 Compliance with Public Benefits Requirements.

4.6.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement, thereby entitling CITY to any and all remedies available to it, including, without limitation, the right of CITY to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability. Nothing herein shall waive OWNER's right to assert a default

(or failure to perform) by CITY has excused OWNER's performance under this Agreement.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Parcel Map, the property subject to such Parcel Map shall be included in a CFD to finance CITY services through annual special taxes that will initially be Thirty-One Cents ($.31) per square foot for non-residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.1 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit CITY’s ability to take any and all necessary steps requisite to the formation of the CFD to finance CITY services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district.

6. [OMITTED]

7. REVIEW FOR COMPLIANCE.

7.1 Periodic and Special Reviews.

7.1.1 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. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City

Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, 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 7.1.2 through 7.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

7.1.2 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:

(a) Recommendation of the Planning staff;

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

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

7.1.3 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.

7.1.4 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.

7.1.5 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.

7.1.6 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 may recommend to the City Council to modify or terminate this Agreement.

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

7.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 7.1.6(b), the CITY determines to proceed with modification or 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 or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

7.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or 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 this Agreement 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.

7.4 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.

8. [OMITTED]

9. DEFAULT AND REMEDIES.

9.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that (i) CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages and (ii) OWNER shall not be liable in damages

to CITY, or to any other person, and CITY covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

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

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

9.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY and OWNER as provided in Section 9.1 above.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

9.3 Release. Except for non-damage remedies, including the remedies of judicial review and of specific performance as provided for in Sections 7.3 and 9.2, respectively,, OWNER, for itself, its successors and assignees, hereby releases the CITY, 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.

9.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Sections 7.2 and 7.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of

default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

10. THIRD PARTY LITIGATION.

10.1 General Plan Litigation. CITY has determined that this Agreement is consistent with the General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. 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 Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

10.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees 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 CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

10.3 Indemnity. In addition to the provisions of Section 10.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, to the extent relating to or in any

way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action. OWNER's indemnity obligation shall terminate following CITY's legal acceptance of (i.e. taking of title to) the Improvements.

10.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, to the extent based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and 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 during OWNER'S period of ownership of the Property, including, but not limited to, soil and groundwater conditions caused by OWNER, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees 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.

10.5 Reservation of Rights. With respect to Sections 10.2, 10.3 and 10.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

10.6 Survival. The provisions of this Sections 10.1 through 10.6, inclusive, shall survive the termination of this Agreement.

11. MORTGAGEE PROTECTION.

11.1 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. 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. 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 mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, 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 during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of 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 by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement

(e) In the event of a default by OWNER, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 9.4 above, or (ii) the expiration of the period provided herein for OWNER to remedy or cure such default, and CITY shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by OWNER; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently prosecutes the cure to completion and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

12. MISCELLANEOUS PROVISIONS.

12.1 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 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 or modifies the 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.

12.2 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.

12.3 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, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

12.4 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.

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

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

12.7 Joint and Several Obligations. Pursuant to Section 2.4, if at any time during the term of this Agreement the Property is subsequently 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. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate

user shall have any obligation under this Agreement except as provided under Section 4 hereof.

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

12.9 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.

12.10 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. No other person shall have any right of action based upon any provision of this Agreement.

12.11 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, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, governmental orders related to statewide or national pandemics, any third party court actions challenging the Project (including but not limited to writs of mandate, restraining orders or injunctions), or other causes beyond the party's control. 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 may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

12.12 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.

12.13 Successors in Interest. 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.

12.14 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.

12.15 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.

12.16 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.

12.17 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.

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

12.19 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.

12.20 Estoppel Certificate. Within thirty (30) business 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 costs incurred by CITY in connection with the issuance of estoppel certificates requested by OWNER under this Section 12.20 prior to CITY's issuance of such certificates.

12.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT
FILE NO. PDA18-004

"OWNER"
MERRILL COMMERCE CENTER EAST LLC
a Delaware limited liability company

By: _____
Name:
Title: _____
Date: _____

"CITY"
CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

BEST BEST & KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate isattached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same inhis/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoingparagraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate isattached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of_____)

On_____before me, _____
(insert name and title of the officer)

personally appeared_____,who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same inhis/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoingparagraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

(SEE ATTACHED LEGAL DESCRIPTION)

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-820460-SF)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 1, 2, 15, 16, 18 AND 31, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPT THE EASTERLY 165 FEET OF THE WESTERLY 263 FEET OF THE NORTHERLY 150 FEET OF LOT 2 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPT THE WESTERLY 185 FEET OF THE NORTHERLY 150 FEET OF LOT 1 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPTING FROM PARCEL A ABOVE: MINERALS, OIL, GAS AND KINDRED SUBSTANCES AS CONTAINED IN INSTRUMENTS RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82; JUNE 24, 1968, AS INSTRUMENT NO. 322, IN BOOK 7047, PAGE 994; AND JUNE 24, 1968 AS INSTRUMENT NO. 321, IN BOOK 7047, PAGE 993; ALL OF OFFICIAL RECORDS.

PARCEL B:

LOTS 17 AND 32, IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAID

PARCEL C:

THE EASTERLY 165 FEET OF THE WESTERLY 263 FEET OF THE NORTHERLY 150 FEET OF LOT 2 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPTING THEREFROM: MINERALS, OIL, GAS AND KINDRED SUBSTANCES AS CONTAINED IN INSTRUMENTS RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82; JUNE 24, 1968, AS INSTRUMENT NO. 322, IN BOOK 7047, PAGE 994; AND JUNE 24, 1968 AS INSTRUMENT NO. 321, IN BOOK 7047, PAGE 993; ALL OF OFFICIAL RECORDS.

PARCEL D:

THE WESTERLY 185 FEET OF THE NORTHERLY 150 FEET OF LOT 1 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA ANA MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF RANCHO SANTA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXCEPTING THEREFROM: MINERALS, OIL, GAS AND KINDRED SUBSTANCES AS CONTAINED IN INSTRUMENTS RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82; JUNE 24, 1968, AS INSTRUMENT NO. 322, IN BOOK 7047, PAGE 994; AND JUNE 24, 1968 AS INSTRUMENT NO. 321, IN BOOK 7047, PAGE 993; ALL OF OFFICIAL RECORDS.

PARCEL E:

AN UNDIVIDED 3/5 INTEREST IN AND TO A PUMP SITE LOCATED ON THE NORTH 63.00 FEET OF THE EAST 30.00 FEET OF THE WEST 230.00 FEET OF LOT 3 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO A MAP OF SUBDIVISION OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS UPON SAID PROPERTY FOR THE PURPOSE OF OPERATING AND MAINTAINING SAID PUMPING PLANT AND IRRIGATING LINES.

FOR CONVEYANCE PURPOSES ONLY: APN 1054-171-02-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-171-04-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-181-01-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-181-02-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-191-01-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-361-01-0-000 (AFFECTS: PORTION OF PARCEL A)
1054-191-02-0-000 (AFFECTS: PORTION OF PARCEL B)
1054-361-02-0-000 (AFFECTS: PORTION OF PARCEL B)
1054-171-01-0-000 (AFFECTS: PARCEL C)
1054-171-03-0-000 (AFFECTS: PARCEL D)
1054-161-02-0-000 (AFFECTS: PARCEL E)

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabeny SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-1017181-SF)

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 3, 14, 19 AND 30, OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A 3/5THS INTEREST IN AND TO A PUMP SITE LOCATED ON THE NORTH 63.00 FEET OF THE EAST 30.00 FEET OF THE WEST 230.00 FEET OF LOT 3 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, PURSUANT TO GRANT DEED RECORDED AUGUST 2, 1968, IN BOOK 7070, PAGE 513, OFFICIAL RECORDS.

EXCEPTING 25% OF ALL MINERAL, OIL, GAS AND KINDRED SUBSTANCES LYING IN, UPON AND UNDER THE PREMISES DESCRIBED ABOVE, AS CONTAINED IN THE DEED FROM WESTERN CONSUMERS FEED RECORDED SEPTEMBER 1, 1965 IN BOOK 6464, PAGE 563, OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED QUARTER INTEREST IN AND TO ALL MINERAL, OIL, GAS AND KINDRED SUBSTANCES LYING IN, UPON AND UNDER THE PREMISES DESCRIBED ABOVE, TOGETHER WITH THE RIGHT OF ENTRY THEREON FOR THE PURPOSE OF DEVELOPING, EXTRACTING AND REMOVING SAID SUBSTANCES THEREFROM, AS CONTAINED IN THE DEED FROM POMONA COLLEGE, RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82, OFFICIAL RECORDS. (FOR cONVEYANCING PURPOSES ONLY):
1054-151-02-0-000 (AFFECTS LOT 14)
1054-161-02-0-000 (AFFECTS A PORTION OF LOT 3)
1054-161-03-0-000 (AFFECTS A PORTION OF LOT 3)
1054-201-02-0-000 (AFFECTS LOT 19)
1054-351-02-0-000 (AFFECTS LOT 30)

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Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabery SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-972996-SF)

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THAT PORTION OF LOTS 7, 8, 9, 10, 23, 24 AND 26, AND THE SOUTHERLY 1/2 OF EUCALYPTUS AVENUE VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY JUNE 6, 1922, ADJOINING SAID LOTS 7 AND 8 ON THE NORTH, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, RECORDS OF SAID COUNTY, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE); THENCE NORTH 89 DEGREES 56' 33" EAST 568.52 FEET ALONG THE NORTH LINE OF MERRILL AVENUE TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 20' 16" EAST 2606.28 FEET TO A POINT ON THE CENTER LINE OF EUCALYPTUS AVENUE (VACATED) WHICH IS NORTH 89 DEGREES 56' 26" EAST 616.91 FEET FROM THE INTERSECTION OF THE CENTER LINE OF SAID VINEYARD AVENUE WITH THE CENTER LINE OF SAID EUCALYPTUS AVENUE.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF MERRILL AVENUE (66 FEET WIDE) WITH THE SOUTHERLY PROJECTION OF THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY, RECORDED IN BOOK 25, PAGE 15, RECORDS OF SURVEY; THENCE NORTH 0 DEGREES 20' 16" EAST ALONG SAID WEST LINE 726.00 FEET; THENCE NORTH 89 DEGREES 56' 33" EAST 300.00 FEET PARALLEL WITH THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 0 DEGREES 20' 16" WEST 726.00 FEET PARALLEL WITH THE SAID WEST LINE OF PARCEL 2, TO THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 89 DEGREES 56' 33" WEST 300.00 FEET TO THE POINT OF BEGINNING.

NOTE: SAID LAND IS ALSO SHOWN ON LICENSED LAND SURVEYORS MAP FILED MARCH 29, 1966, IN BOOK 25, PAGE 15, RECORDS OF SURVEY.

PARCEL NO. 2

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE ABOVE FOR INGRESS AND EGRESS PURSUANT TO THAT CERTAIN GRANT DEED BY AND BETWEEN GEORGE V. VANDERHAM AND ALICE M. VANDERHAM, HUSBAND AND WIFE, AND ALFRED V. HIGHSTREET AND EVADA V. HIGHSTREET, HUSBAND AND WIFE, RECORDED MAY 20, 1966 IN BOOK 6631 PAGE 577, SAN BERNARDINO COUNTY OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THE NORTH 33 FEET OF LOT 8, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6 PAGE 15, RECORDS OF SAID COUNTY.
APN: (FOR CONVEYANCING PURPOSES ONLY): 0218-261-27-0-000, 0218-261-28-0-000, 0218-261-34-0-000

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Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabeny SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (NCS-1017182-SF)

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

A PORTION OF LOTS 23, 24, 25 AND 26 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST OF MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS FILED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF MERRILL AVENUE (66 FEET WIDE) WITH THE SOUTHERLY PRoJECTION OF THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY, RECORDED IN BOOK 25 PAGE 15 OF RECORDS OF SURVEYS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA; THENCE NORTH 0° 20' 16" EAST ALONG SAID WEST LINE 726.00 FEET; THENCE NORTH 89° 56' 33" EAST 300.00 FEET PARALLEL WITH THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 0° 20' 16" WEST 726.00 FEET PARALLEL WITH THE SAID WEST LINE OF PARCEL 2, TO THE CENTER LINE OF SAID MERRILL AVENUE; THENCE SOUTH 89° 56' 33" WEST 300.00 FEET TO THE POINT OF BEGINNING. TOGETHER WITH THE PARCEL OF LAND DESCRIBED AS FOLLOWS:
THAT PORTION OF LOTS 24 AND 25 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS OF THE COUNTY OF SAN BERNARDINO, CALIFORNIA.
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE); THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF SAID MERRILL AVENUE A DISTANCE OF 568.52 FEET TO THE POINT OF BEGINNING, BEING ALSO A POINT ON THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 25, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY LYING 33 FEET NORTH OF THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE NORTH 0° 20' 16" EAST ALONG THE WEST LINE OF SAID PARCEL 2, ALSO BEING THE WEST LINE OF THE PARCEL JOINED HEREWITH, A DISTANCE OF 693.00 FEET, TO THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE SOUTH 89° 56' 33" WEST AND PARALLEL WITH THE CENTER LINE OF MERRILL AVENUE A DISTANCE OF 334.13 FEET; THENCE SOUTH 0° 20' 16" WEST A DISTANCE OF 693.00 FEET TO THE NORTH LINE OF SAID MERRILL AVENUE; THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE) A DISTANCE OF 334.13 FEET TO THE POINT OF BEGINNING.
THE LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE APPROVING A LOT LINE ADJUSTMENT NO. W90-147S/99, RECORDED AUGUST 11, 1999 AS INSTRUMENT NO. 19990340741, OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOTS 8, 9, 24 AND 25, AND THE SOUTHERLY ONE-HALF OF EUCALYPTUS AVENUE VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY DATED JUNE 6, 1922 ADJOINING SAID LOT 8 ON THE NORTH, ALL IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE);
THENCE NORTH 89° 56' 33" EAST 568.52 FEET ALONG THE NORTH LINE OF MERRILL AVENUE TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 20' 16" EAST 2606.28 FEET TO A POINT ON THE CENTERLINE OF EUCALYPTUS AVENUE (VACATED) WHICH IS NORTH 89° 56' 26" EAST 616.91 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SAID VINEYARD AVENUE WITH THE CENTERLINE OF SAID EUCALYPTUS AVENUE.
EXCEPT THAT PORTION OF LOTS 24 AND 25 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS OF THE COUNTY OF SAN BERNARDINO, CALIFORNIA.
BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE); THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF SAID MERRILL AVENUE A DISTANCE OF 568.52 FEET TO THE POINT OF BEGINNING, BEING ALSO A POINT ON THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 25, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY LYING 33 FEET NORTH OF THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE NORTH 0° 20' 16" EAST ALONG THE WEST LINE OF SAID PARCEL 2, ALSO BEING THE WEST LINE OF THE PARCEL JOINED HEREWITH, A DISTANCE OF 693.00 FEET, TO THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE SOUTH 89° 56' 33" WEST AND PARALLEL WITH THE CENTER LINE OF MERRILL AVENUE A DISTANCE OF 334.13 FEET; THENCE SOUTH 0° 20' 16" WEST A DISTANCE OF 693.00 FEET TO THE NORTH LINE OF SAID MERRILL AVENUE;
THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE) A DISTANCE OF 334.13 FEET TO THE POINT OF BEGINNING.

THE LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE APPROVING A LOT LINE ADJUSTMENT NO. W90-147/99, RECORDED AUGUST 11, 1999 AS INSTRUMENT NO. 19990340742, OF OFFICIAL RECORDS.
APN: (FOR CONVEYANCING PURPOSES ONLY): 0218-261-29-0-000 AND 0218-261-35-0-000 AND 0218-261-37-0-000

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Drawing Name: P:\Year_2018\2018-004 Borba 2 Minaberry SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION (012-25002097-5-SG2)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 4 THROUGH 13, INCLUSIVE, AND LOTS 20 THROUGH 29, INCLUSIVE, IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAID COUNTY.

TOGETHER WITH THE STREET ADJOINING LOTS 4, 13, 20 AND 29 ON THE WEST, AND LOTS 5, 12, 21 AND 28 ON THE EAST, AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED APRIL 17, 1947, IN BOOK 2026, PAGE 464, OFFICIAL RECORDS.
EXCEPT THAT PORTION OF LOT 8, SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, SAID PORTION OF BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF GROVE AVENUE, 66.00 FEET WIDE, WITH THE CENTERLINE OF EUCALYPTUS AVENUE, 66.00 FEET WIDE, AS SHOWN ON SAID MAP; THENCE EASTERLY ALONG SAID CENTERLINE OF EUCALYPTUS AVENUE, A DISTANCE OF 85.00 FEET; THENCE SOUTHWESTERLY, A DISTANCE OF 153.24 FEET, MORE OR LESS, TO A POINT ON THE CENTERLINE OF SAID GROVE AVENUE, SAID POINT BEING SITUATE THEREON, SOUTH 127.50 FEET FROM THE POINT OF BEGINNING; THENCE NORTH ALONG SAID CENTERLINE OF GROVE AVENUE, A DISTANCE OF 127.50 FEET TO THE POINT OF BEGINNING.

APN(s): 1054–111–01, 02; 1054–121–01, 02; 1054–131–01 AND 02; 1054–141–01, 02; 1054–151–01; 1054–161–01; 1054–201–01; 1054–211–01 AND 02; 1054–221–01 AND 02; 1054–331–01 AND 02; 1054–341–01, 02 AND
1054–351–01

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Drawing Name: P:\Year_2018\2018-004 Barba 2 Mirabery SP Support\05 Engineering\Exhibits\MCC Development Agreement Exhibits\A-Legal Description of Property.dwg

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

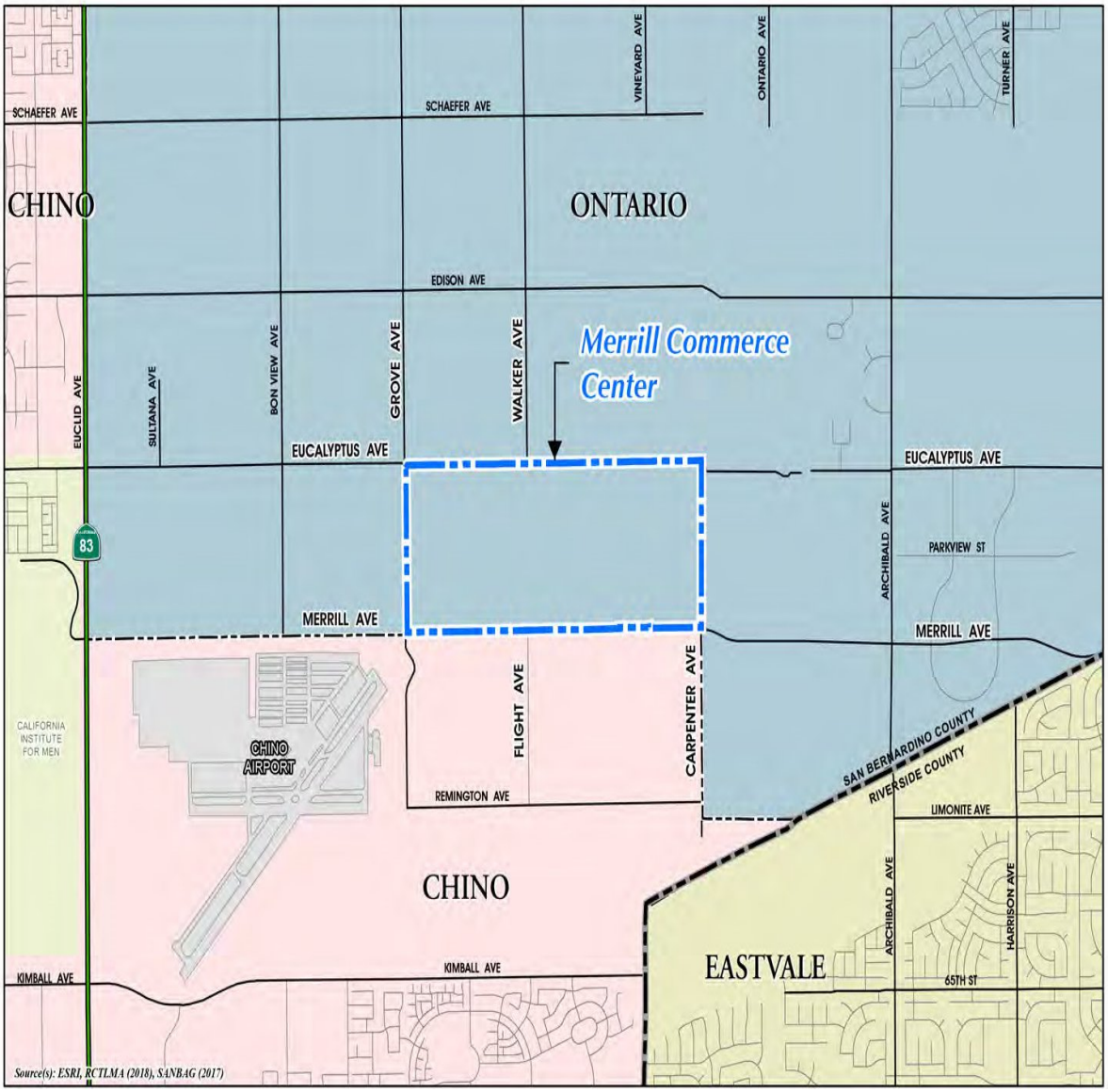

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On December 22, 2020, the Planning Commission:

a) Approved Resolution No. PC20-094, recommending the City Council certify the Environmental Impact Report (SCH #2019049079) for the Merrill Commerce Center Specific Plan (File No. PSP18-001).

b) Approved Resolution No. PC20-095, recommending the City Council approve the General Plan Amendment (File No. PGPA18-003).

c) Approved Resolution No. PC20-096, recommending the City Council approve the Merrill Commerce Center Specific Plan (File No. PSP18-001).

On February 2, 2021, the City Council:

a) Adopted Resolution No. 2021-011, certifying the Environmental Impact Report (SCH #2019049079) for the Merrill Commerce Center Specific Plan (File No. PSP18-001).

b) Adopted Resolution No. 2021-012, approving a General Plan Amendment (File No. PGPA18-003)

On February 16, 2021, the City Council:

a) Adopted Ordinance No. 3178, approving the Merrill Commerce Center Specific Plan (File No. PSP18-001).

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. General Plan Amendment (File No. PGPA18-003)

2. Merrill Commerce Center Specific Plan (File No. PSP18-001), Ordinance No. 3178

3. Merrill Commerce Center Environmental Impact Report (SCH#2019049079)

4. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO THE DEVELOPMENT AGREEMENT

DESCRIPTION OF REQUIRED IMPROVEMENTS

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within Phase A.

PHASE A – STREETS (ST)

a) ST improvements along Eucalyptus Avenue from Carpenter Avenue to westerly boundary of Phase A with street pavement transition.
b) ST improvements along Merrill Avenue from Carpenter Avenue to westerly boundary of Phase A with street pavement transition.
c) ST improvements along Vineyard Avenue from Merrill Avenue to Eucalyptus Avenue.
d) ST improvements along Baker Avenue from Merrill Avenue to Eucalyptus Avenue.
e) Traffic Signal at Eucalyptus Avenue/Carpenter Avenue.
f) Traffic Signal at Eucalyptus Avenue/Vineyard Avenue.
g) Traffic Signal at Eucalyptus Avenue/Baker Avenue.
h) Traffic Signal Modification at Merrill Avenue/Carpenter Avenue.
i) Traffic Signal at Merrill Avenue/Vineyard Avenue.
j) Traffic signal at Merrill Avenue/Baker Avenue.
k) Traffic Signal at Baker Avenue between Eucalyptus Avenue and Merrill Avenue.
l) Traffic Signal at Vineyard Avenue between Eucalyptus Avenue and Merrill Avenue.

PHASE A – SEWER (SS) (Subject to results of Sewer Technical Studies)

a) 12" SS along Eucalyptus Avenue from Walker Avenue to west of Vineyard Avenue.
b) 15" SS along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
c) 8" SS along Baker Avenue from south of Eucalyptus Avenue to Merrill Avenue.
d) 10" SS along Merrill Avenue from Carpenter Avenue to Vineyard Avenue.
e) 8" SS in Merrill Avenue from Baker Avenue going east.
f) 12" SS in Merrill Avenue from Baker Avenue going west to Walker Avenue.
g) 21"-30" SS in Walker Avenue from Eucalyptus Avenue to Merrill Avenue.
h) 24" – 30" SS in Merrill Avenue from Walker Avenue to Grove Avenue.
i) 30" SS in Merrill Avenue from Grove Avenue to Euclid Avenue.

j) 36” SS in Euclid Avenue from Merrill Avenue to the point of connection in Kimball Avenue.

PHASE A – STORM DRAIN (SD)

a) SD along Eucalyptus Avenue from Vineyard Avenue going west to the boundary of Phase A.
b) SD along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) SD along Merrill Avenue from Carpenter Avenue going west to the boundary of Phase A.
d) SD along Baker Avenue from Merrill Avenue to south of Eucalyptus Avenue.

PHASE A – POTABLE WATER (PW)

a) 24” PW along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue
b) 12” PW along Merrill Avenue from Carpenter to Vineyard Avenue.
c) 16” PW along Merrill Avenue from Vineyard Avenue going west to the boundary of Phase A.
d) 16” PW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue
e) 12” PW along Baker Avenue from Eucalyptus Avenue to Merrill Avenue.

PHASE A – RECYCLED WATER (RW)

a) 16” RW along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue
b) 12” RW along Eucalyptus Avenue from Vineyard Avenue going west to the boundary of Phase A.
c) 8” RW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
d) 16” RW along Carpenter Avenue from Eucalyptus Avenue to Merrill Avenue.
e) 16” RW along Merrill Avenue from Carpenter Avenue going west to the boundary of PA 4.

PHASE A – FIBER OPTIC (FO)

a) FO along Eucalyptus Avenue from Carpenter going west to the boundary of Phase A.
b) FO along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) FO along Baker Avenue from Eucalyptus Avenue to Merrill Avenue.
d) FO along Merrill Avenue from Carpenter Avenue going west to the boundary of Phase A.

EXHIBIT "E" Continued
TO THE DEVELOPMENT AGREEMENT

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within Phase B.

PHASE B – STREETS (ST)

a) ST improvements along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue with street pavement transition.
b) ST improvements along Walker Avenue from Edison Avenue to Merrill Avenue.
c) ST improvements along Street "A" from Walker Avenue to Grove Avenue.
d) ST improvements along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
e) ST improvements along Merrill Avenue from Euclid Avenue to Carpenter Avenue.
f) Traffic Signal at Eucalyptus Avenue/Carpenter Avenue
g) Traffic Signal at Eucalyptus Avenue/Vineyard Avenue.
h) Traffic Signal at Eucalyptus Avenue/Baker Avenue.
i) Traffic Signal at Eucalyptus Avenue between Walker Avenue and Grove Avenue.
j) Traffic Signal at Eucalyptus Avenue/Walker Avenue
k) Traffic Signal at Eucalyptus Avenue/Grove Avenue.
l) Traffic Signal at Walker Avenue/Street "A".
m) Traffic Signal at Grove Avenue/Street "A".
n) Traffic Signal at Street "A" between Walker Avenue and Grove Avenue.
o) Traffic Signal Modification at Merrill Avenue/Carpenter Avenue.
p) Traffic Signal at Merrill Avenue/Vineyard Avenue.
q) Traffic Signal at Merrill Avenue/Baker Avenue.
r) Traffic Signal at Merrill Avenue/Grove Avenue.
s) Traffic Signal at Merrill Avenue between Walker Avenue and Grove Avenue.
t) Traffic Signal at Merrill Avenue/Walker Avenue.
u) Traffic Signal Modification at Merrill Avenue/Euclid Avenue.

PHASE B – SEWER (SS) (Subject to results of Sewer Technical Studies)

a) 12" SS along Eucalyptus Avenue from west of Walker Avenue to Grove Avenue.
b) 12" SS along Eucalyptus Avenue from west of Walker Avenue to west of Vineyard Avenue.
c) 15" SS along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
d) 18" SS along Grove Avenue from Eucalyptus Avenue to Merrill Avenue

e) 21” – 30” SS along Walker Avenue from Eucalyptus Avenue to Merrill Avenue
f) 10” SS along Merrill Avenue from Carpenter Avenue to Vineyard Avenue.
g) 8” SS along Merrill Avenue from Baker Avenue going east.
h) 12” SS along Merrill Avenue from Baker Avenue to Walker Avenue.
i) 24” – 30” SS along Merrill Avenue from Walker Avenue to Grove Avenue.
j) 30” SS along Merrill Avenue from Grove Avenue to Euclid Avenue.
k) 36” SS along Euclid Avenue from Merrill Avenue to point of connection in Kimball Avenue.

PHASE B – STORM DRAIN (SD)

a) SD along Eucalyptus Avenue from Vineyard Avenue to Grove Avenue.
b) SD along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) SD along Merrill Avenue from Carpenter Avenue to west of Walker Avenue.
d) SD along Grove Avenue from Merrill Avenue to Eucalyptus Avenue.
e) SD along Grove Avenue from Merrill Avenue going south to daylight point on Chino Airport property.
f) SD along Walker Avenue from Merrill Avenue to the north of Street “A”.

PHASE B – POTABLE WATER (PW)

a) 24” PW along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue.
b) 12” PW along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
c) 16” PW along Merrill Avenue from Grove Avenue to Vineyard Avenue.
d) 12” PW along Merrill Avenue from Vineyard Avenue to Carpenter Avenue**.**
e) 12” PW along Street “A” from Grove Avenue to Walker Avenue**.**
f) 16” PW along Walker Avenue from Merrill Avenue to Eucalyptus Avenue**.**

PHASE B – RECYCLED WATER (RW)

a) 12” RW along Eucalyptus Avenue from Grove Avenue to Vineyard Avenue.
b) 16” RW along Eucalyptus Avenue from Vineyard Avenue to Carpenter Avenue.
c) 8” RW along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
d) 8” RW along Merrill Avenue from Grove Avenue to Walker Avenue.
e) 16” RW along Merrill Avenue from Walker Avenue to Carpenter Avenue.
f) 16” RW along Carpenter Avenue from Merrill Avenue to Eucalyptus Avenue.
g) 8” RW along Street “A” from Grove Avenue to Walker Avenue.
h) 8” RW along Walker Avenue from Merrill Avenue to Eucalyptus Avenue.

PHASE B - FIBER OPTC (FO)

a) FO along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue.
b) FO along Grove Avenue from Eucalyptus Avenue to Merrill Avenue.
c) FO along Merrill Avenue from Grove Avenue to Carpenter Avenue.
d) FO along Street “A” from Grove Avenue to Walker Avenue.
e) FO along Walker Avenue from Merrill Avenue to Eucalyptus Avenue.

EXHIBIT "E" Continued
TO THE DEVELOPMENT AGREEMENT

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within Phase C.

PHASE C - STREETS (ST)

a) ST improvements along Eucalyptus Avenue from Carpenter to Vineyard Avenue with street pavement transition.
b) ST improvements along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) ST improvements along Merrill Avenue from Vineyard Avenue to Carpenter Avenue with street pavement transition.
d) ST improvements along Carpenter Avenue from Merrill Avenue to Eucalyptus Avenue.
e) Traffic Signal at Eucalyptus Avenue/Vineyard Avenue.
f) Traffic Signal at Merrill Avenue/Vineyard Avenue.
g) Traffic Signal Modification at Merrill Avenue/Carpenter Avenue.
h) Traffic Signal at Eucalyptus Avenue/Carpenter Avenue.
i) Traffic Signal at Vineyard Avenue between Eucalyptus Avenue and Merrill Avenue.
j) Traffic Signal at Carpenter Avenue between Eucalyptus Avenue and Merrill Avenue.

PHASE C – SEWER (SS) (Subject to results of the Sewer Technical Study)

a) 15" SS along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
b) 10" SS along Merrill Avenue from Carpenter Avenue to Vineyard Avenue.

PHASE C – STORM DRAIN (SD)

a) SD along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
b) SD along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.

PHASE C – POTABLE WATER (PW)

a) 24 "PW along Eucalyptus Avenue from Carpenter Avenue to Grove Avenue.
b) 16" PW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) 12" PW along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.

PHASE C – RECYCLYED WATER (RW)

a) 16" RW along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
b) 8" RW along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.

c) 16” RW along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.
d) 16” RW along Carpenter Avenue from Merrill Avenue to Eucalyptus Avenue.

PHASE C – FIBER OPTIC (FO)

a) FO along Eucalyptus Avenue from Carpenter Avenue to Vineyard Avenue.
b) FO along Vineyard Avenue from Eucalyptus Avenue to Merrill Avenue.
c) FO along Merrill Avenue from Vineyard Avenue to Carpenter Avenue.

EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements

(SEE ATTACHED EXHIBITS)

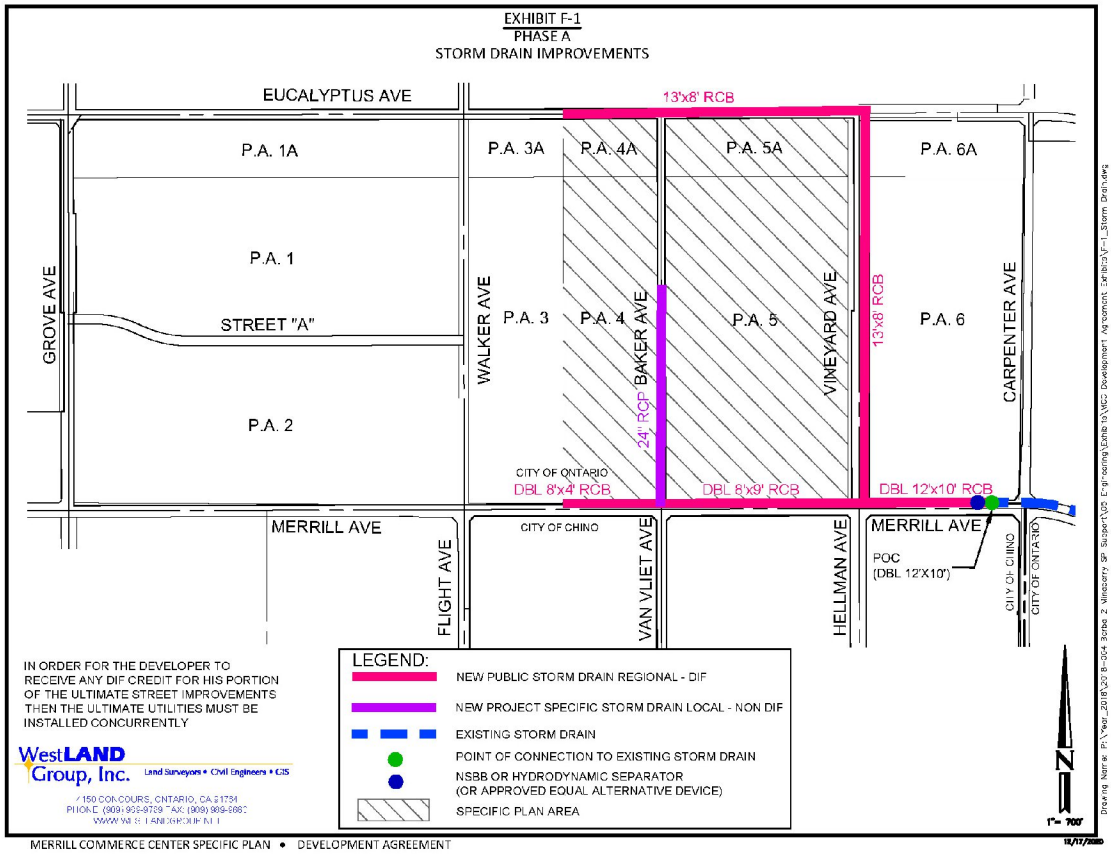
EXHIBIT F-1
PHASE A
STORM DRAIN IMPROVEMENTS
EUCALYPTUS AVE
13'x8' RCB
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
24" RCP
13'x8' RCB
CITY OF ONTARIO
DBL 8'x4' RCB
DBL 8'x9' RCB
DBL 12'x10' RCB
MERRILL AVE
CITY OF CHINO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
MERRILL AVE
POC
(DBL 12'X10')
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
LEGEND:
NEW PUBLIC STORM DRAIN REGIONAL - DIF
NEW PROJECT SPECIFIC STORM DRAIN LOCAL - NON DIF
EXISTING STORM DRAIN
POINT OF CONNECTION TO EXISTING STORM DRAIN
NSBB OR HYDRODYNAMIC SEPARATOR
(OR APPROVED EQUAL ALTERNATIVE DEVICE)
SPECIFIC PLAN AREA
1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

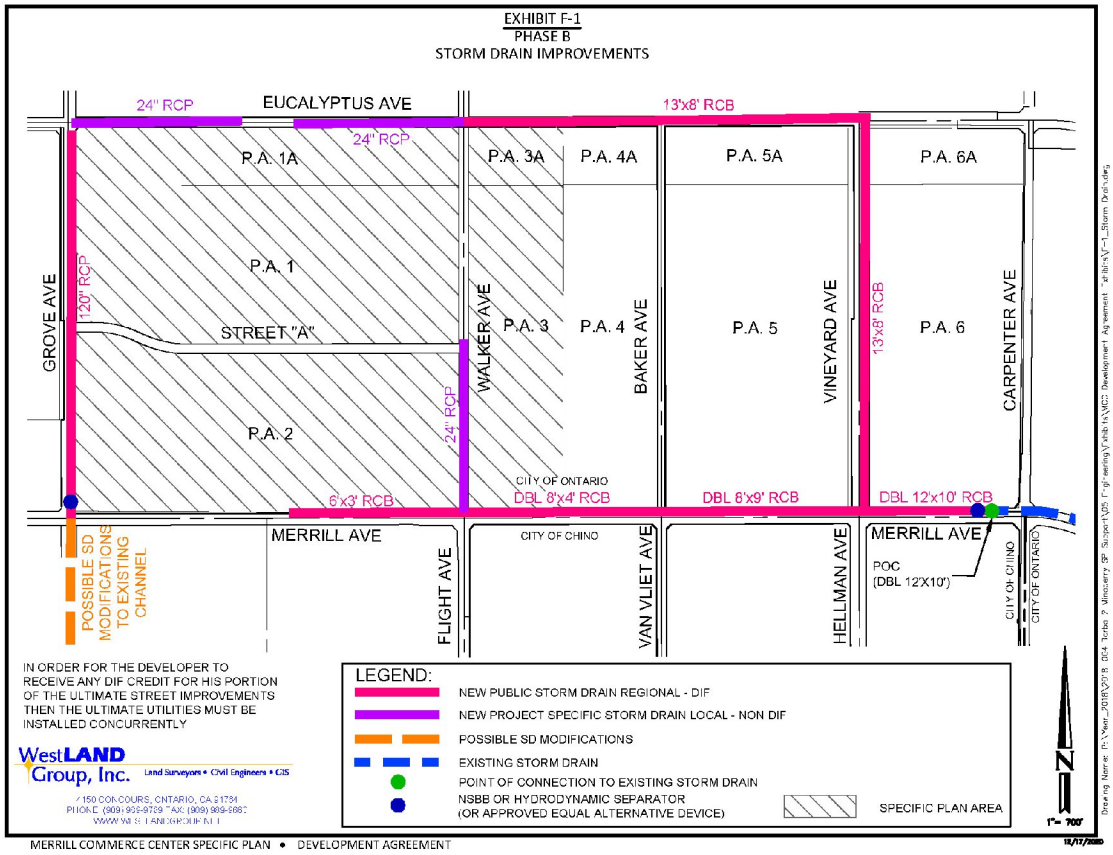
EXHIBIT F-1
PHASE B
STORM DRAIN IMPROVEMENTS
24" RCP
EUCALYPTUS AVE
13'x8' RCB
24" RCP
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 3
P.A. 4
P.A. 5
P.A. 6
P.A. 2
GROVE AVE
120" RCP
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
13'x8' RCB
CARPENTER AVE
24" RCP
CITY OF ONTARIO
6'x3' RCB
DBL 6'x4' RCB
DBL 6'x9' RCB
DBL 12'x10' RCB
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POSSIBLE SD MODIFICATIONS TO EXISTING CHANNEL
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
POC
(DBL 12'X10')
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW PUBLIC STORM DRAIN REGIONAL - DIF
NEW PROJECT SPECIFIC STORM DRAIN LOCAL - NON DIF
POSSIBLE SD MODIFICATIONS
EXISTING STORM DRAIN
POINT OF CONNECTION TO EXISTING STORM DRAIN
NSBB OR HYDRODYNAMIC SEPARATOR
(OR APPROVED EQUAL ALTERNATIVE DEVICE)
SPECIFIC PLAN AREA
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

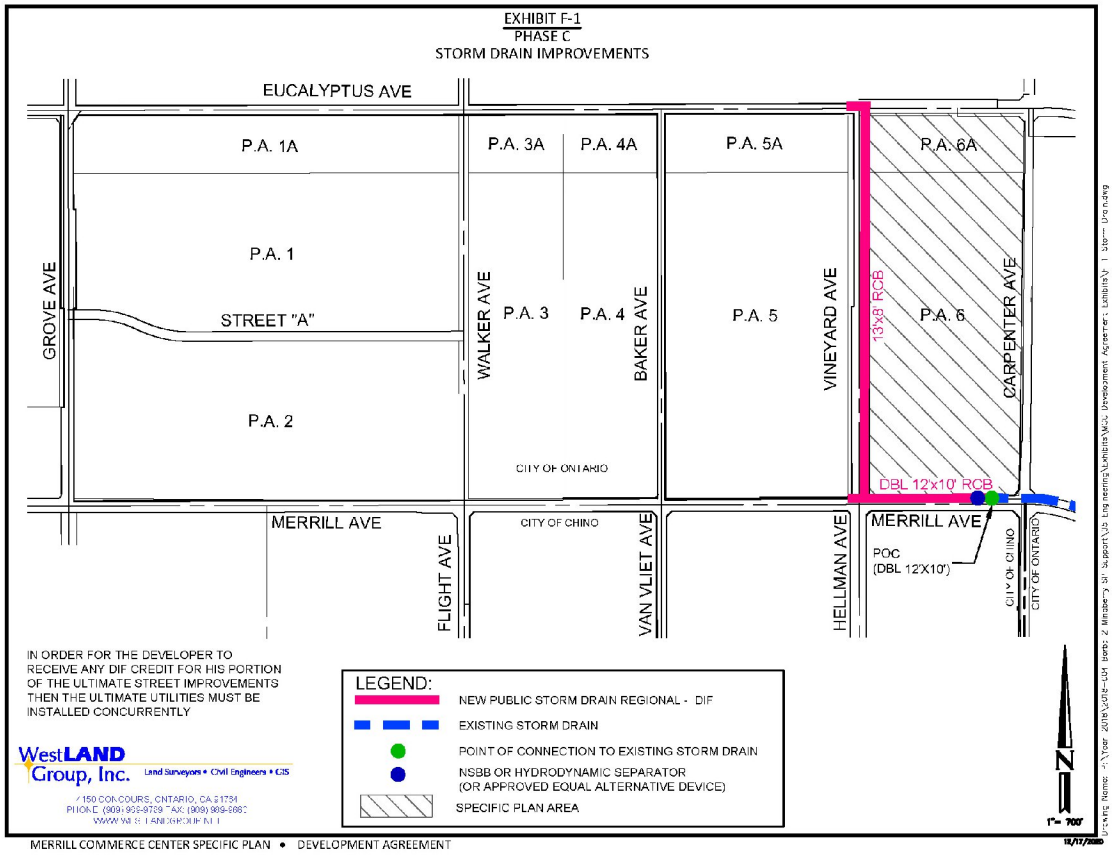
EXHIBIT F-1
PHASE C
STORM DRAIN IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
13'x8' RCB
DBL 12'x10' RCB
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
POC
(DBL 12'X10')
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW PUBLIC STORM DRAIN REGIONAL - DIF
EXISTING STORM DRAIN
POINT OF CONNECTION TO EXISTING STORM DRAIN
NSBB OR HYDRODYNAMIC SEPARATOR
(OR APPROVED EQUAL ALTERNATIVE DEVICE)
SPECIFIC PLAN AREA
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

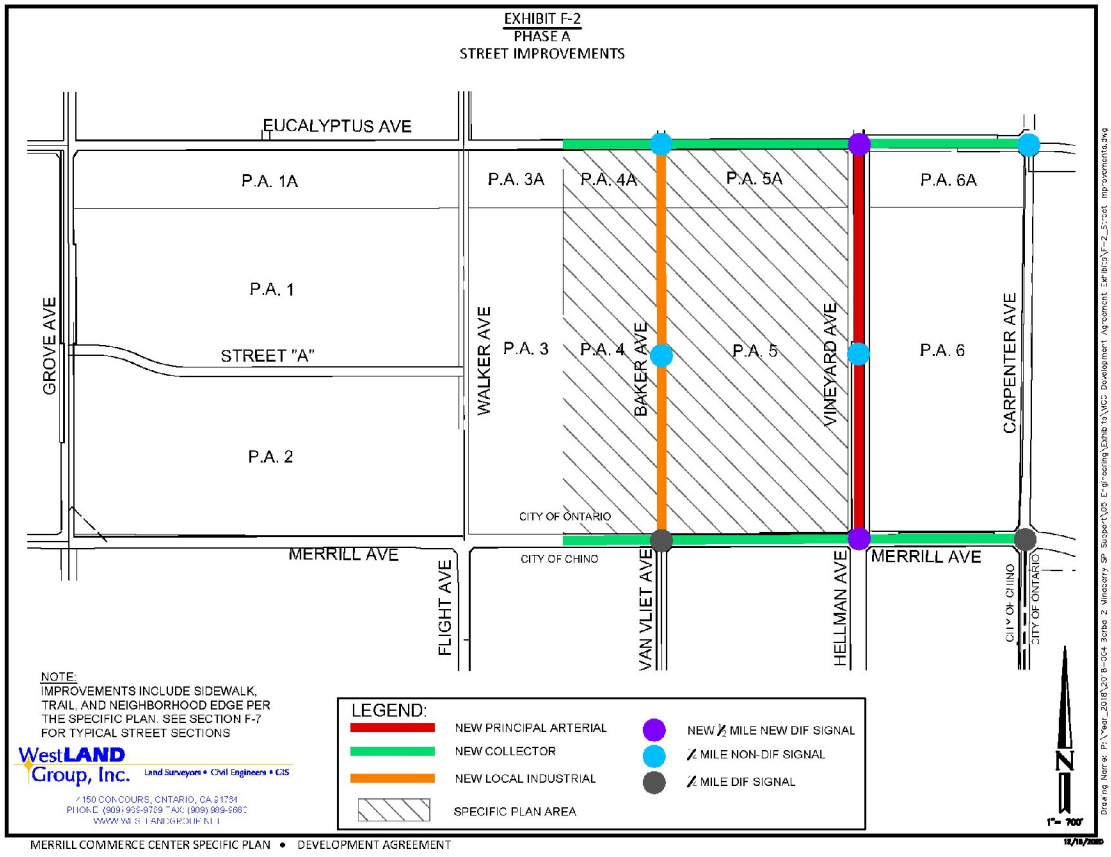
EXHIBIT F-2
PHASE A
STREET IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
MERRILL AVE
CITY OF CHINO
CITY OF ONTARIO
NOTE:
IMPROVEMENTS INCLUDE SIDEWALK, TRAIL, AND NEIGHBORHOOD EDGE PER THE SPECIFIC PLAN. SEE SECTION F-7 FOR TYPICAL STREET SECTIONS
LEGEND:
NEW PRINCIPAL ARTERIAL
NEW COLLECTOR
NEW LOCAL INDUSTRIAL
SPECIFIC PLAN AREA
NEW ½ MILE NEW DIF SIGNAL
½ MILE NON-DIF SIGNAL
½ MILE DIF SIGNAL
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
1" = 700'

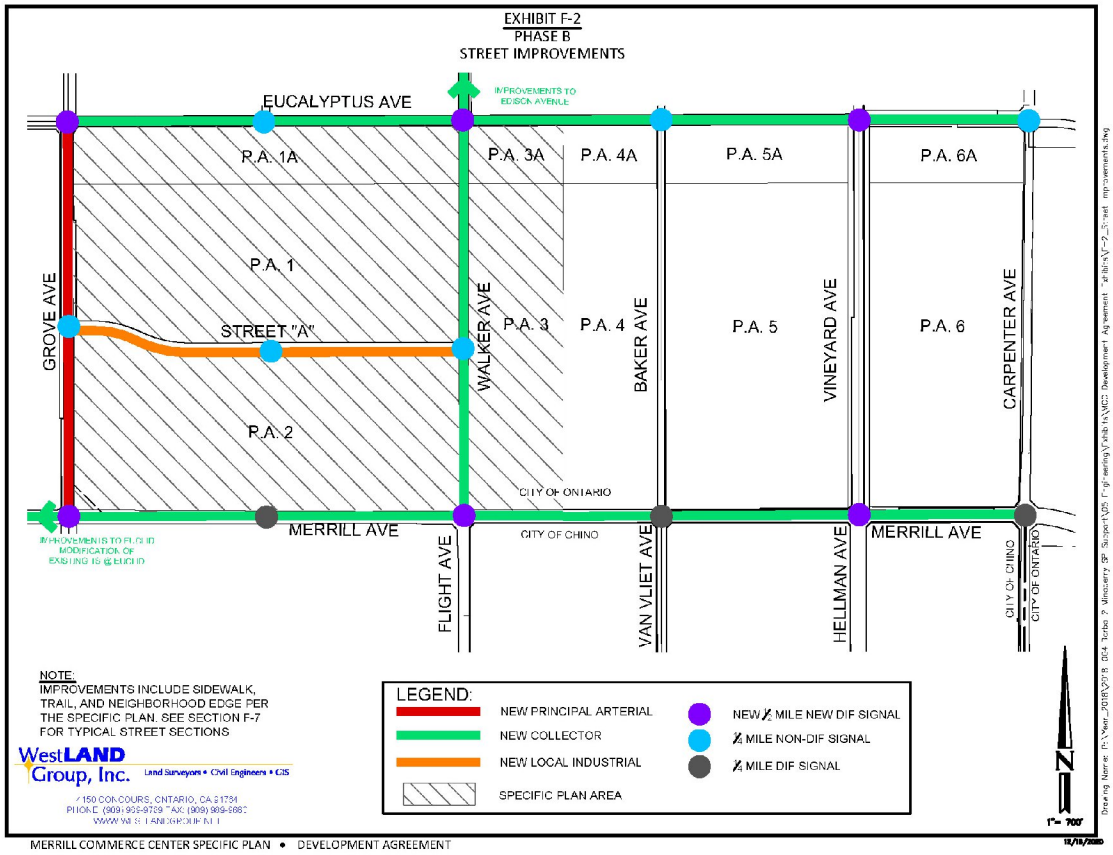
EXHIBIT F-2
PHASE B
STREET IMPROVEMENTS
EUCALYPTUS AVE
IMPROVEMENTS TO EDISON AVENUE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
STREET "A"
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
IMPROVEMENTS TO FLIGHT MODIFICATION OF EXISTING IS @ EUCLID
NOTE:
IMPROVEMENTS INCLUDE SIDEWALK, TRAIL, AND NEIGHBORHOOD EDGE PER THE SPECIFIC PLAN. SEE SECTION F-7 FOR TYPICAL STREET SECTIONS
LEGEND:
NEW PRINCIPAL ARTERIAL
NEW COLLECTOR
NEW LOCAL INDUSTRIAL
SPECIFIC PLAN AREA
NEW ¼ MILE NEW DIF SIGNAL
¼ MILE NON-DIF SIGNAL
¼ MILE DIF SIGNAL
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

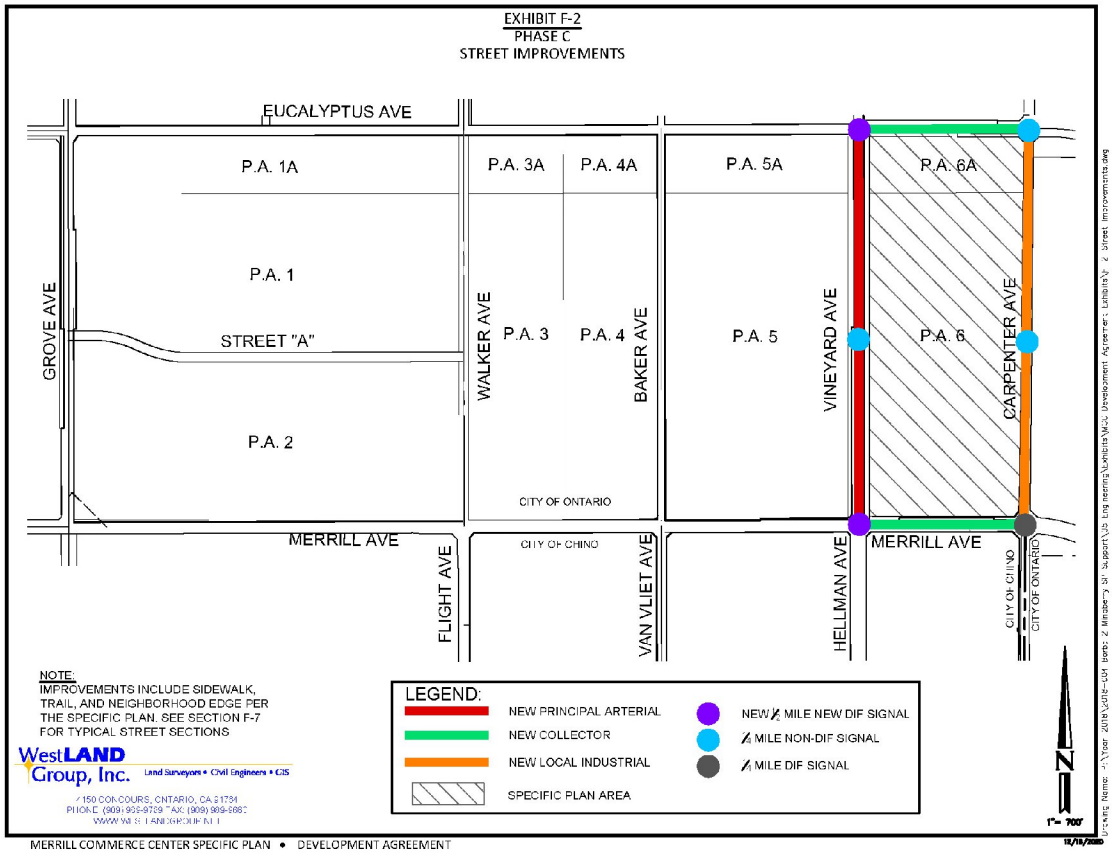
EXHIBIT F-2
PHASE C
STREET IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
STREET "A"
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
CITY OF ONTARIO
CITY OF CHINO
MERRILL AVE
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
NOTE:
IMPROVEMENTS INCLUDE SIDEWALK, TRAIL, AND NEIGHBORHOOD EDGE PER THE SPECIFIC PLAN. SEE SECTION F-7 FOR TYPICAL STREET SECTIONS
LEGEND:
NEW PRINCIPAL ARTERIAL
NEW COLLECTOR
NEW LOCAL INDUSTRIAL
SPECIFIC PLAN AREA
NEW ½ MILE NEW DIF SIGNAL
½ MILE NON-DIF SIGNAL
½ MILE DIF SIGNAL
N
1" = 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

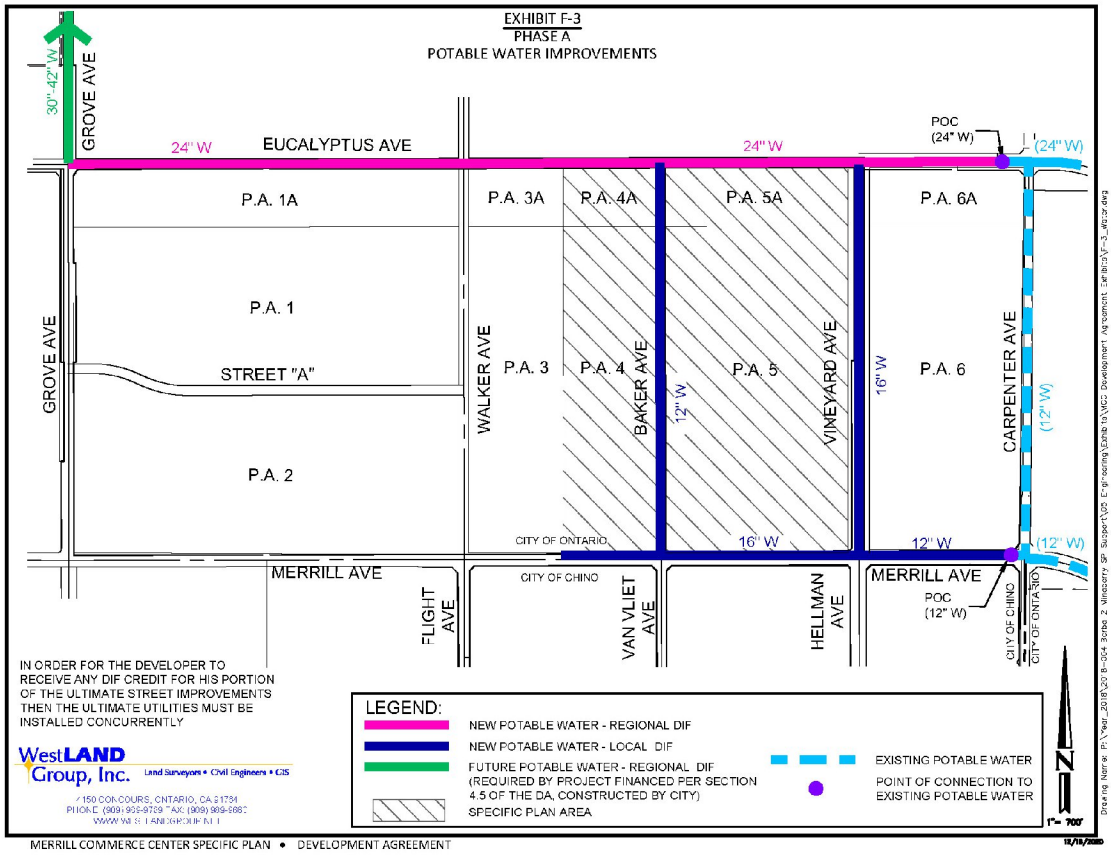
EXHIBIT F-3
PHASE A
POTABLE WATER IMPROVEMENTS
GROVE AVE
30" 42" W
EUCALYPTUS AVE
24" W
24" W
POC
(24" W)
(24" W)
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
STREET "A"
P.A. 2
GROVE AVE
WALKER AVE
P.A. 3
P.A. 4
BAKER AVE
12" W
P.A. 5
VINEYARD AVE
16" W
P.A. 6
CARPENTER AVE
(12" W)
CITY OF ONTARIO
16" W
12" W
(12" W)
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(12" W)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

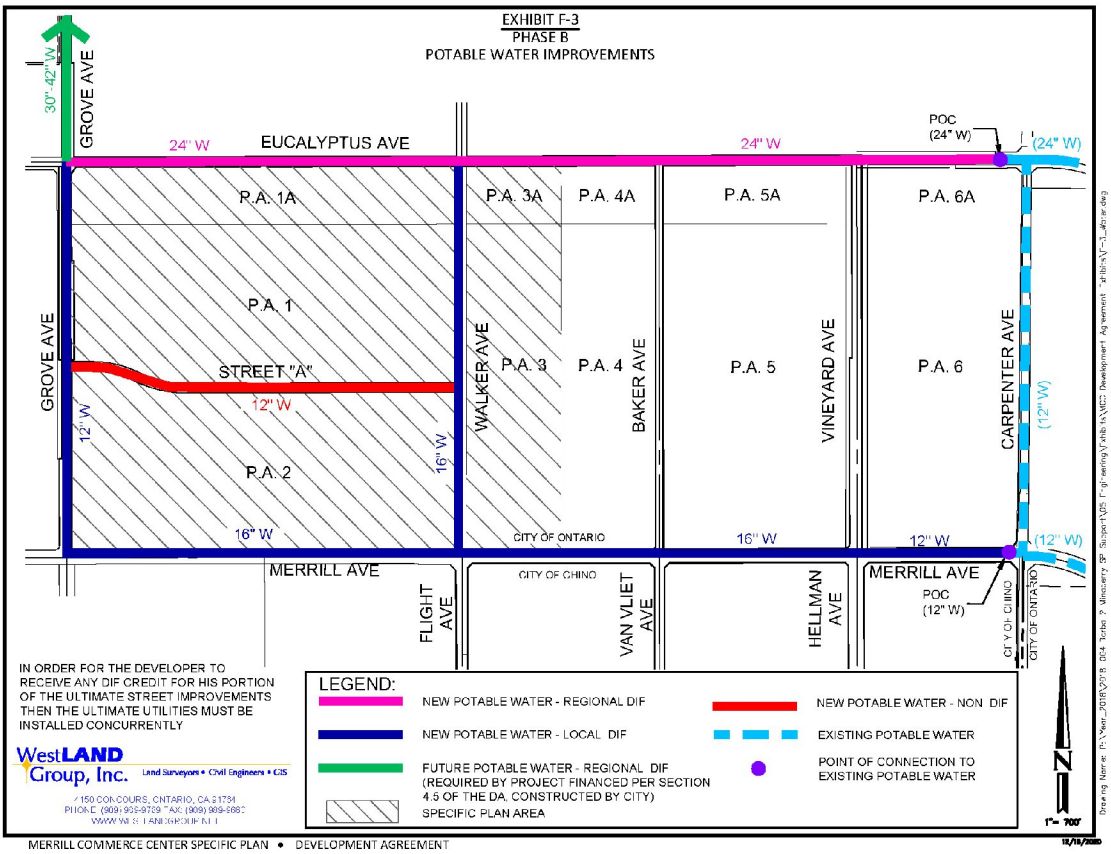
EXHIBIT F-3
PHASE B
POTABLE WATER IMPROVEMENTS
GROVE AVE
30" - 42" W
EUCALYPTUS AVE
24" W
24" W
POC
(24" W)
(24" W)
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
STREET "A"
12" W
12" W
16" W
16" W
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
(12" W)
CITY OF ONTARIO
16" W
12" W
(12" W)
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(12" W)
CITY OF CHINO
CITY OF ONTARIO
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
NEW POTABLE WATER - NON DIF
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1" = 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

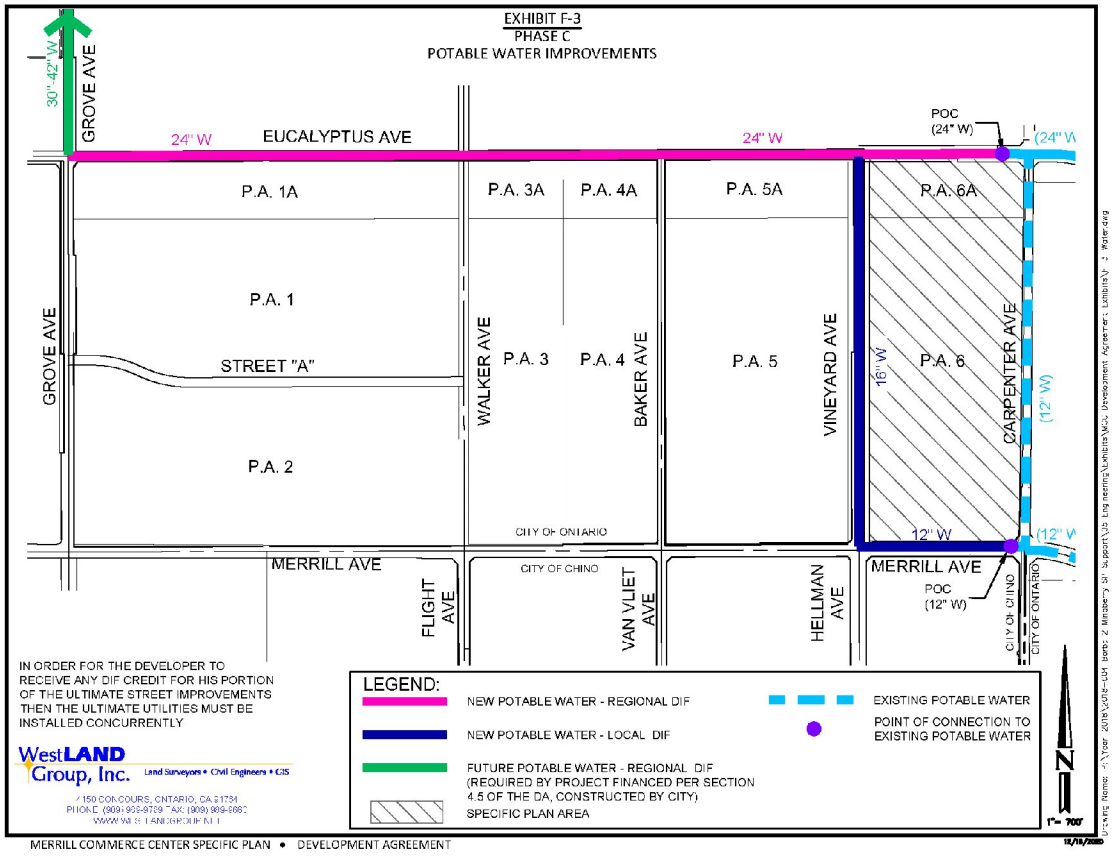
EXHIBIT F-3
PHASE C
POTABLE WATER IMPROVEMENTS
GROVE AVE
30"-42" W
EUCALYPTUS AVE
24" W
24" W
POC
(24" W)
(24" W
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
STREET "A"
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
16" W
(12" W)
CITY OF ONTARIO
12" W
(12" W
MERRILL AVE
MERRILL AVE
FLIGHT AVE
CITY OF CHINO
VAN VLIET AVE
HELLMAN AVE
POC
(12" W)
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
1"= 700'
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

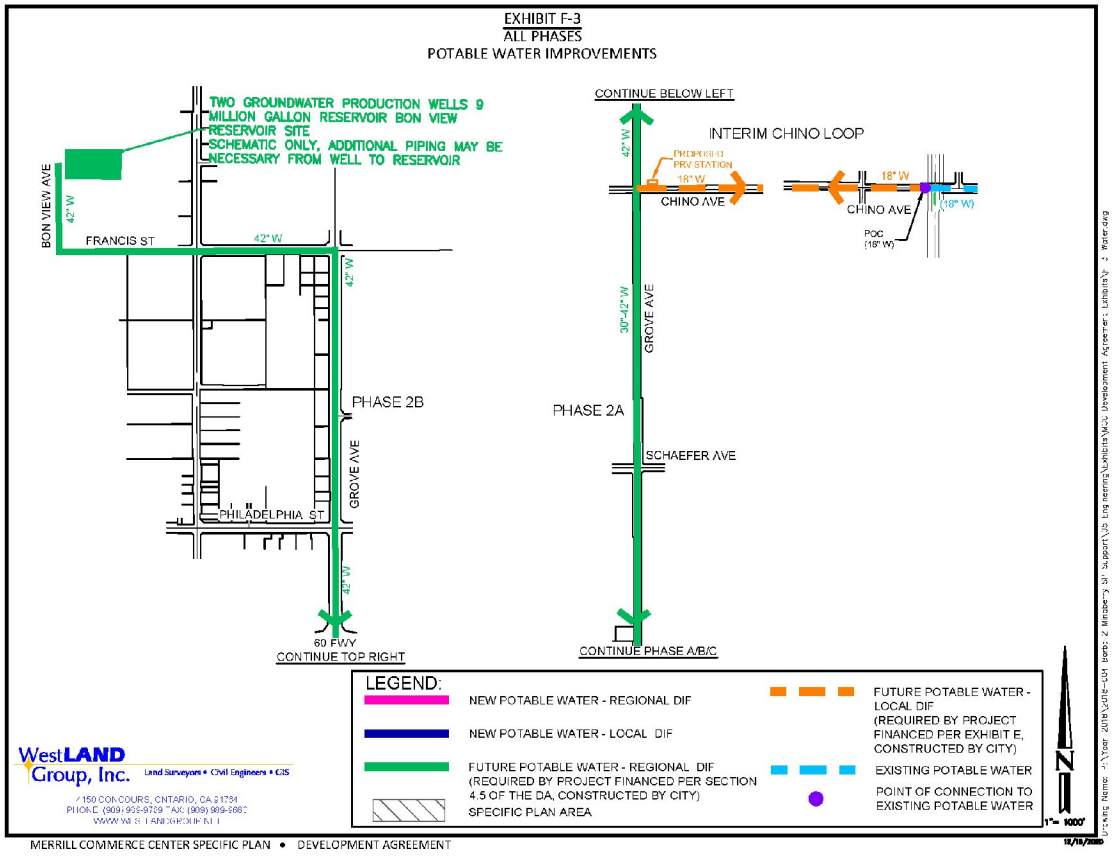
EXHIBIT F-3
ALL PHASES
POTABLE WATER IMPROVEMENTS
TWO GROUNDWATER PRODUCTION WELLS 9 MILLION GALLON RESERVOIR BON VIEW RESERVOIR SITE
SCHEMATIC ONLY, ADDITIONAL PIPING MAY BE NECESSARY FROM WELL TO RESERVOIR
BON VIEW AVE
42" W
FRANCIS ST
42" W
42" W
PHASE 2B
GROVE AVE
PHILADELPHIA ST
42" W
60 FWY
CONTINUE TOP RIGHT
CONTINUE BELOW LEFT
INTERIM CHINO LOOP
42" W
PROPOSED PRV STATION
18" W
CHINO AVE
18" W
CHINO AVE
(18" W)
POC (18" W)
30"-42" W
GROVE AVE
PHASE 2A
SCHAEFER AVE
CONTINUE PHASE A/B/C
LEGEND:
NEW POTABLE WATER - REGIONAL DIF
NEW POTABLE WATER - LOCAL DIF
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
SPECIFIC PLAN AREA
FUTURE POTABLE WATER - LOCAL DIF (REQUIRED BY PROJECT FINANCED PER EXHIBIT E, CONSTRUCTED BY CITY)
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N
1" = 1000'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

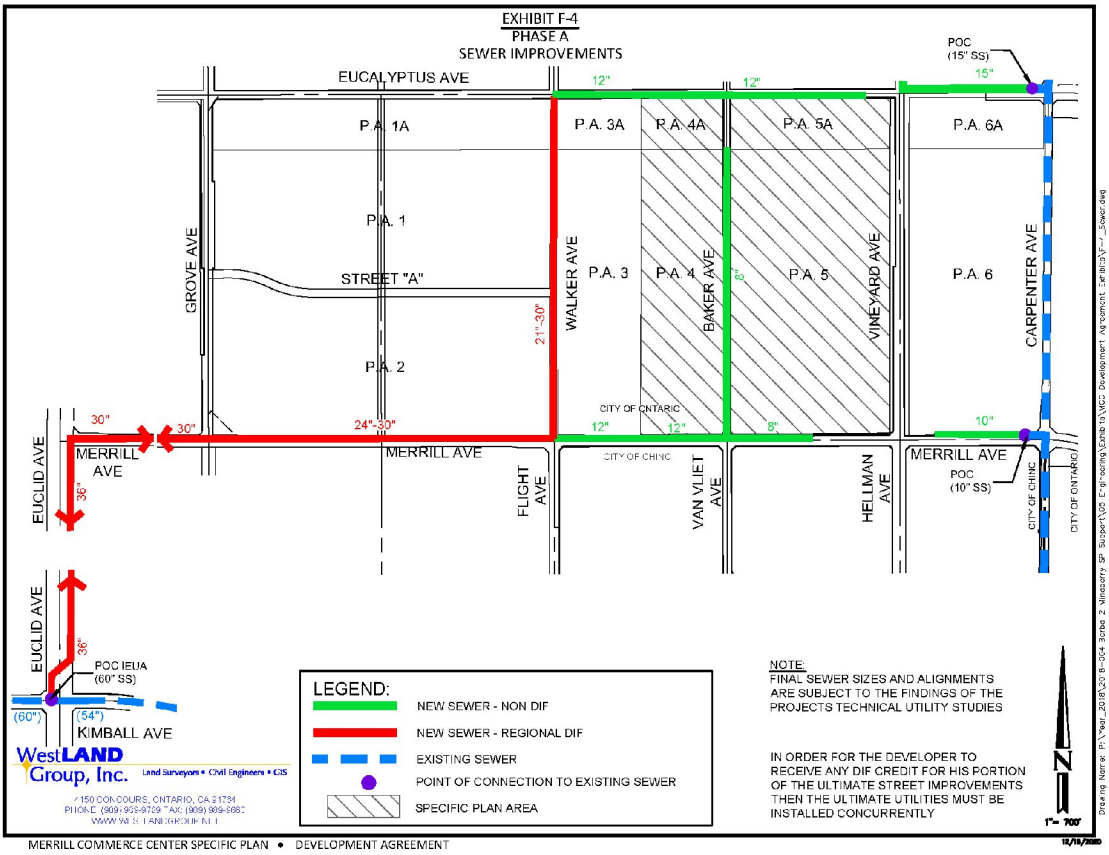
EXHIBIT F-4
PHASE A
SEWER IMPROVEMENTS
EUCALYPTUS AVE
P.A. 1A
P.A. 1
STREET "A"
P.A. 2
P.A. 3A
P.A. 4A
P.A. 3
P.A. 4
P.A. 5A
P.A. 5
P.A. 6A
P.A. 6
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
POC (15" SS)
12"
15"
21"-30"
24"-30"
30"
36"
10"
8"
MERRILL AVE
EUCLID AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
POC (10" SS)
POC IEUA (60" SS)
(60")
(64")
KIMBALL AVE
LEGEND:
NEW SEWER - NON DIF
NEW SEWER - REGIONAL DIF
EXISTING SEWER
POINT OF CONNECTION TO EXISTING SEWER
SPECIFIC PLAN AREA
NOTE:
FINAL SEWER SIZES AND ALIGNMENTS ARE SUBJECT TO THE FINDINGS OF THE PROJECTS TECHNICAL UTILITY STUDIES
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

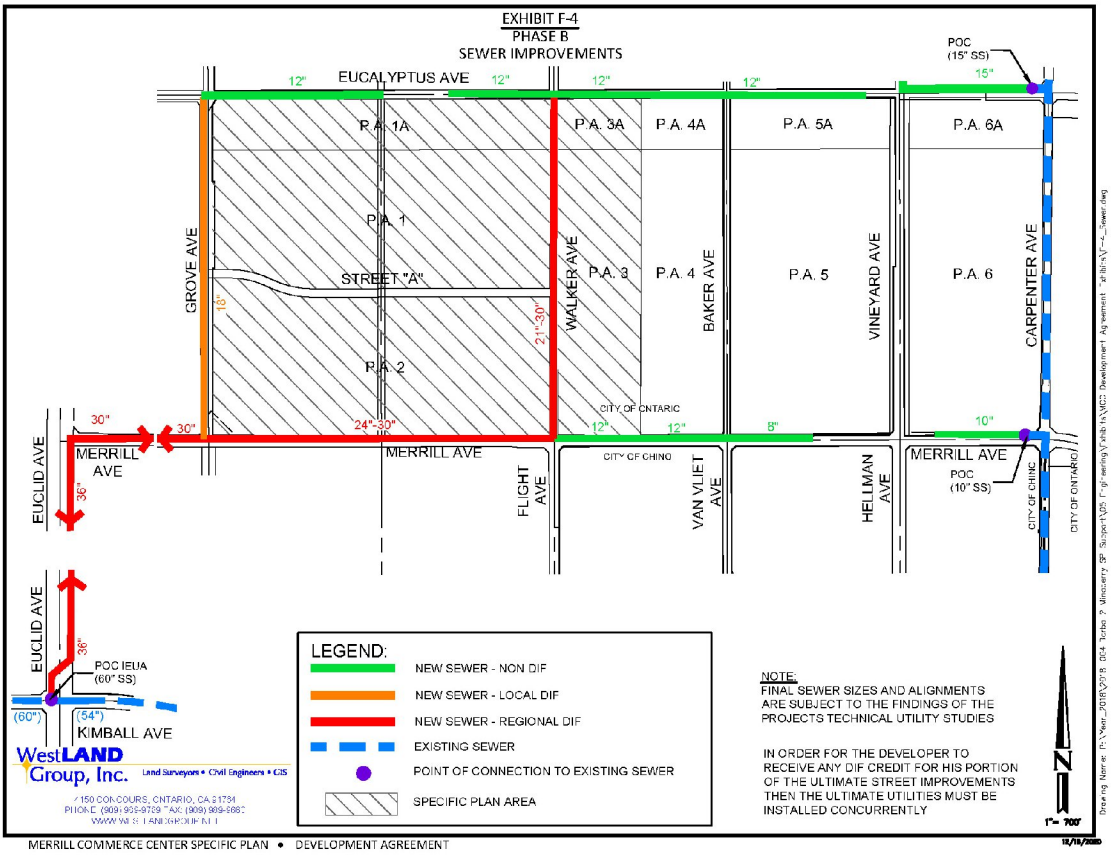
EXHIBIT F-4
PHASE B
SEWER IMPROVEMENTS
EUCALYPTUS AVE
12"
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
STREET "A"
GROVE AVE
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
POC
(15" SS)
15"
18"
21"-30"
24"-30"
30"
36"
10"
8"
MERRILL AVE
EUCLID AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF ONTARIO
CITY OF CHINO
POC (10" SS)
POC IEUA
(60" SS)
(60")
(54")
KIMBALL AVE
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
LEGEND:
NEW SEWER - NON DIF
NEW SEWER - LOCAL DIF
NEW SEWER - REGIONAL DIF
EXISTING SEWER
POINT OF CONNECTION TO EXISTING SEWER
SPECIFIC PLAN AREA
NOTE:
FINAL SEWER SIZES AND ALIGNMENTS ARE SUBJECT TO THE FINDINGS OF THE PROJECTS TECHNICAL UTILITY STUDIES
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
N
1"= 700'

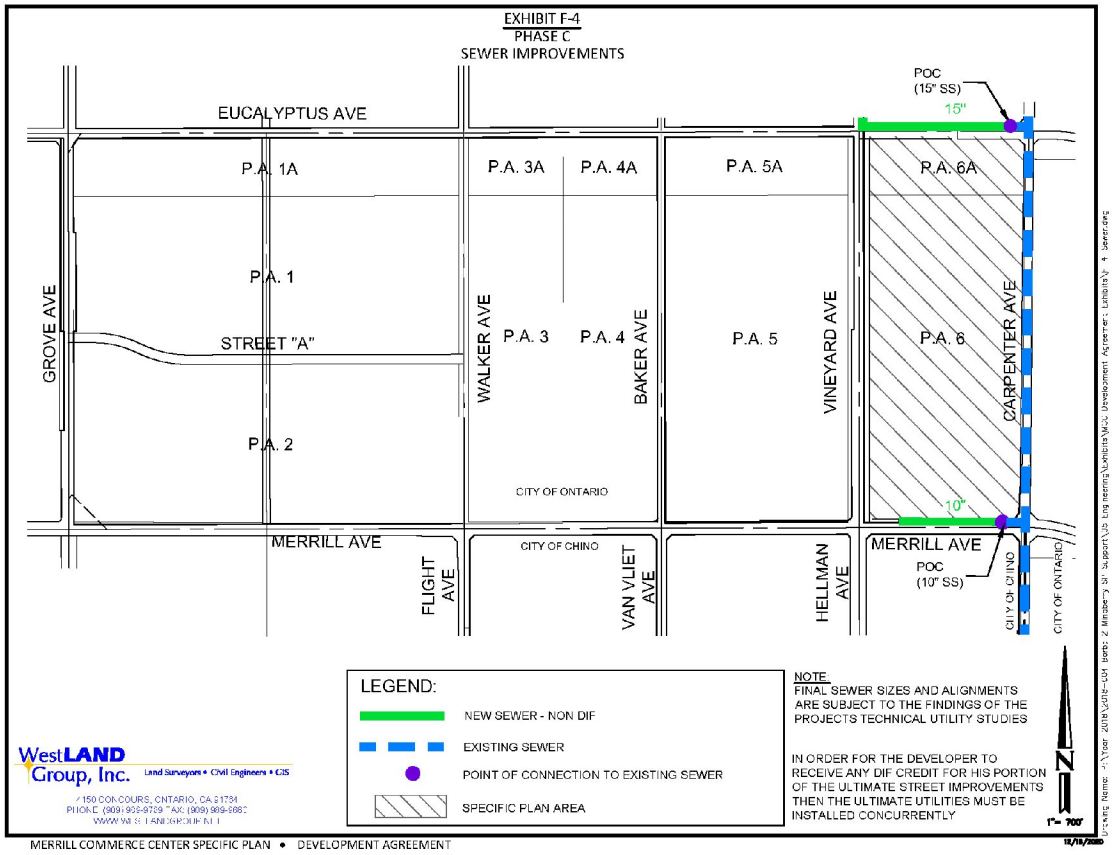
EXHIBIT F-4
PHASE C
SEWER IMPROVEMENTS
EUCALYPTUS AVE
POC
(15" SS)
15"
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
GROVE AVE
STREET "A"
WALKER AVE
P.A. 3
P.A. 4
BAKER AVE
P.A. 5
VINEYARD AVE
P.A. 6
CARPENTER AVE
P.A. 2
CITY OF ONTARIO
10"
MERRILL AVE
CITY OF CHINO
MERRILL AVE
POC
(10" SS)
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
CITY OF CHINO
CITY OF ONTARIO
LEGEND:
NEW SEWER - NON DIF
EXISTING SEWER
POINT OF CONNECTION TO EXISTING SEWER
SPECIFIC PLAN AREA
NOTE
FINAL SEWER SIZES AND ALIGNMENTS ARE SUBJECT TO THE FINDINGS OF THE PROJECTS TECHNICAL UTILITY STUDIES
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
N
1"= 700'
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

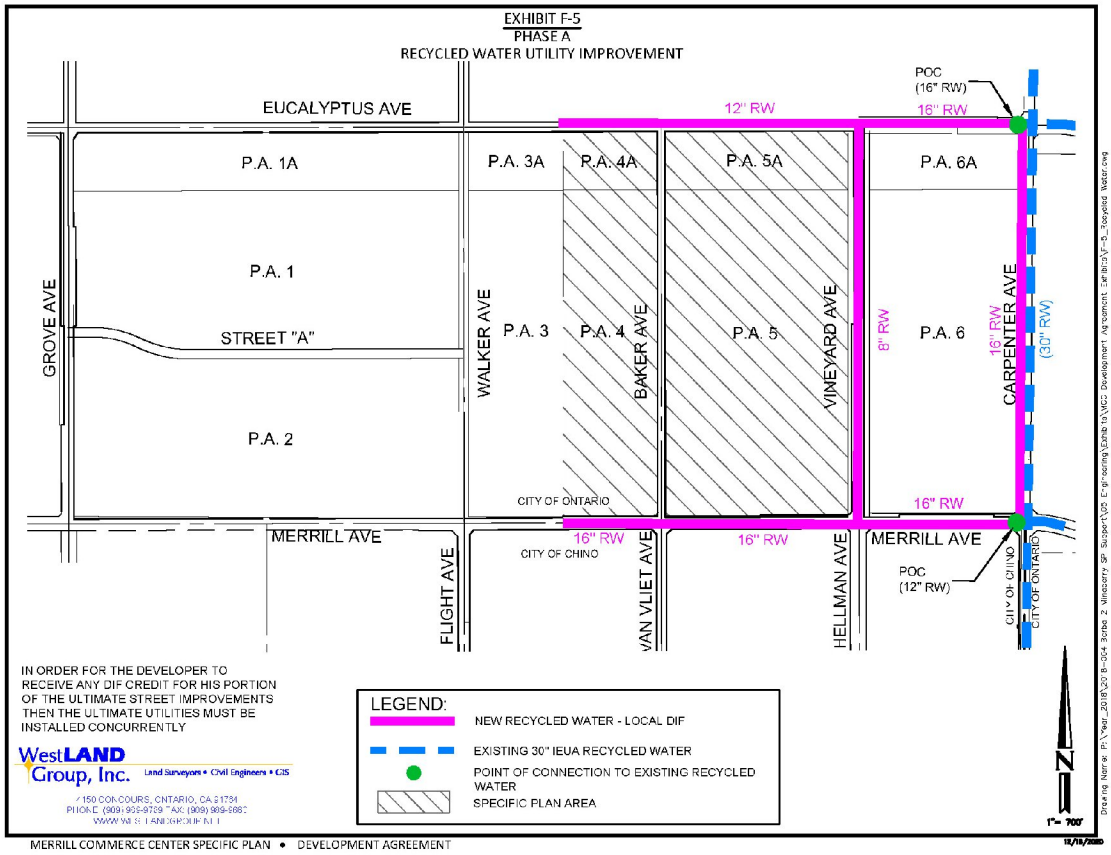
EXHIBIT F-5
PHASE A
RECYCLED WATER UTILITY IMPROVEMENT
EUCALYPTUS AVE
12" RW
POC
(16" RW)
16" RW
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
STREET "A"
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
8" RW
16" RW
(30" RW)
CITY OF ONTARIO
16" RW
MERRILL AVE
16" RW
CITY OF CHINO
16" RW
MERRILL AVE
FLIGHT AVE
VAN VLIET AVE
HELLMAN AVE
POC
(12" RW)
CITY OF CHINO
CITY OF ONTARIO
IN ORDER FOR THE DEVELOPER TO RECEIVE ANY DIF CREDIT FOR HIS PORTION OF THE ULTIMATE STREET IMPROVEMENTS THEN THE ULTIMATE UTILITIES MUST BE INSTALLED CONCURRENTLY
LEGEND:
NEW RECYCLED WATER - LOCAL DIF
EXISTING 30" IEUA RECYCLED WATER
POINT OF CONNECTION TO EXISTING RECYCLED WATER
SPECIFIC PLAN AREA
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
1" = 700'

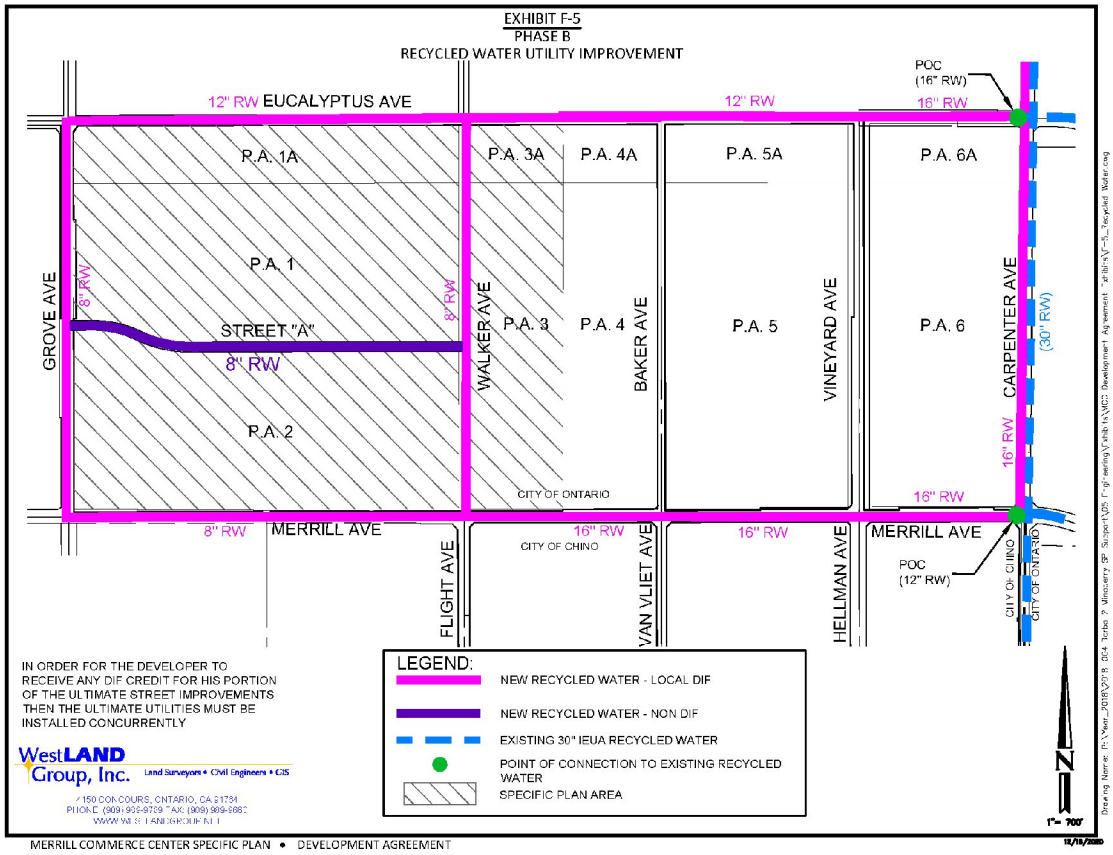
EXHIBIT F-5
PHASE B
RECYCLED WATER UTILITY IMPROVEMENT
12" RW EUCALYPTUS AVE
12" RW
POC
(16" RW)
16" RW
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
P.A. 1
P.A. 2
P.A. 3
P.A. 4
P.A. 5
P.A. 6
GROVE AVE
8" RW
STREET "A"
8" RW
WALKER AVE
BAKER AVE
VINEYARD AVE
CARPENTER AVE
(30" RW)
16" RW
CITY OF ONTARIO
16" RW
8" RW
MERRILL AVE
16" RW
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MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

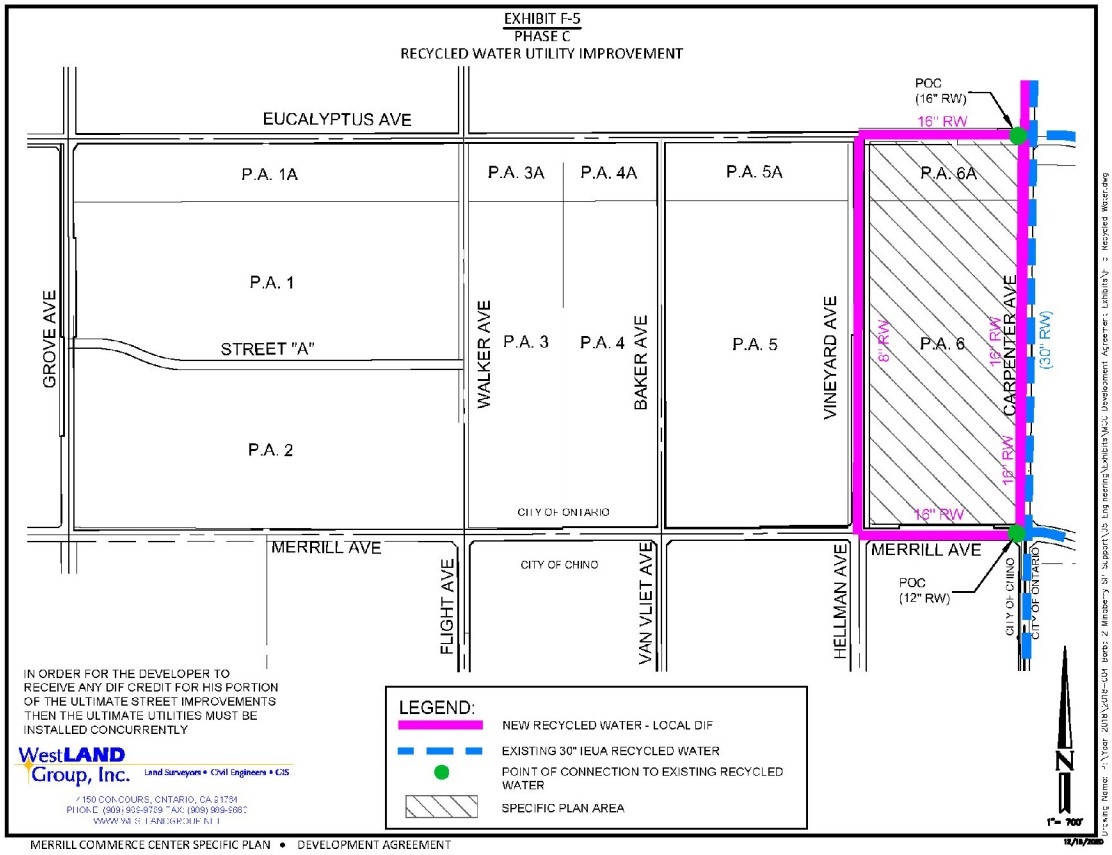
EXHIBIT F-5
PHASE C
RECYCLED WATER UTILITY IMPROVEMENT
EUCALYPTUS AVE
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
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CARPENTER AVE
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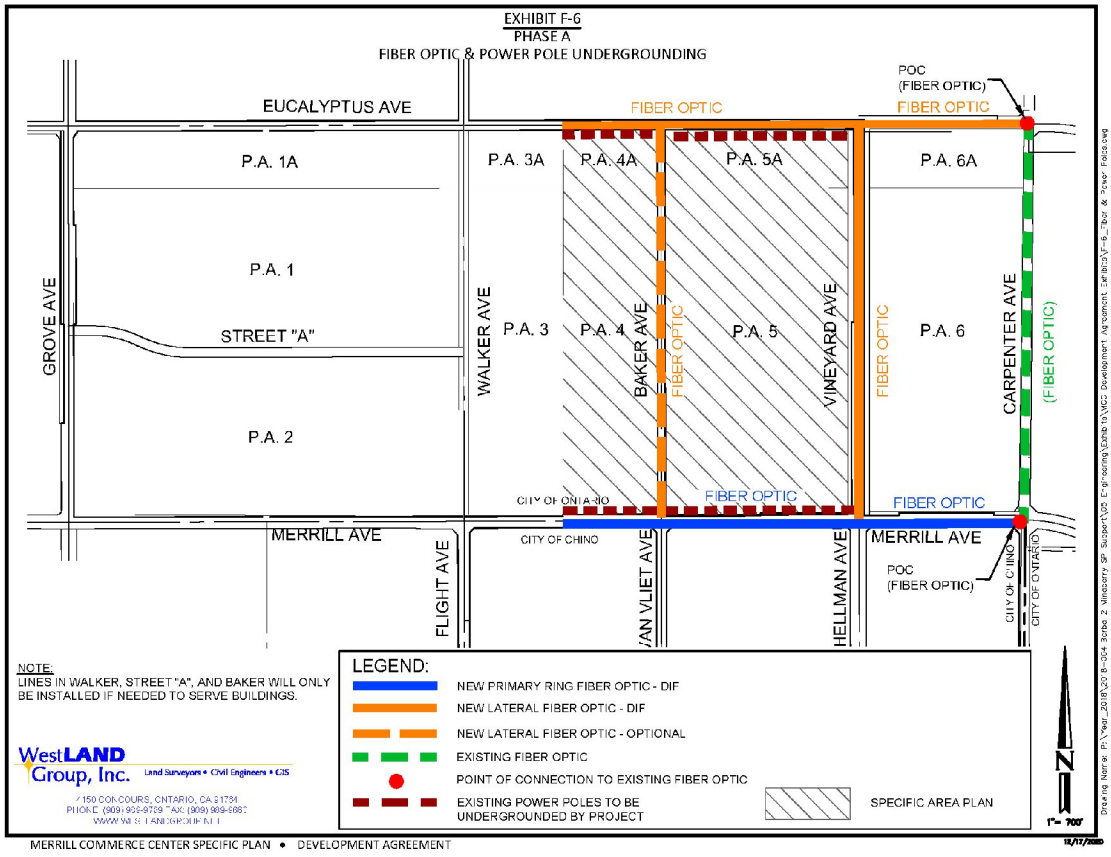
EXHIBIT F-6
PHASE A
FIBER OPTIC & POWER POLE UNDERGROUNDING
EUCALYPTUS AVE
FIBER OPTIC
POC
(FIBER OPTIC)
FIBER OPTIC
P.A. 1A
P.A. 3A
P.A. 4A
P.A. 5A
P.A. 6A
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HELLMAN AVE
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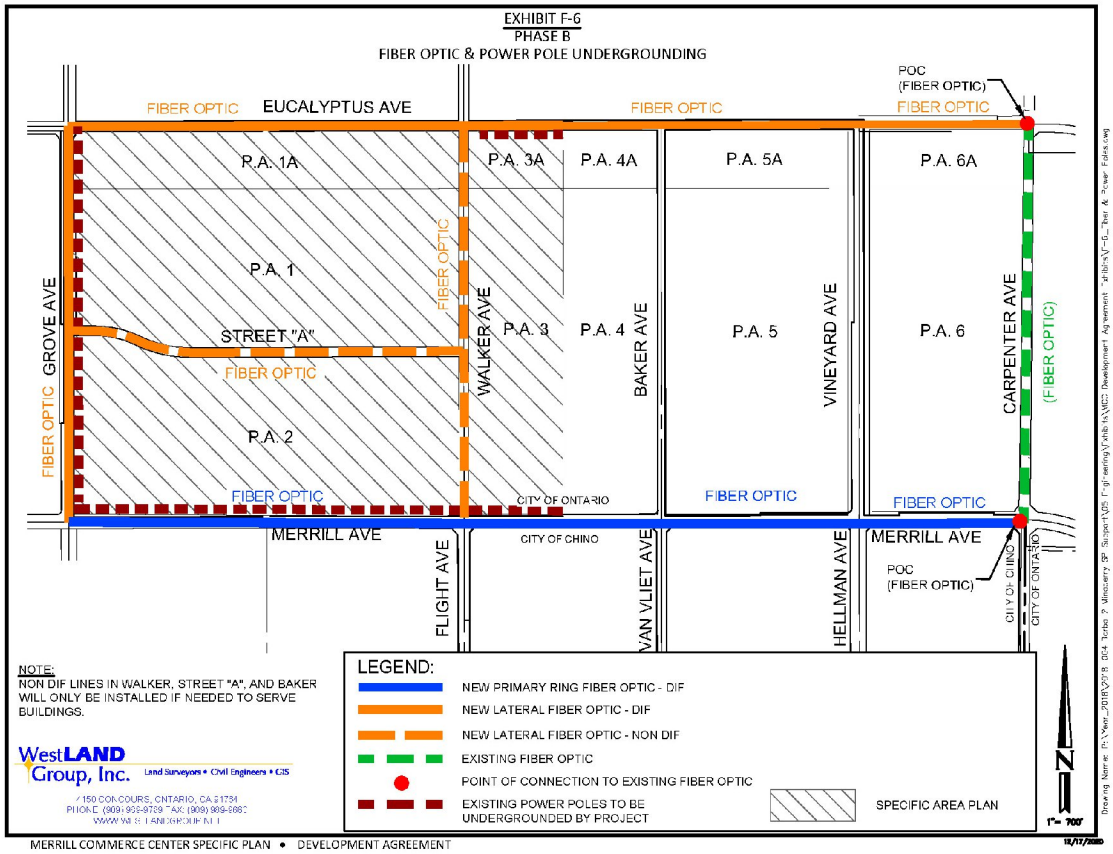
CITY OF ONTARIO
NOTE:
LINES IN WALKER, STREET "A", AND BAKER WILL ONLY BE INSTALLED IF NEEDED TO SERVE BUILDINGS.
LEGEND:
NEW PRIMARY RING FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - OPTIONAL
EXISTING FIBER OPTIC
POINT OF CONNECTION TO EXISTING FIBER OPTIC
EXISTING POWER POLES TO BE UNDERGROUNDED BY PROJECT
SPECIFIC AREA PLAN
WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT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BAKER AVE
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WestLAND Group, Inc.
Land Surveyors • Civil Engineers • GIS
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NEW LATERAL FIBER OPTIC - DIF
NEW LATERAL FIBER OPTIC - NON DIF
EXISTING FIBER OPTIC
POINT OF CONNECTION TO EXISTING FIBER OPTIC
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1" = 700'
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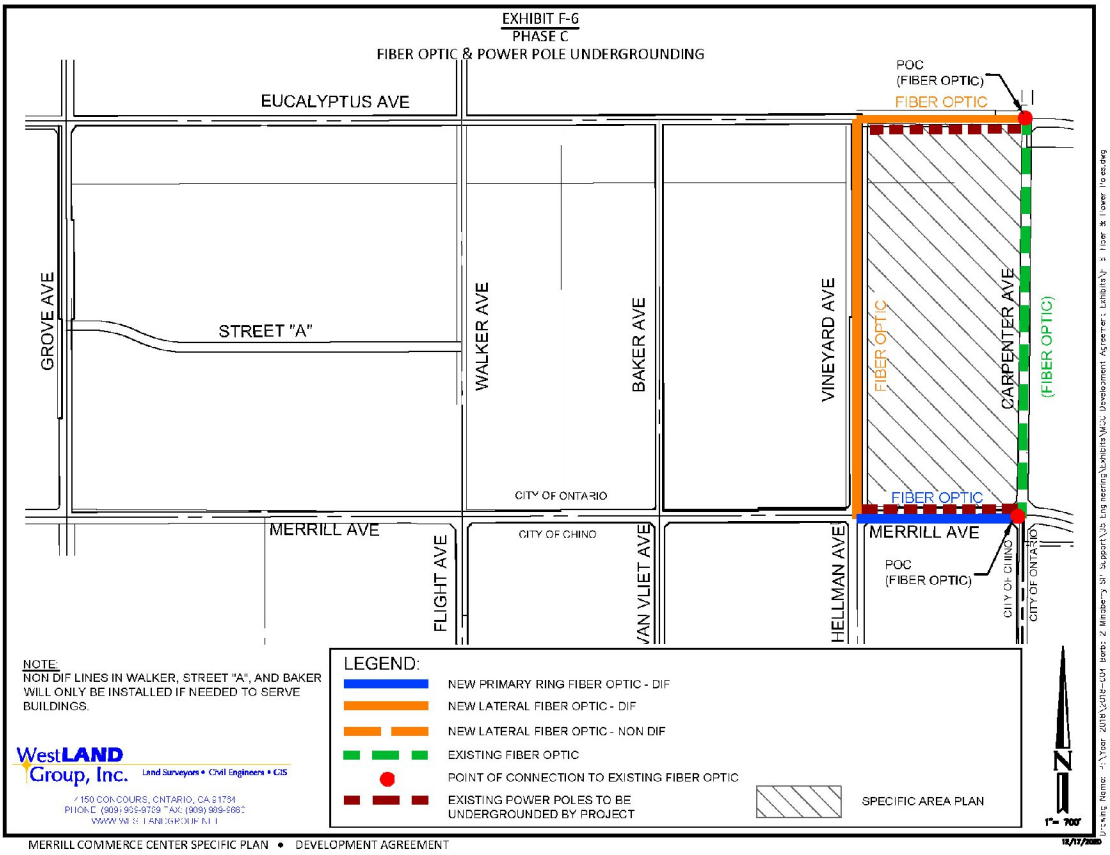
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(FIBER OPTIC)
FIBER OPTIC
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(FIBER OPTIC)
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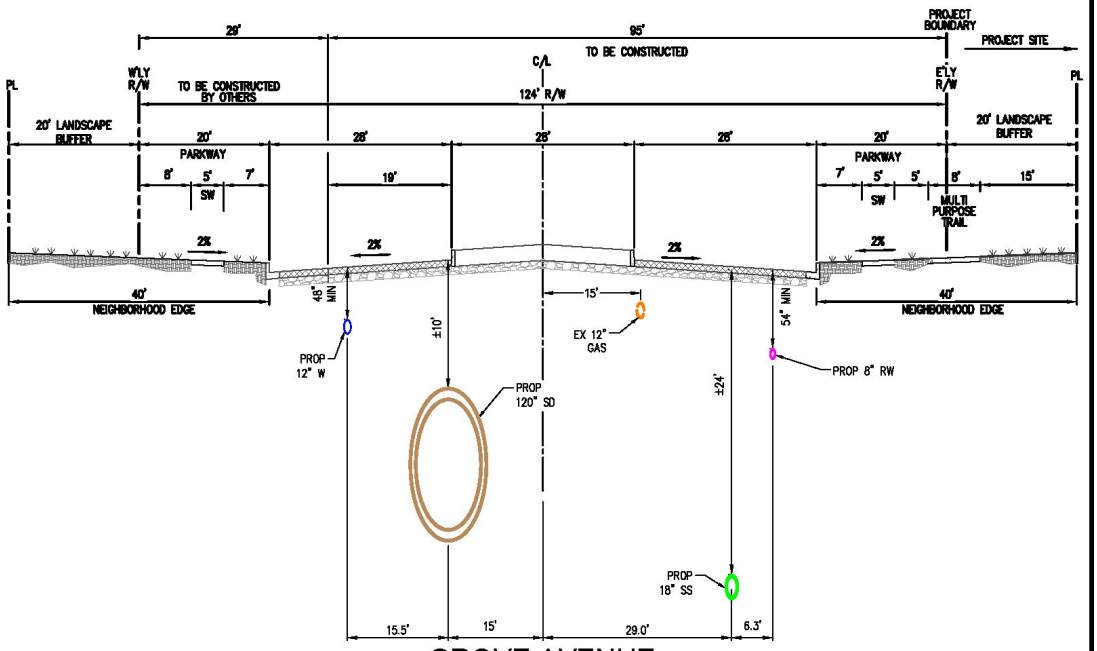
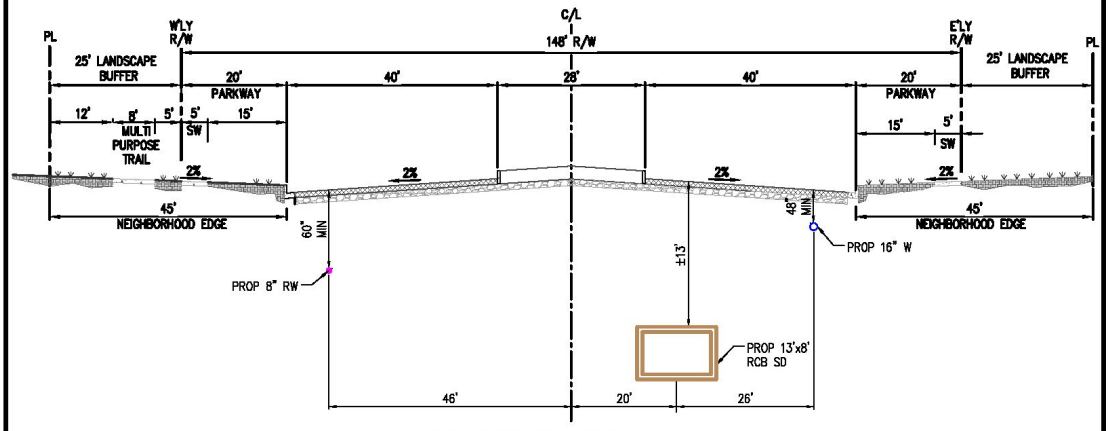
MERRILL COMMERCE CENTER SPECIFIC PLAN • DEVELOPMENT AGREEMENT

EXHIBIT F-7
STREET SECTIONS



GROVE AVENUE
PRINCIPAL ARTERIAL
124' ROW

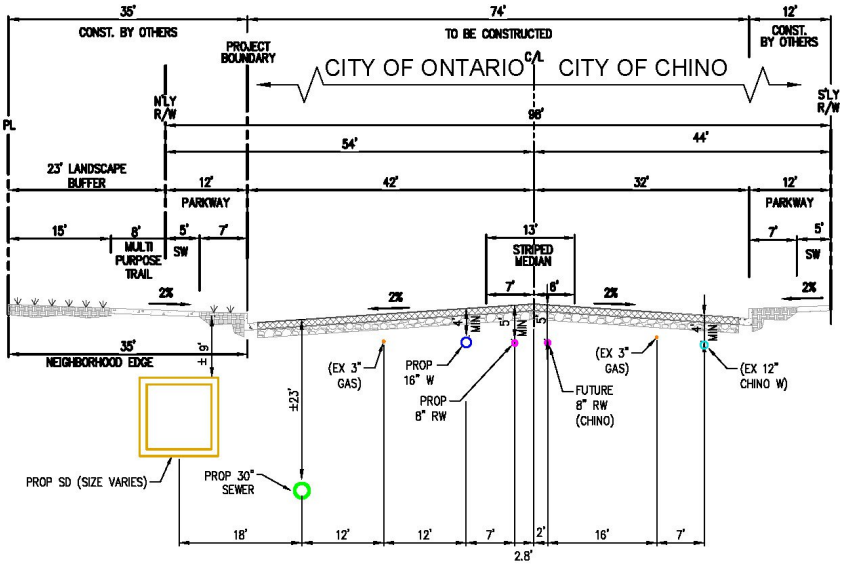


VINEYARD AVENUE
PRINCIPAL ARTERIAL
148' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
WWW.WESTLANDGROUP.NET

EXHIBIT F-7

STREET SECTIONS

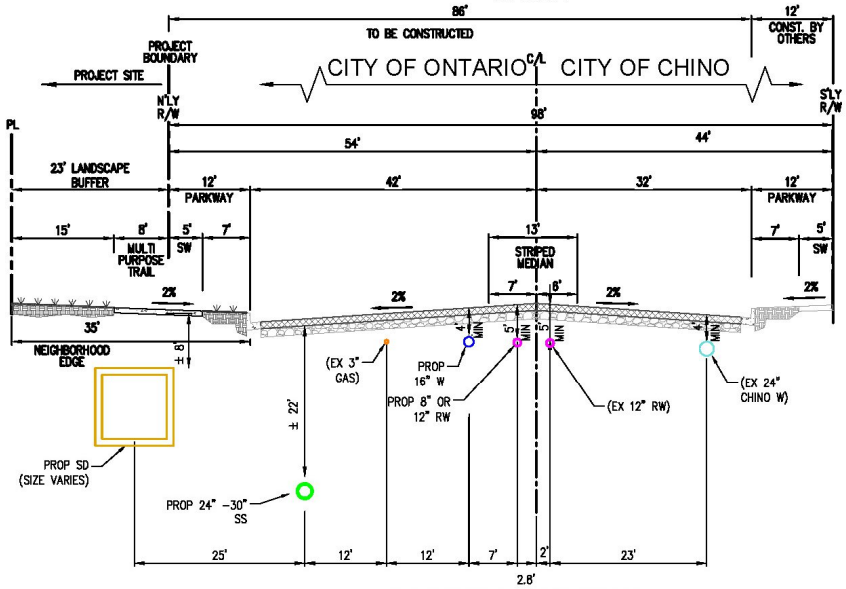


MERRILL AVENUE

COLLECTOR

WEST OF GROVE TO EUCLID

98' ROW



MERRILL AVENUE

COLLECTOR

EAST OF GROVE TO CARPENTER

98' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS

4150 CONCOURS, ONTARIO, CA 91764

PHONE: (909) 989-9789 FAX: (909) 989-9660

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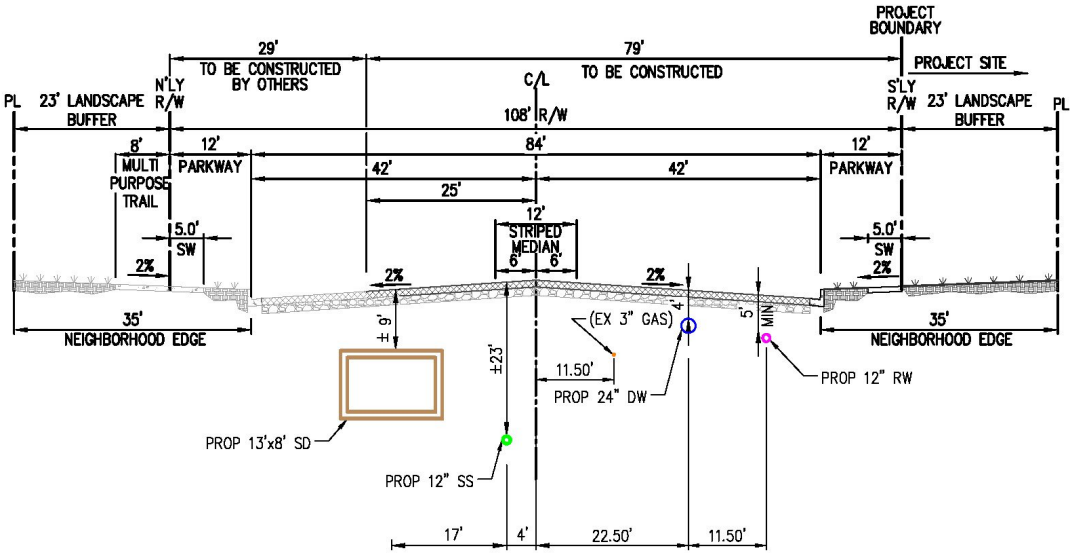
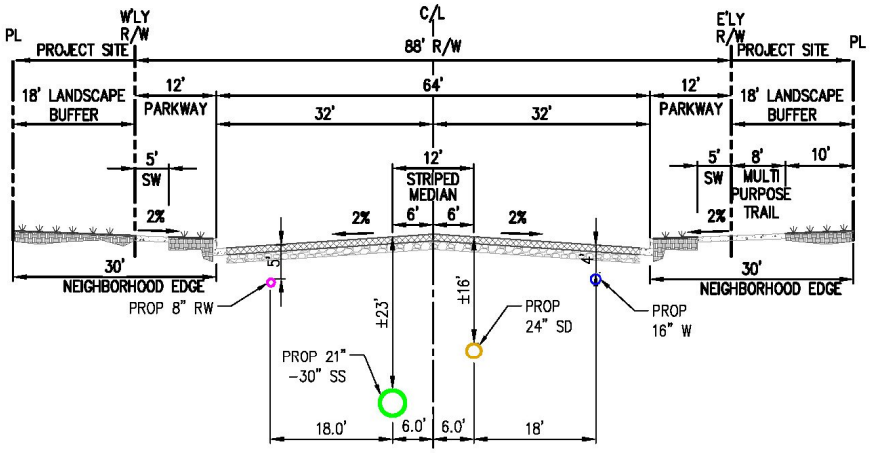
EXHIBIT F-7
STREET SECTIONS



EUCALYPTUS AVENUE
COLLECTOR
108' ROW



WALKER AVENUE
COLLECTOR
88' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
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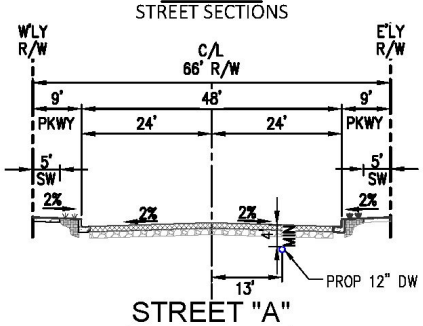
EXHIBIT F-7

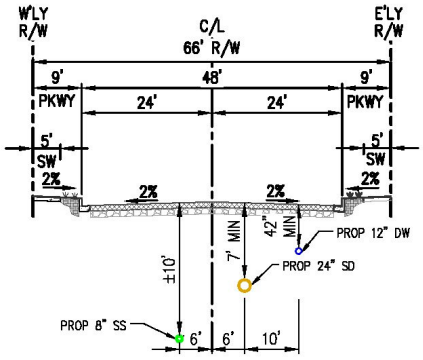
STREET SECTIONS



STREET "A"

LOCAL INDUSTRIAL

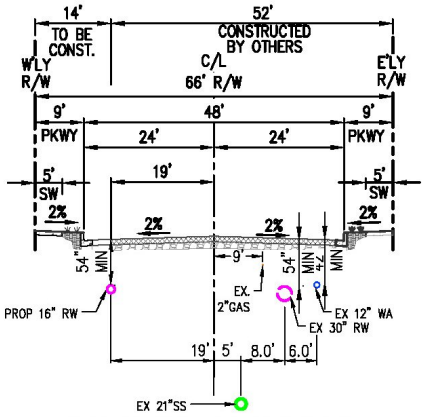
66' ROW



BAKER AVENUE

LOCAL INDUSTRIAL

66' ROW



CARPENTER AVENUE

LOCAL INDUSTRIAL

66' ROW

WestLAND Group, Inc. Land Surveyors • Civil Engineers • GIS

4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
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MERRILL COMMERCE CENTER SPECIFIC PLAN DEVELOPMENT AGREEMENT

Exhibit "G"

FORM OF CERTIFICATE OF REGIONAL DIF CREDIT

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and _____, dated _____, 20__, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement', the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: $_____

_____
Scott Ochoa, City Manager

Dated:_____

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **PUBLIC HEARINGS**
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: 10

SUBJECT: A PUBLIC HEARING TO CONSIDER A PETITION OF CANCELLATION OF WILLIAMSON ACT CONTRACTS 69-147 (FILE NO. PWIL20-001) AND 70-167 (FILE NO. PWIL20-002), FOR PROPERTIES LOCATED SOUTH OF EUCALYPTUS AVENUE AND NORTH OF MERRILL AVENUE, APPROXIMATELY 552 FEET WEST OF CARPENTER AVENUE AND 630 FEET EAST OF WALKER AVENUE, WITHIN PLANNING AREAS 4, 4A, 6, AND 6A (INDUSTRIAL AND BUSINESS PARK DISTRICTS), OF THE MERRILL COMMERCE CENTER SPECIFIC PLAN - APNS: 1054-151-02, 1054-161-03, 1054-201-02, 1054-351-02 AND 1073-111-02

RECOMMENDATION: That the City Council consider and adopt a resolution approving the Tentative Cancellation of Land Conservation Contract Numbers 69-147 (File No. PWIL20-001) and 70-167 (File No. PWIL20-002).

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
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 Williamson Act provides relief of property tax to owners of farmland and restricts a specific parcel of land to agriculture uses. The cancellations of Land Conservation Contract Numbers 69-147 and 70-167 will have a positive impact on revenue as the property taxes for the project area will be reassessed based on industrial use rather then the restricted property tax for an agriculture use.

BACKGROUND & ANALYSIS: Agricultural lands under a Williamson Act Contract are governed by the California Land Conservation Act of 1965, also known as the Williamson Act, and was enacted to promote farmland conservation. The Williamson Act provides relief of property tax to owners of farmland in exchange for a minimum ten-year agreement that restricts a specific parcel of land to agriculture uses. The contract time limit is indefinite, until the contract is non-renewed and cancelled. Upon annexation, the City of Ontario assumed responsibility for administration of the Land Conservation Contracts which existed in the Ontario Ranch area. The City adopted the Agricultural Overlay Zoning District, or a "Right-to-Farm" Ordinance, that would allow existing agricultural uses within Ontario Ranch to continue for as long as the landowner desired.

In the City's review of the cancellation process for Williamson Act Contracts, the Notice of Non-Renewal procedure was intended to be the normal method of terminating agricultural Contracts. For the landowner, it allows the Property Tax Assessments to gradually increase to full market value over a 10-year period until the Contract expired. For the City, the non-renewal allows adequate time to plan for future land use and infrastructure requirements.

The applicant is requesting the cancellation of the Williamson Act Contract Nos. 69-147 and 70-167 prior to the Non-Renewal termination dates. The Cancellations will provide relief from the provisions of the Contracts, thus allowing for development of the properties with an industrial use. The Notice of Non-Renewal for each of subject properties was recorded with the County of San Bernardino as follows:

- Land Conservation Contract 69-147 Non-Renewal recorded on January 20, 2021 and will expire on January 1, 2031.
- Land Conservation Contract 70-167 Non-Renewal recorded on September 21, 2017 and will expire on January 1, 2027.

The proposed alternative use of industrial is consistent with the Policy Plan, which designates the subject site for Business Park (0.60 FAR) and Industrial (0.55 FAR). The subject site is part of the Merrill Commerce Center Specific Plan, which has been planned in accordance with TOP Policy Plan (Attachment "A").

Copies of the petitions for cancellation were sent to the Director of the Department of Conservation as required by the Williamson Act. On February 2, 2021, the Planning Department received comments from the Department of Conservation stating they concur with staff's findings pursuant to Section 51282 of the Williamson Act.

The cancellation process for Williamson Act contracts identifies findings which must be made in order to cancel a contract. The City Council must find that the proposed cancellation is consistent with the purposes of the Williamson Act or is in the public interest. Staff has reviewed the request and believes that the cancellations are consistent with the purposes of the Williamson Act as follows:

1. The cancellation is for land on which a Notice of Non-Renewal has been served;
2. Cancellation is not likely to result in the removal of adjacent lands from agricultural use;
3. Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan;
4. Cancellation will not result in discontinuous patterns of urban development; and
5. There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.

The findings are identified in the attached Resolutions. Following each required finding is the supporting statements that satisfy the requirements for cancellation.

CANCELLATION FEE: As required by the Williamson Act, there is a Penalty Fee for cancellation of an Agricultural Contract. The fee is equal to 12.5 percent of the unrestricted base value of the land as determined by the County Assessor's Office. The fee for the subject property, as determined by the County Assessor, totals $10,157,000 (LCC#69-147: $5,069,500 and LCC#70-167: $5,087,500). As required by the Williamson Act, a copy of the Assessor's value appraisal was sent to the Director of the Department of Conservation on February 2, 2021, to allow the opportunity to request a formal review

from the Assessor.

CONDITIONS AND CONTINGENCIES: The following Conditions and Contingencies will be required to be satisfied upon tentative approval by the City Council. All applicable conditions must be satisfied within one year of the date of recording of the Certificate of Tentative Cancellation. Conditions and contingencies include:

1. Upon approval, a Certificate of Tentative Cancellation must be recorded with the County Clerk;
2. Payment in full of the Penalty Fee - Together with a statement stating that unless the fee is paid or a Certificate of Cancellation of Contract is issued within one year from the date of the recording of the Certificate of Tentative Cancellation, the fee shall be recomputed;
3. Obtain all approvals necessary (including Specific Plan, EIR adoption, and Tentative Map/s) to commence the specified alternative use; and
4. Within 30 days of satisfaction of the conditions, the City Council must execute and record a Certificate of Final Cancellation of the contract.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

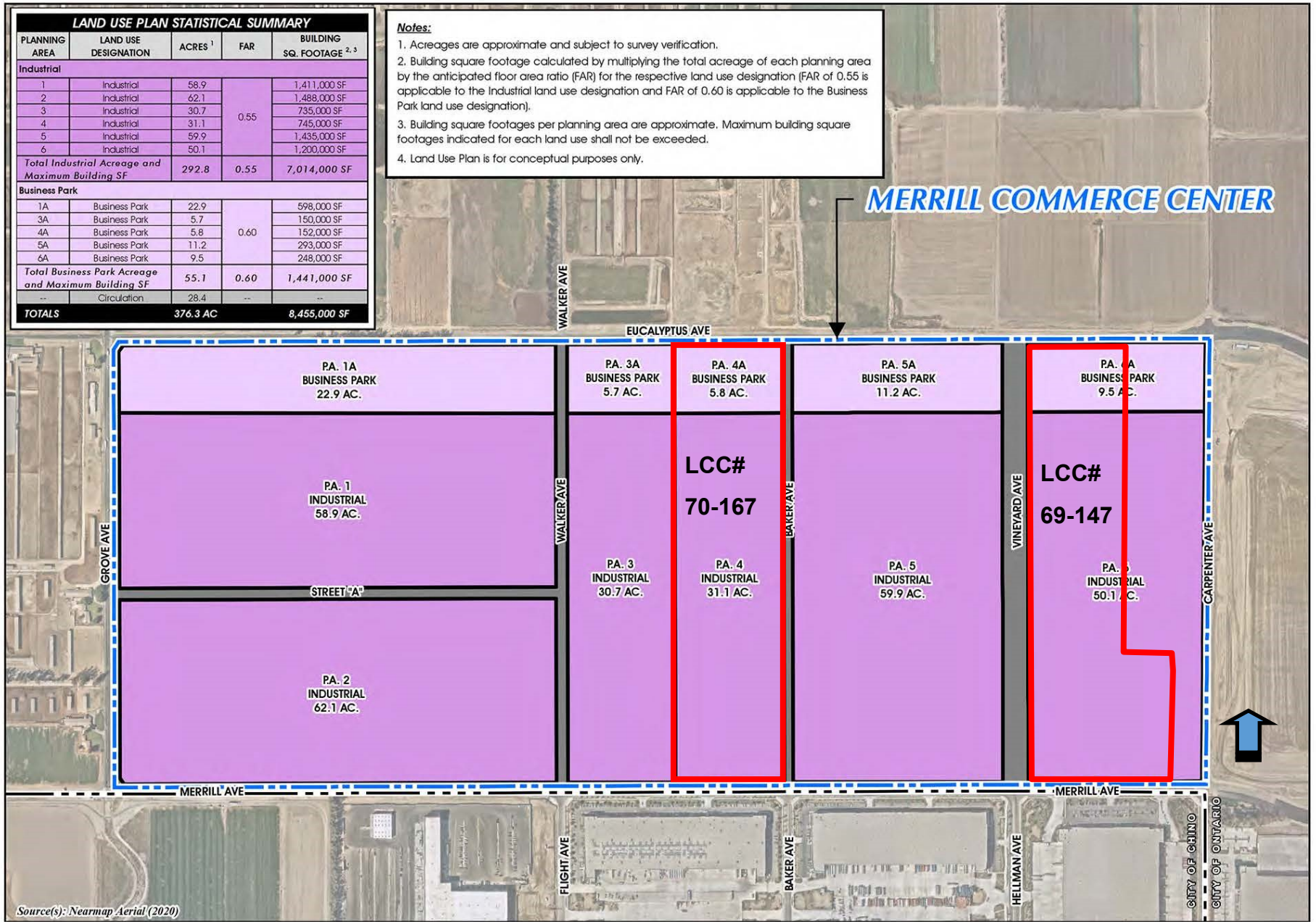
AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development 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. Any special conditions of approval associated with uses near the airport are included in the conditions of approval provided with the attached Resolution.

The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics. The proposed was evaluated and found to be consistent with the policies and criteria set forth within the Handbook, subject to conditions.

PLANNING COMMISION REVIEW: On March 23, 2021, the Planning Commission conducted a public hearing and voted (6-0) to recommend City Council approval of Tentative Cancelations of Land Conservation Contracts Numbers 69-147 (File No. PWIL20-001) and 70-167 (File No. PWIL20-002).

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan (File no. PSP18-001), for which an Environmental Impact Report (State Clearing House No. 2019049079) was adopted by the City Council on February 2, 2021. 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.

ATTACHEMENT A



CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

MARCH 23, 2021

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

FILE NOS: PMTT20-010, PWIL20-001, and PWIL20-002

SUBJECT: A Tentative Parcel Map (File No. PMTT20-010/TPM 20273) to subdivide 366.65 gross acres of land into 22 lettered lots and 22 numbered lots, and Tentative Cancellation of Williamson Act Contract Nos. 69-147 (File No. PWIL20-001) and 70-167 (File No. PWIL20-002). The project is bordered by Eucalyptus Avenue to the north, Carpenter Avenue to the east, Merrill Avenue to the south, and Grove Avenue to the west, and is situated within the Business Park and Industrial land use districts of the Merrill Commerce Center Specific Plan. The environmental impacts of this project were previously reviewed in conjunction with File Nos. PGPA18-003 and PSP18-001, regarding the Merrill Commerce Center Specific Plan, for which an Environmental Impact Report (State Clearinghouse No. 2019049079) was previously certified by the City Council on February 2, 2021. This application introduces no new significant environmental impacts; (APNs: 1054-111-01; 1054-111-02; 1054-121-01; 1054-121-02; 1054-131-01; 1054-131-02; 1054-141-01; 1054-141-02; 1054-151-01; 1054-151-02; 1054-161-01; 1054-161-02; 1054-161-03; 1054-171-01; 1054-171-02; 1054-171-03; 1054-171-04; 1054-181-01; 1054-181-02; 1054-191-01; 1054-191-02; 1054-201-01; 1054-201-02; 1054-211-01, 1054-211-02; 1054-221-01; 1054-221-02; 1054-331-01; 1054-331-02; 1054-341-01; 1054-341-02; 1054-351-01; 1054-351-02; 1054-361-01; 1054-361-02; 1073-111-01; 1073-111-02; 1073-111-03; 1073-111-04; 1073-111-05; 1073-111-06) **submitted by Prologis.**

PROPERTY OWNER: Prologis L.P.; Minaberry Family, LLC; Joseph and Doleen Borba Administrative Trust

RECOMMENDED ACTION: That the Planning Commission consider and approve File Nos. PMTT20-010, PWIL20-001, and PWIL20-002, pursuant to the facts and reasons contained in the staff report and attached resolution, and subject to the conditions of approval contained in the attached departmental reports.

PROJECT SETTING: The project site is comprised of 366.65 gross acres of land located at the northeast corner of Merrill

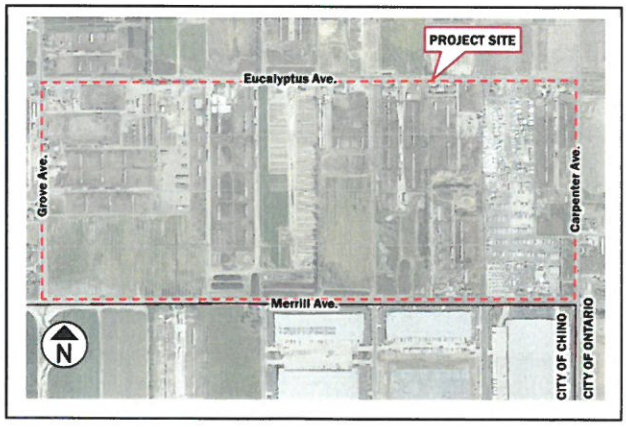


Figure 1: Project Location

Case Planner:	Edmelynne V. Hutter, AICP
Planning Director Approval:	
Submittal Date:	October 21, 2020

Hearing Body	*Date*	*Decision*	*Action*
DAB	3/1/2021	Approval	Recommend
PC	3/23/2021	Approve	Final/Recommend
CC	4/20/2021 Williamson Act		Final

and Grove Avenues, within the SP (Merrill Commerce Center Specific Plan) zoning district and is depicted in Figure 1: Project Location. The Project site is bordered by Eucalyptus Avenue on the north, Merrill Avenue on the south, Carpenter Avenue on the east, and Grove Avenue on the west. The properties to the north of the site are currently developed with agricultural uses and dairies and are located within the SP(AG) zoning district. The properties to the south are located within the City of Chino and developed with the Chino Airport, industrial buildings, and agricultural uses. The properties east of the Project are improved with industrial and warehouse developments. The properties to the west are developed with dairy farms. 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.

PROJECT ANALYSIS:

(1) Background — On February 2, 2021, the City Council approved the introduction (first reading) of Ordinance No. 3178 for the Merrill Commerce Center Specific Plan ("MCCSP"), adopted Resolution No. R2021-011, certifying the MCCSP Final Environmental Impact Report (State Clearinghouse No. 2019049047), and adopted Resolution No. R2021-012, approving the associated General Plan Amendment (File No. PGPA18-003) establishing the Business Park (0.6 FAR) and Industrial (0.55 FAR) land uses on the project site. On February 16, 2021, the City Council adopted (second reading) Ordinance No. 3178, approving the MCCSP (File No. PSP18-001). The MCCSP establishes the land use designations, development standards, and design guidelines on 376.3 acres of land, which includes the potential development of up to 8,455,000 square feet of industrial and business park development. The ordinance approving the MCCSP was enacted on March 18, 2021, following the 30-day referendum period mandated by State law (Elections Code Section 9235 et seq.).

On October 21, 2020, the applicant submitted a Tentative Parcel Map (File No. PMTT20-010) to facilitate the future construction of industrial buildings totaling 6,266,502 square feet and business park buildings totaling 1,074,566 square feet (See Exhibit B—Tentative Parcel Map No. 20273).

On November 13, 2020, the applicant submitted applications requesting Tentative Cancellation of Williamson Act Contract Nos. 69-147 (File No. PWIL20-001) and 70-167 (File No. PWIL20-002), which are currently in place on the Project site.

On March 1, 2021, the Development Advisory Board ("DAB") conducted a hearing to consider the Tentative Parcel Map, and concluded the hearing, voting unanimously to recommend that the Planning Commission approve the Application subject to conditions of approval, which are included as attachments to the Planning Commission resolution.

Development plans showing building layout, architectural design, landscaping, parking, etc., for individual parcels within the Project site will be submitted and processed at a later date, for Planning Commission consideration.

(2) Tentative Parcel Map — The proposed Tentative Parcel Map will subdivide the Project site into 22 numbered lots and 22 lettered lots (see Exhibit B-Tentative Parcel Map, attached) to facilitate the construction of 10 industrial buildings and 11 business park buildings totaling 7,341,068 square feet. The parcels range in size from 3.62 to 59.32 acres, as shown in the Tentative Parcel Map Summary Table (see Exhibit C, attached). The minimum parcel size required for the Business Park and Industrial land use districts is one acre.

(3) Site Access/Circulation — The Project site will be accessible from the four perimeter streets of Eucalyptus, Merrill, Carpenter, and Grove Avenues, which will all be widened and/or improved as part of future development of the Project. Street extensions, such as Vineyard Avenue, Walker Avenue, Baker Avenue, and the proposed "Street A," will provide additional access to interior areas of the Project site.

(4) Parking — All future land uses will be required to meet all Development Code and MCCSP parking standards and regulations.

(5) Architecture — All future building designs shall be required to incorporate a Contemporary Architectural style, as required in the MCCSP. In addition, equipment and loading/dock areas will be screened from public view in accordance with Specific Plan requirements.

(6) Chino Airport Land Use Compatibility Compliance — The project site is located within the Chino Airport Influence Area (AIA). Pursuant to the California Airport Land Use Planning Handbook, the project site is located within Safety Zones 1 (Runway Protection Zone), 2 (Inner/Approach Departure Zone), 3 (Inner Turning Zone), 4 (Outer Approach/Departure Zone), and 6 (Traffic Pattern/Overflight Zones), as shown on Exhibit D – Chino Airport Safety Zones, attached. Safety Zone 1, which occupies portions of Parcels 2, 3, and 4, prohibits the construction of any buildings or structures. The remaining portion of the project site is impacted by a combination of Safety Zones 2, 3, 4, and 6, which are subject to intensity limits (number of people on the site) and open land criteria requirements. Future development shall be required to be consistent with the policies and criteria of the Caltrans Division of Aeronautics – California Airport Land Use Planning Handbook.

(7) Landscaping — The MCCSP requires a minimum 10 percent landscape coverage be provided for buildings within the Industrial and Business Park land use districts. All future development applications will be required to comply with the minimum 10 percent landscape coverage, in addition to right-of-way landscape and neighborhood edge landscape requirements. The proposed lettered lots associated with this Project will be

developed with landscaping and a Community Facilities District will be established to ensure these areas are properly maintained.

(8) Signage — The Merrill Commerce Center will be required to establish a comprehensive sign program and all future signage will be subject to the sign program and Development Code. The sign program will facilitate integration of the signs with the overall site and building design to create a unified visual statement and provide for flexible application of sign regulations in the design and display of multiple signs. Key provisions will include an entry monument, center and tenant identification signage, traffic and wayfinding signs, building signs, secondary monumentation, and visitor and directional signage.

(9) Utilities (drainage, sewer) — To serve the future industrial developments, the Project will be required to construct infrastructure improvements per the Development Agreement (File No. PDA18-004) and requirements of the MCCSP. Furthermore, the Applicant has submitted a Preliminary Water Quality Management Plan ("PWQMP"), which establishes the Project's compliance with storm water discharge/water quality requirements. The PWQMP includes site design measures that capture runoff and pollutant transport by minimizing impervious surfaces and maximizes low impact development ("LID") best management practices ("BMPs"), such as retention and infiltration, biotreatment, and evapotranspiration. The PWQMP proposes the use of landscape areas designed as swales and grade to accept runoff, underground storm water retention chambers where downstream landscape areas are limited, surface retention basins to receive impervious area runoff and installation of storm water drywells in detention areas.

(10) Williamson Act Contract Cancellation — Agricultural lands under a Williamson Act Contract are governed by the California Land Conservation Act of 1965, also known as the Williamson Act and was enacted to promote farmland conservation. The Williamson Act provides relief of property tax to owners of farmland in exchange for a minimum ten-year agreement that restricts a specific parcel of land to agriculture uses. The contract time limit is indefinite, until the contract non-renewed and canceled. Upon annexation, the City of Ontario assumed responsibility for administration of the Land Conservation Contracts which existed in the Ontario Ranch area. The City adopted the Agricultural Overlay Zoning District, or a "Right-to-Farm" Ordinance, that would allow existing agricultural uses within Ontario Ranch to continue for as long as the landowner desired.

In the City's review of the cancellation process for Williamson Act Contracts, the Notice of Non-Renewal procedure was intended to be the normal method of terminating agricultural Contracts. For the landowner, it allows the Property Tax Assessments to gradually increase to full market value over a 10-year period, until the Contract expired. For the City, the non-renewal allows adequate time to plan for future land use and infrastructure requirements.

In conjunction with the proposed Tentative Parcel Map 20273, the applicant is requesting the cancellation of the Williamson Act Contract Nos. 69-147 and 70-167 prior to the Non-Renewal termination dates. The Cancellations will provide relief from the provisions of the Contracts, thus allowing for development of the properties with an industrial use. The Notice of Non-Renewal, for each of subject properties (Figure 2: Merrill Commerce Center Specific Plan - Williamson Act Contract Locations), was recorded with the County of San Bernardino as follows:

- Land Conservation Contract 69-147 Non-Renewal recorded on January 20, 2021 and will expire on January 1, 2031.

- Land Conservation Contract 70-167 Non-Renewal recorded on September 21, 2017 and will expire on January 1, 2027.

The proposed alternative use of industrial is consistent with the Policy Plan, which

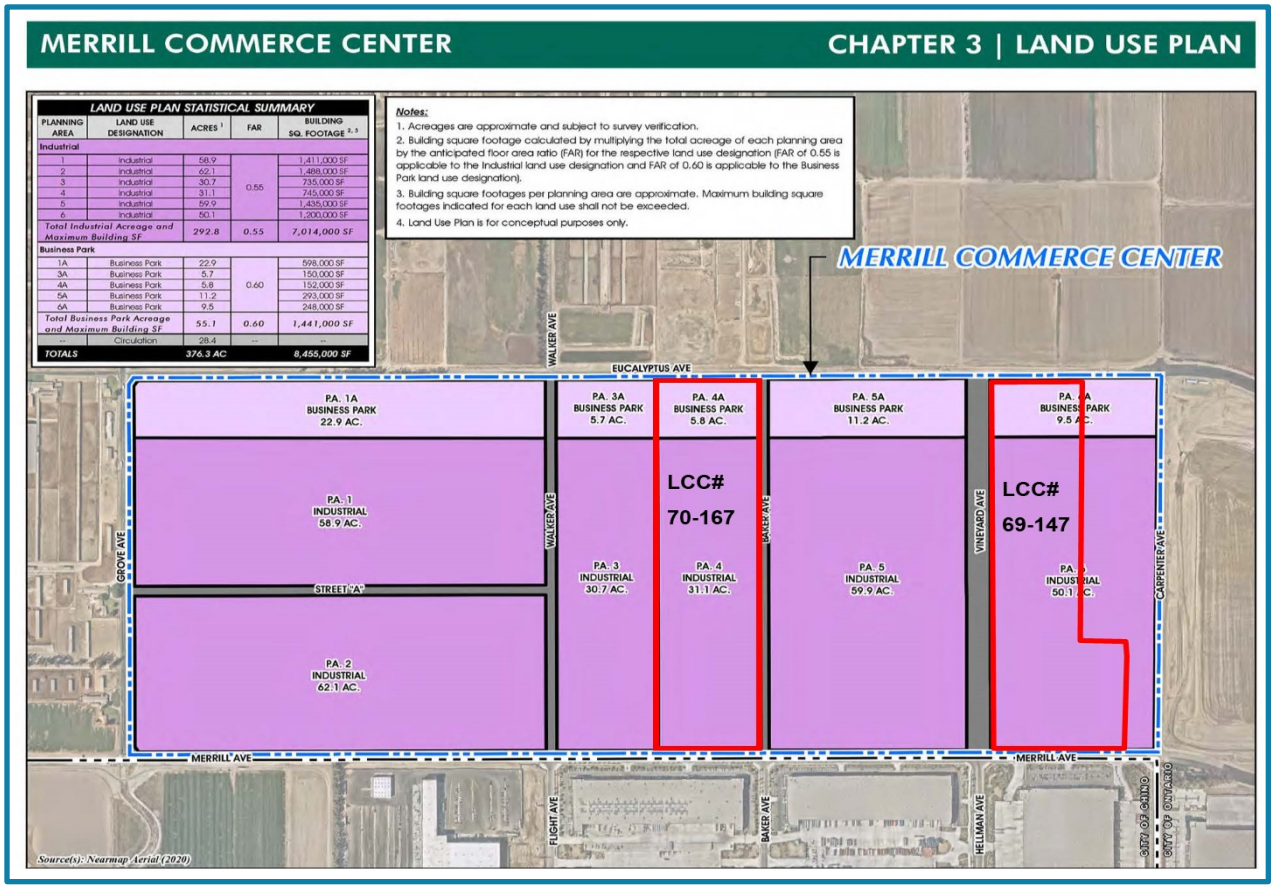


***Figure 2: Merrill Commerce Center Specific Plan - Williamson Act Contract* Locations**

designates the subject site for Business Park (0.60 FAR) and Industrial (0.55 FAR). The subject site is part of the Merrill Commerce Center Specific Plan, which has been planned in accordance with TOP Policy Plan.

Copies of the petitions for cancellation were sent to the Director of the Department of Conservation, as required by the Williamson Act. On February 2, 2021, The Planning Department received comments from the Department of Conservation stating they concur with staff's findings, pursuant to Section 51282 of the Williamson Act.

Required Findings— The cancellation process for Williamson Act contracts identifies findings which must be made in order to cancel a contract. The City Council must find that the proposed cancellation is consistent with the purposes of the Williamson Act or is in the public interest. Staff has reviewed the request and believes that the cancellations are consistent with the purposes of the Williamson Act as follows:

1. The cancellation is for land on which a Notice of Non-Renewal has been served.

   Pursuant with Government Code Section 51245 a Notice of Non-Renewal of Land Conservation Contract Numbers 69-147, was on recorded January 20, 2021, as Instrument No. 2021-0027541, and Conservation Contract Number 70-167, was on recorded September 21,2017, as Instrument No. 2017-0391236, Official Records, has been served.

2. Cancellation is not likely to result in the removal of adjacent lands from agricultural use.

   Cancellation of the Land Conservation Contract Nos. 69-147 and 70-167 is not likely to result in the removal of adjacent lands from agricultural uses. The properties adjacent to the contracted land are part of Merrill Commerce Center Specific Plan. The change in use of these parcels would be due to the development of the specific plan and not to the cancellation of land conservation contracts. Adjacent lands that were once subject to a Williamson Act Contract have terminated those contracts. Moreover, the policy decision to transition uses in the area from agriculture to urban was made when the City adopted TOP Policy Plan. The environmental consequences of that decision were analyzed in the Environmental Impact Report certified in conjunction with The Ontario Plan ("TOP"). Thus, the City's prior planning decision, and not the cancellation of the contracts associated with this project, would be the cause of any influence on the decision to remove land from agricultural use. Additionally, to ease the transition from agricultural to urban uses and to minimize conflicts between the two uses, the City has adopted an Agricultural Overlay District.

3. Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.

   The subject site is a part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR).

4. Cancellation will not result in discontinuous patterns of urban development.

   The subject properties are part of Merrill Commerce Center Specific Plan. TOP Policy Plan includes requirements for subsequent approval by the City of a Specific Plan for development within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. Also, the properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. Further, a Specific Plan (West Ontario Commerce Center Specific Plan) has been approved immediately to the east of the project site. To the west the subject property abuts the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. To the south the project site is bounded by industrial development and the Chino Airport, located within the City of Chino. Due to the established TOP Policy Plan (General Plan), which establishes the land use plan and intensity of development for the entire Ontario Ranch area and the existing developed urban areas, the subject properties and surrounding area will be urbanized in the near future. Therefore, cancellation of the Williamson Act contracts associated with the Project would not result in leap-frog development.

5. There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.

   The contracted land lies within the boundaries of Merrill Commerce Center Specific Plan. The adjacent non-contracted land is part of Merrill Commerce Center Specific Plan and is scheduled for future development, therefore not available. Development of the subject site and adjacent non-contracted land through Merrill Commerce Center Specific Plan will eliminate "leapfrog" development and provide for continuous pattern of development. The properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the south, the Specific Plan is bounded by industrial development and the Chino Airport. To the east, the Specific Plan is adjacent to industrial development (West Ontario Commerce Center Specific Plan), and to the west by the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. Furthermore, since the subject site is within Merrill Commerce Center Specific Plan, once the adjacent parcels are developed it will provide for more contiguous

patterns of urban development than development of proximate non-contracted land.

Cancellation Fee— As required by the Williamson Act, there is a Penalty Fee for cancellation of an Agricultural Contract. The fee is equal to 12.5 percent of the unrestricted base value of the land as determined by the County Assessor's Office.

The fee for the subject property, as determined by the County Assessor, totals $10,157,000 (LCC#69-147: $5,069,500 and LCC#70-167: $5,087,500). As required by the Williamson Act, a copy of the Assessor's value appraisal was sent to the Director of the Department of Conservation on February 2, 2021, to allow the opportunity to request a formal review from the Assessor.

Prior to City Council approval of the Tentative Cancellation, the City Council must review and approve the West Ontario Commerce Center Specific Plan Environmental Impact Report. In addition, the following Conditions and Contingencies will be required to be satisfied upon tentative approval by the City Council. All applicable conditions must be satisfied within one year of the date of recording of the Certificate of Tentative Cancellation. Conditions and contingencies include:

1. Upon approval, a Certificate of Tentative Cancellation must be recorded with the County Clerk;

2. Payment in full of the Penalty Fee. Together with a statement stating that unless the fee is paid, or a Certificate of Cancellation of Contract is issued within one year from the date of the recording of the Certificate of Tentative Cancellation, the fee shall be recomputed;

3. Obtain all approvals necessary (including Specific Plan, EIR adoption, and Tentative Map/s) to commence the specified alternative use; and

4. Within 30 days of satisfaction of the conditions, the City Council must execute and record a Certificate of Final Cancellation of the contract.

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

- 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 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 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.

  - LU1-3 Adequate Capacity. We require adequate infrastructure and services for all development.

  - 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 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 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.

Community Economics Element:

- 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.

Mobility Element:

- Goal M1: A system of roadways that meets the mobility needs of a dynamic and prosperous Ontario.

- M1-1 Roadway Design and Maintenance. We require our roadways to:

- Comply with federal, state and local design and safety standards.
- Meet the needs of multiple transportation modes and users.
- Handle the capacity envisioned in the Functional Roadway Classification Plan.
- Be compatible with the streetscape and surrounding land uses.

➢ M1-2 Mitigation of Impacts. We require development to mitigate its traffic impacts.

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.

➢ CD2-5 Streetscapes. We design new and, when necessary, retrofit existing streets to improve walkability, bicycling and transit integration, strengthen connectivity, and enhance community identity through improvements to the public right of way such as sidewalks, street trees, parkways, curbs, street lighting and street furniture.

➢ 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

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. Any special conditions of approval associated with uses near the airport are included in the conditions of approval provided with the attached Resolution.

The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of

Aeronautics. The proposed was evaluated and found to be consistent with the policies and criteria set forth within the Handbook, subject to conditions.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific Plan (File no. PSP18-001), for which an Environmental Impact Report (State Clearing House No. 2019049079) was adopted by the City Council on February 2, 2021. 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.

CONDITIONS OF APPROVAL: See attached department reports.

TECHNICAL APPENDIX:

Surrounding Zoning and Land Use:

	Existing Land Use	*General Plan Designation*	*Zoning Designation*	*Specific Plan Land Use*
Site	Agriculture, Dairy, Truck Terminal, and vacant	General Commercial (0.4 FAR), Office Commercial (0.75 FAR), and Business Park (0.6 FAR)	Specific Plan / Agricultural Overlay	N/A
North	Agriculture and Dairy	Mixed Use (NMC West) and Medium Density Residential (11.1 – 25 du/ac)	Specific Plan / Agricultural Overlay	N/A
South	Chino Airport, Agriculture, and Industrial (City of Chino)	Public and General Industrial (City of Chino)	AD (Airport Development), M2 (General Industrial), and Airport Overlay District (City of Chino)	N/A
East	Industrial (under construction)	Business Park (0.6 FAR) and Industrial (0.55 FAR)	Specific Plan	West Ontario Commerce Center
West	Dairy	Low Medium Density Residential (5.1 – 11 du/ac) and Business Park (0.6 FAR)	Specific Plan / Agricultural Overlay	N/A

General Site Statistics

Item	*Proposed*	*Min./Max. Standard*	*Meets Y/N*
Project Area:	366.65 acres	N/A	
Lot/Parcel Size:	1.65 – 2.59 acres Business Park 3.61 – 28.56 acres SF Industrial	Min. 1 acre (Business Park) Min. 1 acre (Industrial)	Y

EXHIBIT A – PROJECT AERIAL



Exhibit B—TENTATIVE PARCEL MAP

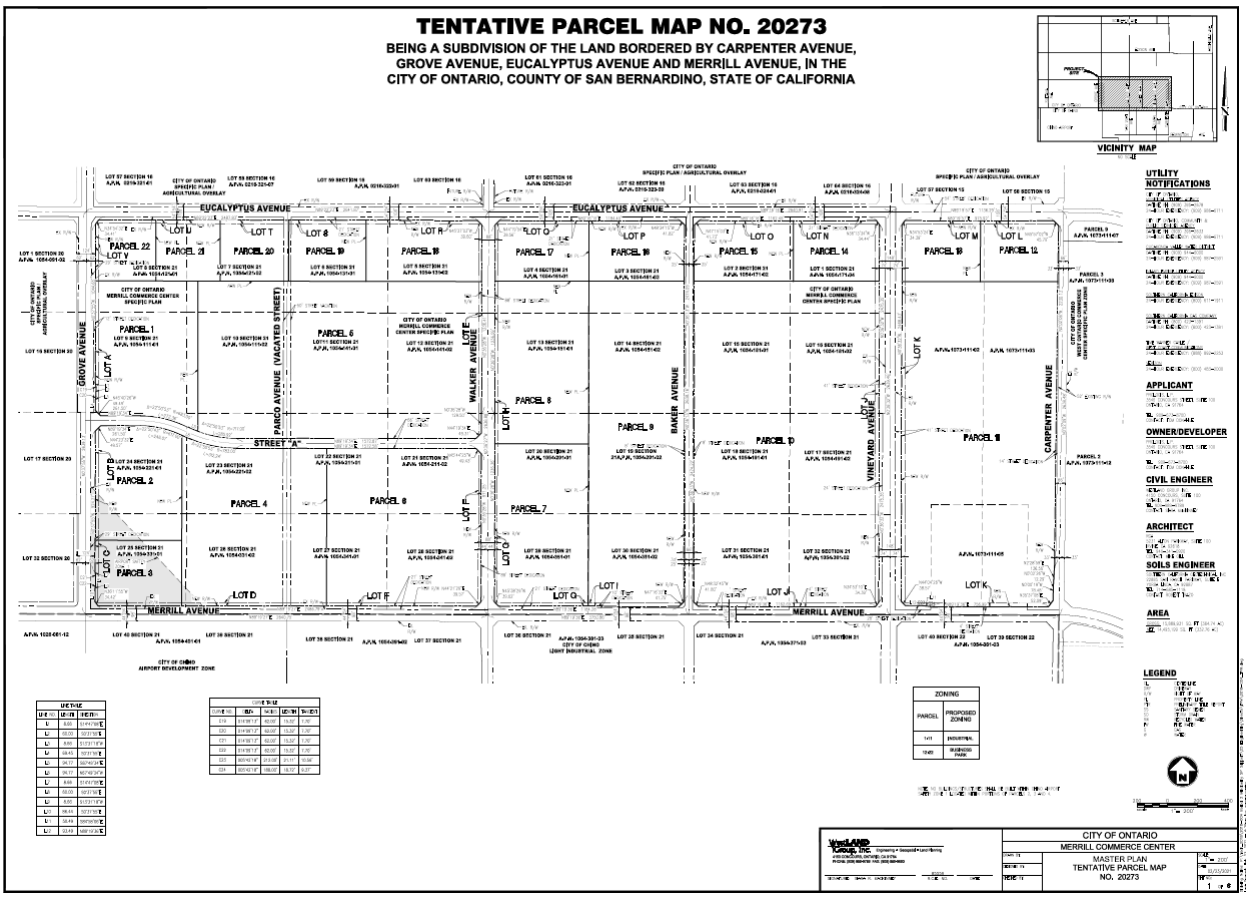
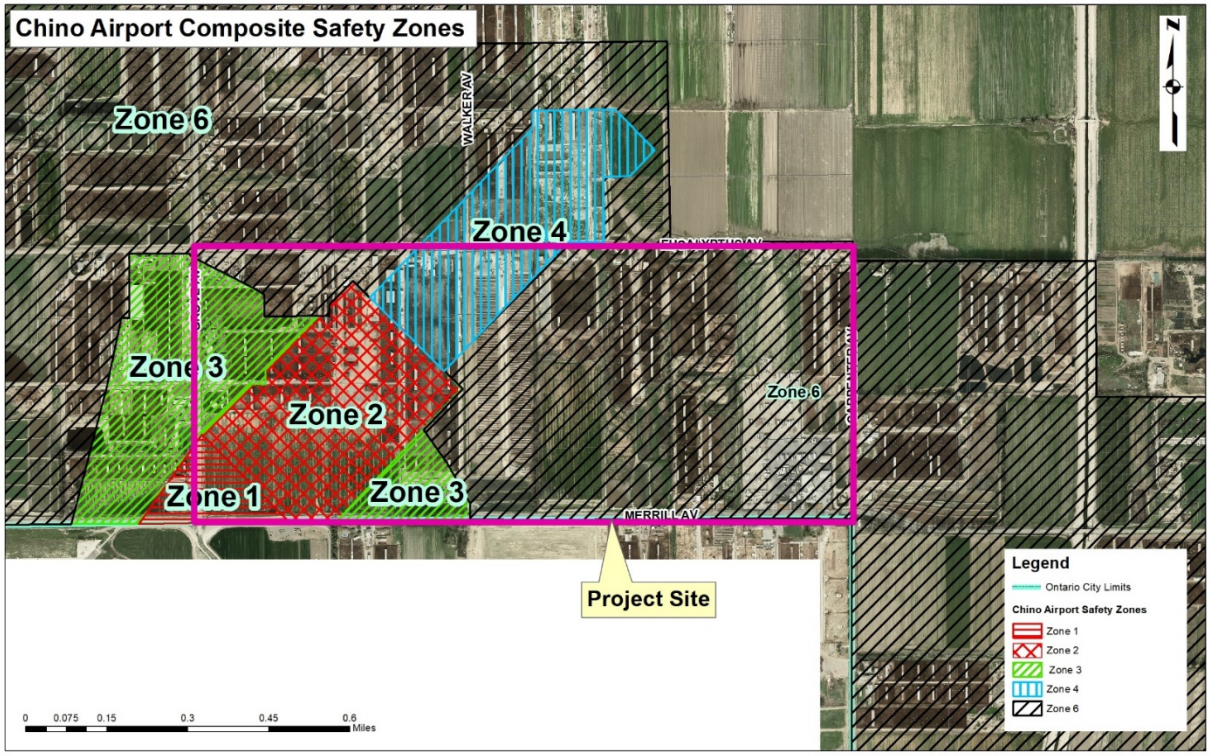


Exhibit C—TENTATIVE PARCEL MAP SUMMARY TABLE

Parcel	Parcel Area (acres)
1	14.51
2	9.24
3	5.60
4	22.60
5	43.98
6	24.06
7	15.05
8	15.05
9	30.64
10	59.32
11	49.56
12	4.68
13	4.73
14	5.17
15	5.95
16	5.75
17	5.65
18	6.96
19	4.65
20	4.14
21	3.88
22	3.62
Total	344.79

Exhibit D—CHINO AIRPORT SAFETY ZONES



RESOLUTION NO. PC21-015

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF FILE NO. PWIL20-001, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 69-147 FOR 29.095 ACRES OF LAND GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EUCALYPTUS AVENUE AND VINEYARD AVENUE, APPROXIMATELY 522 FEET WEST OF CARPENTER AVENUE, WITHIN PLANNING AREA 6 (INDUSTRIAL DISTRICT) OF MERRILL COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1073-11-02.

WHEREAS, 9052 MERRILL AVE ONTARIO LLC ("Applicant") has filed an Application for the approval of the cancellation of Land Conservation Contract Number 69-147, File No. PWIL20-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 29.095 acres of land generally located on the southeast corner of Eucalyptus Avenue and Vineyard Avenue, approximately 522 feet west Carpenter Avenue, within the Planning Area 6 (Industrial district) of the Merrill Commerce Center Specific Plan, and is presently improved with dairy and agriculture use; and

WHEREAS, the properties to the north of the Project site is within the Specific Plan/Agriculture Overlay (SP/AG) zoning district and is developed with dairy and agriculture uses. The properties to the east are within the industrial zoning district (Planning Areas 1 and 2) of the Colony Commerce Center West Specific Plan and is developed with industrial uses. The properties to the south are within the City of Chino and is developed with industrial uses. The properties to the west are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan and is developed with dairy and agriculture uses; and

WHEREAS, the subject property was annexed into the City of Ontario on November 30, 1999; and

WHEREAS, the City of Ontario certified the *Ontario Sphere of Influence Final Environmental Impact Report* in January 7, 1998. The Final EIR evaluated the potential impacts to prime agricultural land and to agricultural productivity that would result from the full and complete build-out of the New Model Colony (NMC) pursuant the General Plan Amendment. The Final EIR concluded that the conversion of agricultural uses to urban uses within the NMC would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, the City, upon annexation, assumed responsibility for administration of the Land Conservation Contracts which existed in the annexed area; and

WHEREAS, the City Ontario certified the Environmental Impact Report for The Ontario Plan (TOP) on January 27, 2010. The adoption of TOP also included the approval of the Policy Plan (General Plan), which replaced the previous Ontario General Plan and New Model Colony General Plan Amendment. The Final TOP EIR concluded that the conversion of agricultural uses to urban uses within Ontario Ranch (NMC) would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, The City's the Agricultural Overlay Zoning District, or a "right-to-farm" ordinance (Development Code Division 6.01, Section 6.01.035), allows existing agricultural uses within Ontario Ranch to continue for as long as the landowner desires; 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 environmental impacts of this project were reviewed in conjunction with Merrill Commerce Center Specific Plan File No. PSP18-001, Environmental Impact Report (SCH#2019049079); and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; 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 a recommendation 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 ("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, the Project is located with the Airport Influence Area of Chino Airport and must be consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics, which addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; 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 March 23, 2021, 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 previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation. Based upon the facts and information contained in the previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific (File No. PSP18-001), for which a Certified EIR (SCH#2019049079) was adopted by the City Council on February 16, 2021.

(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: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 3: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance and Chino Airport Influence Area.*** The proposed project is located within the Safety, Noise, Airspace Protection and Overflight Zones of the ALUCP. A consistency determination was completed, and the proposed project is consistent with the policies and criteria of the ALUCP, subject to conditions. In addition, the project site is located within the Chino Airport's airport influence area (AIA) and the Chino Airport zoning overlay. Land use compatibility assessments are part of the Chino Airport Overlay (Generic Safety Zones for General Aviation Airports from the Caltrans Division of Aeronautics – California Airport Land Use Planning Handbook). Pursuant to the California Airport Land Use Planning Handbook, the Specific Plan site is within Safety Zones 1, 2, 3, 4, and 6, Traffic Pattern/Overflight Zone. Light industrial and manufacturing uses are acceptable within Zones 2, 3, 4, and 6, subject to Open Land criteria.

SECTION 4: ***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 3, above, the Planning Commission hereby concludes as follows:

a. ***The cancellation is for land on which a Notice of Non-Renewal has been served.***

Pursuant with Government Code § 51245 a Notice of Non-Renewal of Land Conservation Contract Number 69-147, was recorded on January 20, 2021, as Instrument No. 2021-0027541, Official Records, has been served.

b. ***Cancellation is not likely to result in the removal of adjacent lands from agricultural use.***

Cancellation of the Land Conservation Contract No. 69-147 is not likely to result in the removal of adjacent lands from agricultural uses. The properties adjacent to the contracted land are part of Merrill Commerce Center Specific Plan. The change in use of the subject property would be due to the development of the specific plan and not to the cancellation of land conservation contracts. Adjacent lands that were once subject to a Williamson Act Contract have terminated those contracts. Moreover, the policy decision to transition uses in the area from agriculture to urban was made when the City adopted TOP Policy Plan. The environmental consequences of that decision were analyzed in the Environmental Impact Report certified in conjunction with The Ontario Plan (TOP). Thus, the City's prior planning decision, and not the cancellation of the contracts associated with this project, would be the cause of any influence on the decision to remove land from agricultural use. Additionally, to ease the transition from agricultural to urban uses and to minimize conflicts between the two uses, the City has adopted an Agricultural Overlay District.

c. ***Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.***

The subject site is a part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR).

d. ***Cancellation will not result in discontinuous patterns of urban development. The cancellation of the Land Conservation Contracts will not result in discontinuous patterns of urban development.***

The subject property is part of Merrill Commerce Center Specific Plan. TOP Policy Plan includes requirements for subsequent approval by the City of a Specific Plan for development within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. In

addition, the properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. Further, a Specific Plan (West Ontario Commerce Center Specific Plan) has been approved immediately to the east of the project site. To the west the subject property abuts the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. To the south the project site is bounded by industrial development and the Chino Airport, located within the City of Chino. Due to the establish TOP Policy Plan (General Plan), which establishes the land use plan and intensity of development for the entire Ontario Ranch area and the existing developed urban areas, the subject property and surrounding area will be urbanized in the near future. Therefore, cancellation of the Williamson Act contracts associated with the Project would not result in leap-frog development.

e. ***There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.***

The contracted land lies within the boundaries of Merrill Commerce Center Specific Plan. The adjacent non-contracted land is part of Merrill Commerce Center Specific Plan and is scheduled for future development, therefore not available. Development of the subject site and adjacent non-contracted land through Merrill Commerce Center Specific Plan will eliminate “leapfrog” development and provide for continuous pattern of development. The properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the south, the Specific Plan is bounded by industrial development and the Chino Airport. To the east, the Specific Plan is adjacent to industrial development (West Ontario Commerce Center Specific Plan) and to the west by the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. Furthermore, since the subject site is within Merrill Commerce Center Specific Plan, once the adjacent parcels are developed it will provide for more contiguous patterns of urban development than development of proximate non-contracted land.

SECTION 5: ***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 APPROVE the herein described Application,

subject to each and every condition set forth in set forth in the staff report, attached hereto as and incorporated herein by this reference.

SECTION 6: ***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 7: ***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 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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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 23rd day of March 2021, 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. PC21-015, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on March 23, 2021, by the following roll call vote, to wit:

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

NOES: None

ABSENT: None

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

RESOLUTION NO. PC21-016

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF FILE NO. PWIL20-002, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 70-167 FOR 37.34 ACRES OF LAND GENERALLY LOCATED AT THE SOUTHSIDE OF EUCALYPTUS AVENUE, APPROXIMATELY 630 FEET EAST OF WALKER AVENUE AND APPROXIMATELY 2,490 WEST OF CARPENTER AVENUE AT 8643 SOUTH EUCALYPTUS AVENUE, WITHIN PLANNING AREA 4 (INDUSTRIAL DISTRICT) OF MERRILL COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1054-151-02, 1054-161-03, 1054-201-02 AND 1054-351-02.

WHEREAS, LIBERTY PROPERTY LIMITED PARTNERSHIP ("Applicant") has filed an Application for the approval of the cancellation of Land Conservation Contract Number 70-167, File No. PWIL20-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 37.34 acres of land generally located on the South side of Eucalyptus Avenue, approximately 630 feet east of Walker Avenue and approximately 2,490 west of Carpenter Avenue at 8643 South Eucalyptus Avenue, within the Planning Area 4 (Industrial district) of the Merrill Commerce Center Specific Plan, and is presently improved with dairy and agriculture use; and

WHEREAS, the properties to the north of the Project site is within the Specific Plan/Agriculture Overlay (SP/AG) zoning district and is developed with dairy and agriculture uses. The properties to the east are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan and is developed with dairy and agriculture uses. The properties to the south are within the City of Chino and is developed with industrial uses and the Chino Airport. The properties are the west are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan and is developed with dairy and agriculture uses; and

WHEREAS, the subject properties were annexed into the City of Ontario on November 30, 1999; and

WHEREAS, the City of Ontario certified the *Ontario Sphere of Influence Final Environmental Impact Report* in January 7, 1998. The Final EIR evaluated the potential impacts to prime agricultural land and to agricultural productivity that would result from the full and complete build-out of the New Model Colony (NMC) pursuant the General Plan Amendment. The Final EIR concluded that the conversion of agricultural uses to urban uses within the NMC would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, the City, upon annexation, assumed responsibility for administration of the Land Conservation Contracts which existed in the annexed area; and

WHEREAS, the City Ontario certified the Environmental Impact Report for The Ontario Plan (TOP) on January 27, 2010. The adoption of TOP also included the approval of the Policy Plan (General Plan), which replaced the previous Ontario General Plan and New Model Colony General Plan Amendment. The Final TOP EIR concluded that the conversion of agricultural uses to urban uses within Ontario Ranch (NMC) would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, The City's the Agricultural Overlay Zoning District, or a "right-to-farm" ordinance (Development Code Division 6.01, Section 6.01.035), allows existing agricultural uses within Ontario Ranch to continue for as long as the landowner desires; 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 environmental impacts of this project were reviewed in conjunction with Merrill Commerce Center Specific Plan File No. PSP18-001, Environmental Impact Report (SCH#2019049079); and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; 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 a recommendation 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 ("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, the Project is located with the Airport Influence Area of Chino Airport and must be consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics, which addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; 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 March 23, 2021, 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 previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation. Based upon the facts and information contained in the previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific (File No. PSP18-001), for which a Certified EIR (SCH#2019049079) was adopted by the City Council on February 16, 2021.

(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: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 3: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance and Chino Airport Influence Area.*** The proposed project is located within the Safety, Noise, Airspace Protection and Overflight Zones of the ALUCP. A consistency determination was completed, and the proposed project is consistent with the policies and criteria of the ALUCP, subject to conditions. In addition, the project site is located within the Chino Airport's airport influence area (AIA) and the Chino Airport zoning overlay. Land use compatibility assessments are part of the Chino Airport Overlay (Generic Safety Zones for General Aviation Airports from the Caltrans Division of Aeronautics – California Airport Land Use Planning Handbook). Pursuant to the California Airport Land Use Planning Handbook, the Specific Plan site is within Safety Zones 1, 2, 3, 4, and 6, Traffic Pattern/Overflight Zone. Light industrial and manufacturing uses are acceptable within Zones 2, 3, 4, and 6, subject to Open Land criteria.

SECTION 4: ***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 3, above, the Planning Commission hereby concludes as follows:

a. ***The cancellation is for land on which a Notice of Non-Renewal has been served.***
Pursuant with Government Code § 51245 a Notice of Non-Renewal of Land Conservation Contract Number 70-167, was recorded on September 21, 2017, as Instrument No. 2017-0391236, Official Records, has been served.

b. ***Cancellation is not likely to result in the removal of adjacent lands from agricultural use.***

Cancellation of the Land Conservation Contract No. 70-167 is not likely to result in the removal of adjacent lands from agricultural uses. The properties adjacent to the contracted land are part of Merrill Commerce Center Specific Plan. The change in use of the subject properties would be due to the development of the specific plan and not to the cancellation of land conservation contracts. Adjacent lands that were once subject to a Williamson Act Contract have terminated those contracts. Moreover, the policy decision to transition uses in the area from agriculture to urban was made when the City adopted TOP Policy Plan. The environmental consequences of that decision were analyzed in the Environmental Impact Report certified in conjunction with The Ontario Plan (TOP). Thus, the City's prior planning decision, and not the cancellation of the contracts associated with this project, would be the cause of any influence on the decision to remove land from agricultural use. Additionally, to ease the transition from agricultural to urban uses and to minimize conflicts between the two uses, the City has adopted an Agricultural Overlay District.

c. ***Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.***

The subject properties are part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR).

d. ***Cancellation will not result in discontinuous patterns of urban development. The cancellation of the Land Conservation Contracts will not result in discontinuous patterns of urban development.***

The subject properties are part of Merrill Commerce Center Specific Plan. TOP Policy Plan includes requirements for subsequent approval by the City of a Specific Plan for development within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. In addition, the properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the east and west the subject properties are within

the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan. To the south the project site is bounded by industrial development and the Chino Airport, located within the City of Chino. Due to the establish TOP Policy Plan (General Plan), which establishes the land use plan and intensity of development for the entire Ontario Ranch area and the existing developed urban areas, the subject properties and surrounding area will be urbanized in the near future. Therefore, cancellation of the Williamson Act contracts associated with the Project would not result in leap-frog development.

e. ***There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.***

The contracted land lies within the boundaries of Merrill Commerce Center Specific Plan. The adjacent non-contracted land is part of Merrill Commerce Center Specific Plan and is scheduled for future development, therefore not available. Development of the subject site and adjacent non-contracted land through Merrill Commerce Center Specific Plan will eliminate "leapfrog" development and provide for continuous pattern of development. The properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the south, the Specific Plan is bounded by industrial development and the Chino Airport. To the east, the Specific Plan is adjacent to industrial development (West Ontario Commerce Center Specific Plan) and to the west by the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. Furthermore, since the subject site is within Merrill Commerce Center Specific Plan, once the adjacent parcels are developed it will provide for more contiguous patterns of urban development than development of proximate non-contracted land.

SECTION 5: ***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 APPROVE the herein described Application, subject to each and every condition set forth in set forth in the staff report, attached hereto as and incorporated herein by this reference.

SECTION 6: ***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 7: ***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 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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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 23rd day of March 2021, 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. PC21-016, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on March 23, 2021, by the following roll call vote, to wit:

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

NOES: None

ABSENT: None

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PWIL20-001, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 69-147 FOR 29.095 ACRES OF LAND GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EUCALYPTUS AVENUE AND VINEYARD AVENUE, APPROXIMATELY 522 FEET WEST OF CARPENTER AVENUE, WITHIN PLANNING AREAS 6 AND 6A (INDUSTRIAL AND BUSINESS PARK DISTRICTS) OF MERRILL COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1073-111-02.

WHEREAS, 9052 MERRILL AVE ONTARIO LLC ("Applicant") has filed an Application for the approval of the cancellation of Land Conservation Contract Number 69-147, File No. PWIL20-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 29.095 acres of land generally located on the southeast corner of Eucalyptus Avenue and Vineyard Avenue, approximately 522 feet west Carpenter Avenue, within the Planning Areas 6 and 6A (Industrial and Business Park districts) of the Merrill Commerce Center Specific Plan, and is presently improved with dairy and agriculture use; and

WHEREAS, the properties to the north of the Project site is within the Specific Plan/Agriculture Overlay (SP/AG) zoning district and is developed with dairy and agriculture uses. The properties to the east are within the industrial zoning district (Planning Areas 1 and 2) of the Colony Commerce Center West Specific Plan and is developed with industrial uses. The properties to the south are within the City of Chino and is developed with industrial uses. The properties to the west are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan and is developed with dairy and agriculture uses; and

WHEREAS, the subject property was annexed into the City of Ontario on November 30, 1999; and

WHEREAS, the City of Ontario certified the *Ontario Sphere of Influence Final Environmental Impact Report* in January 7, 1998. The Final EIR evaluated the potential impacts to prime agricultural land and to agricultural productivity that would result from the full and complete build-out of the New Model Colony (NMC) pursuant the General Plan Amendment. The Final EIR concluded that the conversion of agricultural uses to urban uses within the NMC would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, the City, upon annexation, assumed responsibility for administration of the Land Conservation Contracts which existed in the annexed area; and

WHEREAS, the City Ontario certified the Environmental Impact Report for The Ontario Plan (TOP) on January 27, 2010. The adoption of TOP also included the approval of the Policy Plan (General Plan), which replaced the previous Ontario General Plan and New Model Colony General Plan Amendment. The Final TOP EIR concluded that the conversion of agricultural uses to urban uses within Ontario Ranch (NMC) would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, The City's the Agricultural Overlay Zoning District, or a "right-to-farm" ordinance (Development Code Division 6.01, Section 6.01.035), allows existing agricultural uses within Ontario Ranch to continue for as long as the landowner desires; 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 environmental impacts of this project were reviewed in conjunction with Merrill Commerce Center Specific Plan File No. PSP18-001, Environmental Impact Report (SCH#2019049079); and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; 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 review and act 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 ("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, the Project is located with the Airport Influence Area of Chino Airport and must be consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics, which addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; 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 March 23, 2021, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting (6-0) to issue Resolution No. PC21-015, recommending the City Council approve the Application; and

WHEREAS, on April 20, 2021, 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 Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED 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 previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation. Based upon the facts and information contained in the previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific (File No. PSP18-001), for which a Certified EIR (SCH#2019049079) was adopted by the City Council on February 16, 2021.

(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. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the approving 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 3. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance and Chino Airport Influence Area.*** The proposed project is located within the Safety, Noise, Airspace Protection and Overflight Zones of the ALUCP. A consistency determination was completed, and the proposed project is consistent with the policies and criteria of the ALUCP, subject to conditions. In addition, the project site is located within the Chino Airport's airport influence area (AIA) and the Chino Airport zoning overlay. Land use compatibility assessments are part of the Chino Airport Overlay (Generic Safety Zones for General Aviation Airports from the Caltrans Division of Aeronautics – California Airport Land Use Planning Handbook). Pursuant to the California Airport Land Use Planning Handbook, the Specific Plan site is within Safety Zones 1, 2, 3, 4, and 6, Traffic Pattern/Overflight Zone. Light industrial and manufacturing uses are acceptable within Zones 2, 3, 4, and 6, subject to Open Land criteria.

SECTION 4. ***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 3, above, the City Council hereby concludes as follows:

a. ***The cancellation is for land on which a Notice of Non-Renewal has been served.***

Pursuant with Government Code § 51245 a Notice of Non-Renewal of Land Conservation Contract Number 69-147, was recorded on January 20, 2021, as Instrument No. 2021-0027541, Official Records, has been served.

b. ***Cancellation is not likely to result in the removal of adjacent lands from agricultural use.***

Cancellation of the Land Conservation Contract No. 69-147 is not likely to result in the removal of adjacent lands from agricultural uses. The properties adjacent to the contracted land are part of Merrill Commerce Center Specific Plan. The change in use of the subject property would be due to the development of the specific plan and not to the cancellation of land conservation contracts. Adjacent lands that were once subject to a Williamson Act Contract have terminated those contracts. Moreover, the policy decision to transition uses in the area from agriculture to urban was made when the City adopted TOP Policy Plan. The environmental consequences of that decision were analyzed in the Environmental Impact Report certified in conjunction with The Ontario Plan (TOP). Thus, the City's prior planning decision, and not the cancellation of the contracts associated

with this project, would be the cause of any influence on the decision to remove land from agricultural use. Additionally, to ease the transition from agricultural to urban uses and to minimize conflicts between the two uses, the City has adopted an Agricultural Overlay District.

c. ***Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.***

The subject site is a part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR).

d. ***Cancellation will not result in discontinuous patterns of urban development. The cancellation of the Land Conservation Contracts will not result in discontinuous patterns of urban development.***

The subject property is part of Merrill Commerce Center Specific Plan. TOP Policy Plan includes requirements for subsequent approval by the City of a Specific Plan for development within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. In addition, the properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. Further, a Specific Plan (West Ontario Commerce Center Specific Plan) has been approved immediately to the east of the project site. To the west the subject property abuts the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. To the south the project site is bounded by industrial development and the Chino Airport, located within the City of Chino. Due to the establish TOP Policy Plan (General Plan), which establishes the land use plan and intensity of development for the entire Ontario Ranch area and the existing developed urban areas, the subject property and surrounding area will be urbanized in the near future. Therefore, cancellation of the Williamson Act contracts associated with the Project would not result in leap-frog development.

e. ***There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.***

The contracted land lies within the boundaries of Merrill Commerce Center Specific Plan. The adjacent non-contracted land is part of Merrill Commerce Center Specific Plan and is scheduled for future development, therefore not available. Development of the subject site and adjacent non-contracted land through Merrill Commerce Center Specific Plan will eliminate "leapfrog" development and provide for continuous pattern of development. The properties north of Merrill Commerce Center

Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the south, the Specific Plan is bounded by industrial development and the Chino Airport. To the east, the Specific Plan is adjacent to industrial development (West Ontario Commerce Center Specific Plan) and to the west by the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. Furthermore, since the subject site is within Merrill Commerce Center Specific Plan, once the adjacent parcels are developed it will provide for more contiguous patterns of urban development than development of proximate non-contracted land.

SECTION 5. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Application, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6. ***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 7. ***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 8. ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____
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. 2021-____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 20, 2021, 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. 2021-____ duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT “A”

Certificate of Tentative Cancellation of Land Conservation Contract 69-147

(Document follows this page)

CERTIFICATE OF TENTATIVE CANCELLATION
OF
LAND CONSERVATION CONTRACT

This certifies that in accordance with the California Government Code Article 5, Chapter 7, Division 1 of Title 5 (beginning with Section 51280), the City Council of the City of Ontario has made findings necessary to support issuance of this Certificate of Tentative Cancellation to 69-147, hereinafter referred to as OWNER, for cancellation of the Land Conservation Contract attached hereto and made a part hereof as Exhibit "A".

This Certificate concerns 29.095 Acres of real property described in Exhibit "B" (map and legal description), attached hereto and made a part hereof, which is in the City of Ontario and which is (all) (a portion) of the property subject to the provisions of the above-referenced contract ("Property").

The petition for cancellation was accompanied by a proposal for a specified alternative use of the Property, and sets forth the following proposed alternative use:

The City of Ontario Policy Plan (General Plan) zones the subject property for Specific Plan. The subject site is a part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR) and is planned in accordance with the City of Ontario Policy Plan's (General Plan) land use designation of Industrial (FAR0.55 FAR) and Business Park (0.60 FAR) as illustrated by Exhibit LU-01 "Land Use Plan" of the Policy Plan (General Plan).

The City Council of the City of Ontario will, in accordance with Government Code Section 51283.4(b), within thirty (30) days of receipt of written notice from OWNER that the conditions and contingencies hereinafter set forth have been satisfied, make its determination whether or not such conditions and contingencies are, in fact, satisfied, and if it is determined that the conditions and contingencies have been satisfied, the City will execute, City Manager, a Certificate of Cancellation of the above Land Conservation Contract set forth in Exhibit "A" covering the Property and cause the same to be recorded.

The conditions and contingencies which must be satisfied prior to execution of a Certificate of Cancellation by the City Manager of the City of Ontario are as follows:

1. Payment in full of the cancellation fee, determined in accordance with Government Code Section 51283, in the amount of $5,069,500; and
2. Certification of associated Environmental Impact Report; and
3. Approval of Tentative Maps on the subject property, which are required to commence the specified alternative use; and

Should the OWNER fail to pay the cancellation fee as herein provided within one (1) year from the date this Certificate is recorded or a Certificate of Cancellation cannot otherwise be issued within one (1) year from the date this Certificate is recorded, the cancellation fee shall be recomputed.

If the OWNER has been unable to satisfy the above conditions and contingencies, owner shall so notify the City of Ontario of the particular conditions or contingencies which they are unable to satisfy. Within thirty (30) days after receipt of such notice, and upon a determination that the OWNER is in fact unable to satisfy such conditions and contingencies, the City Manager of the City of Ontario shall execute a Certificate of Withdrawal of this Certificate of Tentative Cancellation and cause such certificate to be recorded.

This Certificate of Tentative Cancellation is hereby executed on this 20th day of April 2021, by the Mayor of the City of Ontario.

_____
Scott Ochoa, City Manager

ATTEST:

_____
City Clerk

A notary public or other officer completing this certificate certifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____, Notary Public,

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

737

RECORDED AT REQUEST

Board of Supervisors

1971 FEB 26 PM 12 10

BOOK 7616 PAGE 849

OFFICIAL RECORDS SAN BERNARDINO, CALIF.

NO FEE B

69-147

AMENDMENT TO

LAND CONSERVATION AGREEMENT

THIS AMENDMENT TO THE LAND CONSERVATION AGREEMENT is made and entered into this 3rd day of February, 1971, by and between Marinus Oosten and Anthonia Oosten

See Exhibit "A" for tax parcels covered by this Amendment.

(All owners, including multiple owners, and spouses, must be entered above. If unmarried, so indicate.) hereinafter referred to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER, or OWNER'S predecessors in interest, and COUNTY executed a LAND CONSERVATION AGREEMENT on February 20, 1969, which AGREEMENT was recorded in Book 7190 page 509, in the San Bernardino County Recorder's Office on February 28, 1969 19___, and

WHEREAS, the LAND CONSERVATION AGREEMENT, identified above, is incorporated herein and made a part hereof as though set forth in full in this AMENDMENT, and

WHEREAS, the State Board of Equalization, in conformance with the powers and duties granted to it by the Legislature in California Government Code Section 15606, has determined that Clause 8 in the covenant section of the AGREEMENT, previously identified, is not sufficiently restrictive so that the AGREEMENT is substantially similar to a CONTRACT, as defined and required by the legislation in existence at the time the AGREEMENT was executed, and

WHEREAS, OWNER, or OWNER'S predecessor, and COUNTY intended (as set forth on the first page of the AGREEMENT) "that the terms and conditions and restrictions of this Agreement are substantially similar to contracts authorized by the California Land Conservation Act of 1965 so as to be an enforceable restriction under provisions of California Revenue and Taxation Code Section 422;".

NOW THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and in the AGREEMENT AS AMENDED and the substantial benefits to be derived by OWNER and COUNTY therefrom, do hereby agree as follows:

1. Clause 8 in the covenant section of the AGREEMENT is amended to read as follows:

"8. Cancellation - Except as provided in Clause 9 of this AGREEMENT, this AGREEMENT may be cancelled as to any or all of the land if the following procedures and provisions are complied with:

a.) Cancellation must be by mutual agreement of the OWNER and the COUNTY and as a result of a request by the OWNER and approval by the Board of Supervisors of the COUNTY.

b.) There must be a public hearing as to such request for cancellation before the Board of Supervisors.

c.) A notice of the public hearing must be sent by mail to each owner in the agricultural preserve of land under agreement and there must be publication of notice pursuant to Section 6061 of the Government Code.

d.) The Board of Supervisors shall make findings that cancellation is not inconsistent with the purposes of the Land Conservation Act of 1965 and is in the public interest. - The existence of an opportunity for another use of the land shall not be sufficient reason for cancellation. A potential alternative use of the land may be considered only if there is no proximate land not subject to a Land Conservation Act contract or agreement suitable for the use to which it is proposed the subject land be put. The uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation. The uneconomic character of the existing use may be considered only if there is no reasonable or comparable agricultural use to which the land may be put.

e.) If the cancellation is approved and agreed upon, the Assessor of the County of San Bernardino shall revalue the land, without the restriction, to which the cancellation applies as soon as possible after the cancellation, use the cancellation date as the valuation date, and apply the latest assessment ratio that has been published pursuant to Section 251 of Volume 18 of the Administrative Code in order to determine the assessed value. The assessed value shall be subject to equalization pursuant to Section 1604 of the Revenue and Taxation Code. When the assessed valuation becomes final, the OWNER shall pay COUNTY, as deferred taxes, an amount equal to 50% (fifty percentum) of the new assessed valuation of the property. If after the effective date of the cancellation, the announced County ratio of assessed value to full cash value is changed, the percentage payment to the County shall be changed so that no greater percentage of full cash value will have been paid. If, at the date of the cancellation, the Agreement previously has been subject to a notice of nonrenewal, the amount due

shall be reduced by the proportion that the whole number of years the Agreement remained in effect measured from the date the notice of nonrenewal was given bears to the number of tax lien dates, included in the term covered by Clause 5 in the Agreement."

IN WITNESS WHEREOF, OWNER and COUNTY have executed this Amendment to Land Conservation Agreement on the day and year first above written.

COUNTY OF SAN BERNARDINO

BY _____
CHAIRMAN of the
Board of Supervisors

ATTEST:

V. DENNIS WARDLE, County Clerk
and ex officio Clerk of the
Board of Supervisors

BY _____ Deputy

SEAL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On this 22nd day of February, 1971, before me, Margaret F. Simondes, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Ruben S. Ayala known to me to be the Chairman of the Board of Supervisors of the County of San Bernardino that executed the within Contract and acknowledged to me that said County of San Bernardino did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

OFFICIAL SEAL
MARGARET F. SIMONDES
NOTARY PUBLIC—CALIFORNIA
PRINCIPAL OFFICE IN
SAN BERNARDINO COUNTY

(SEAL)

Margaret F Simondes
NOTARY PUBLIC in and for said County and State

MARGARET F. SIMONDES
My Commission Expires June 20, 1972

NOTE: All owners, including multiple owners, and spouses, must execute this Amendment. All signatures must be notarized, either separately or collectively. Please obtain the certification sheets necessary for the signatures and attach them after this page.

OWNER(S)

Marinus Oosten

Antonia Oosten

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On this 22nd day of February, 1971, before me William DeGroot, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared MARINUS POSTEN, ANTONIA POSTEN

known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

OFFICIAL SEAL
WILLIAM DE GROOT
NOTARY PUBLIC-CALIFORNIA
SAN BERNARDINO COUNTY
My Commission Expires Nov. 3, 1973
3241 Euclid Ave., Ontario, Calif. 91761

William De Groot
NOTARY PUBLIC in and for said
County and State

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19____, before me _____, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

_____
NOTARY PUBLIC in and for said
County and State

(SEAL)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
218 261 26	Ptn Lots 8, 9, 24, 25 and Sly 1/2 Eucalyptus Ave. vacated adj on N RANCHO SANTA ANA DEL CHINO, Sec. 22, Tp 2 S, R 7 W lying westerly of fol desc li beg at intersection E li Vineyard Ave. 66 ft wide and N li Merrill Ave. 66 ft wide; th N 89 deg 56 min 33 seconds E 568.52 ft alg N li Merrill Ave. to true POB; th N 0 deg 20 min 16 seconds E 2606.28 ft to pt on C/L Eucalyptus Ave. vacated N 89 deg 56 min 26 seconds E 616.91 ft from intersection C/L sd Vineyard Ave. wi C/L sd Eucalyptus Ave. Ex wellsite. 34.49 Ac M/L.

Exhibit "A"

Attachment 1

The Land referred to herein below is situated in the City of Ontario, County of San Bernardino, State of California, and is described as follows:

PARCEL 2:

THAT PORTION OF LOTS 8, 9, 24 AND 25, AND THE SOUTHERLY ONE-HALF OF EUCALYPTUS AVENUE VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY DATED JUNE 6, 1922 ADJOINING SAID LOT 8 ON THE NORTH, ALL IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE);
THENCE NORTH 89° 56' 33" EAST 568.52 FEET ALONG THE NORTH LINE OF MERRILL AVENUE TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 0° 20' 16" EAST 2606.28 FEET TO A POINT ON THE CENTERLINE OF EUCALYPTUS AVENUE (VACATED) WHICH IS NORTH 89° 56' 26" EAST 616.91 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SAID VINEYARD AVENUE WITH THE CENTERLINE OF SAID EUCALYPTUS AVENUE.

EXCEPT

THAT PORTION OF LOTS 24 AND 25 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS OF THE COUNTY OF SAN BERNARDINO, CALIFORNIA.

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF VINEYARD AVENUE (66 FEET WIDE) AND THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE);
THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF SAID MERRILL AVENUE A DISTANCE OF 568.52 FEET TO THE POINT OF BEGINNING, BEING ALSO A POINT ON THE WEST LINE OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 25, PAGE 15, RECORDS OF SAN BERNARDINO COUNTY LYING 33 FEET NORTH OF THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE NORTH 0° 20' 16" EAST ALONG THE WEST LINE OF SAID PARCEL 2, ALSO BEING THE WEST LINE OF THE PARCEL JOINED HEREWITH, A DISTANCE OF 693.00 FEET, TO THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL;
THENCE SOUTH 89° 56' 33" WEST AND PARALLEL WITH THE CENTER LINE OF MERRILL AVENUE A DISTANCE OF 334.13 FEET;
THENCE SOUTH 0° 20' 16" WEST A DISTANCE OF 693.00 FEET TO THE NORTH LINE

OF SAID MERRILL AVENUE;
THENCE NORTH 89° 56' 33" EAST ALONG THE NORTH LINE OF MERRILL AVENUE (66 FEET WIDE) A DISTANCE OF 334.13 FEET TO THE POINT OF BEGINNING.

THE LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE APPROVING A LOT LINE ADJUSTMENT NO. W90-147/99, RECORDED AUGUST 11, 1999 AS INSTRUMENT NO. 19990340742, OF OFFICIAL RECORDS.

For conveyancing purposes only:
APN 0218-271-24-0-000

Property Information Management System

San Bernardino County

Office of the Assessor

PROPERTY INFORMATION REPORT FOR PARCEL 1073-111-02-0000

Exhibit "A" Continued

Property Information

Parcel found. Renumbered from: 0218-271 -24-0000

Property Address (Main Situs) Protected per CA. Govt. Code Sect. 6254.21
Protected per CA. Govt. Code Sect. 6254.21

Owner and Mailing Address 9052 MERRILL AVE ONTARIO LLC
C/O PROLOGIS, LP- RE TAX
Protected per CA. Govt. Code Sect. 6254.21
Protected per CA. Govt. Code Sect. 6254.21

Effective Date 03/18/2020

Parcel 1073111020000
Parcel Status ACTIVE
Parcel Type REAL PROPERTY
Property ID
Tax Status ASSESSED BY COUNTY
Use Code STG YARD
Land Access PUBLIC PAVED
Size 25.001 ACRES AND OVER
Land Type INDUSTRIAL

District ONTARIO
Resp Group REAL PROPERTY
Resp Unit INDUSTRIAL ZONE OR USE

Current Owners

Name OPEN SPACE CONTRACT 69-147
R/I OPEN SPACE CONTRACT NUMBER
% Int 0.0000000
Type INFORMATIONAL OWNER
Acquisition Date 01/01/1973
Document Date 01/01/1973
Inactive Date NONE

Document Numbers
19990340742

Name 9052 MERRILL AVE ONTARIO LLC
R/I SOLE OWNER
% Int 100.0000000
Type BILLED OWNER
Acquisition Date 05/02/2019
Document Date 05/02/2019
Inactive Date NONE

Document Numbers
20190140605

Legal Parcel Map

Parcel Map	Parcel Nbr	Unit	Book	Page
	1073111020000			

San Bernardino County Assessor

Legal Description

PTN LOTS 8 9 24 25 AND SLY 1/2 EUCALYPTUS AVE VACATED ADJ ON N RANCHO SANTA ANA DEL CHINO SEC 22 TP2S R 7W LYING WLY OF FOL DESC LI BEG AT INTERSECTION E LI VINEYARD AVE 66 FT WIDE AND N LI MERRILL AVE 66 FT WIDE TH N 89 DEG 56 MIN 33 SECONDS E 568.52 FT ALG N LI MERRILL AVE TO TRUE POB TH N 0 DEG 20 MIN 16 SECONDS E 2606.28 FT TO PT ON C/L EUCALYPTUS AVE VACATED N 89 DEG 56 MIN 26 SECONDS E616.91 FT FROM INTERSECTION C/L SD VINEYARD AVE WITH C/L SD EUCALYPTUS AVE EX THAT PTN LOTS 24 AND 25 SD SEC 22 DESC AS FOLS BEG AT INTERSECTION E LI VINEYARD AVE AND N LI MERRILL AVE TH N 89 DEG 56MIN 33 SECONDS E ALG N LI SD MERRILL AVE 568.52 FT TO POB TH N 0 DEG 20 MIN 16 SECONDS E 693 FT TH S 89 DEG 56 MIN 33 SECONDS W PARALLEL WITH C/L MERRILL AVE 334.13 FT TH S 0 DEG 20 MIN 16 SECONDS W693 FT TO N LI MERRILL AVE TH N 89 DEG 56 MIN 33 SECONDS E ALG N LI MERRILL AVE 334.13 FT TO POB EX CO RD

Legal Reason for Change

Legal Reason for Change	Document Number	Date
LOT LINE ADJUSTMENT	19990340742	08/11/1999

No Active Homeowner's Exemptions Found

Exhibit "A" Continued

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

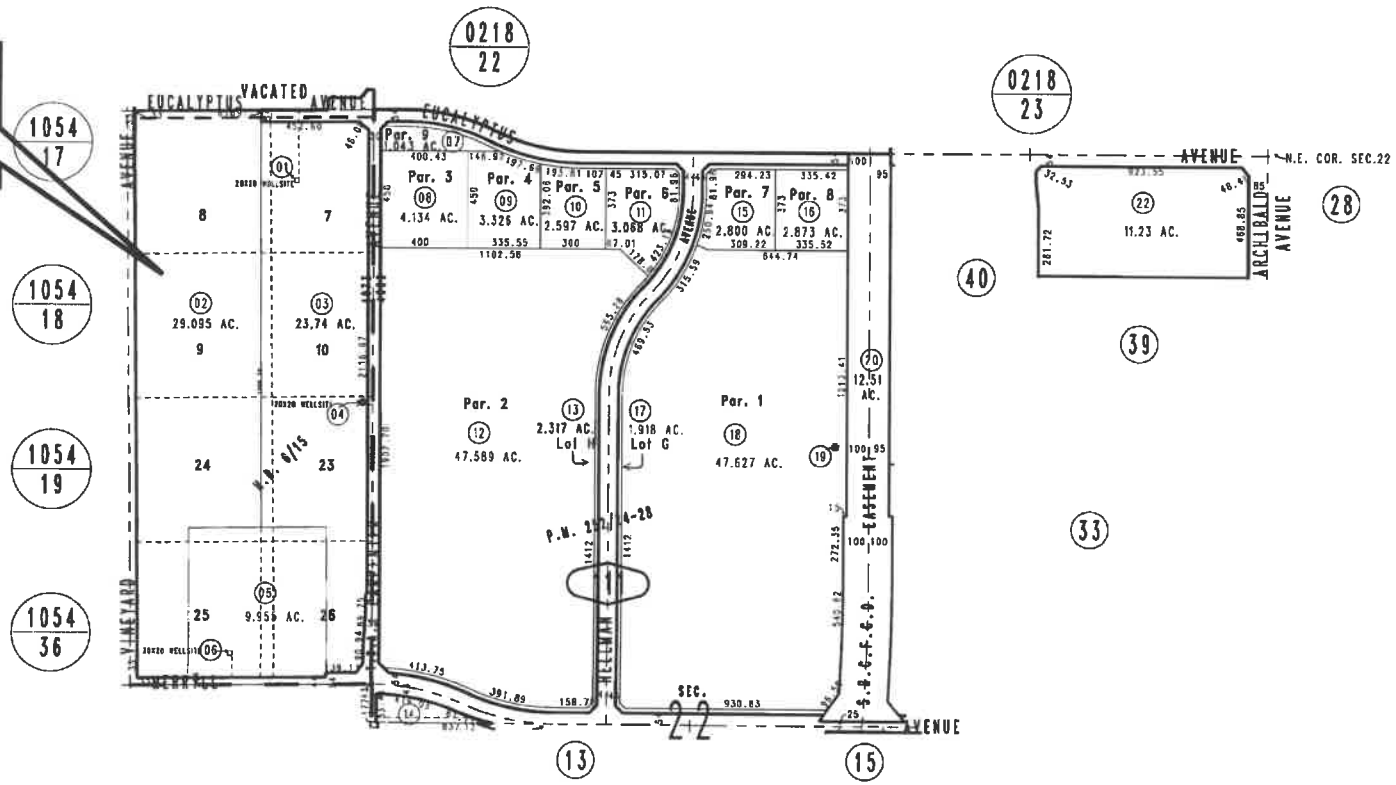
Ptn. N.1/2 Sec.22, T.2S.,R.7W., S.B.B.&M.

City of Ontario
Tax Rate Area
4073 4089

1073 - 11

1"=500'

Parcel in Question 1073-111-02



AUGUST 2020 GW

Parcel Map No. 19738, P.M. 252/24-28
Ptn. Rancho Santa Ana Del Chino, M.B. 6/15

Assessor's Map
Book 1073 Page 11
San Bernardino County

REVISED
11/13/20 GW

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PWIL20-002, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 70-167 FOR 37.34 ACRES OF LAND GENERALLY LOCATED AT THE SOUTHSIDE OF EUCALYPTUS AVENUE, APPROXIMATELY 630 FEET EAST OF WALKER AVENUE AND APPROXIMATELY 2,490 WEST OF CARPENTER AVENUE AT 8643 SOUTH EUCALYPTUS AVENUE, WITHIN PLANNING AREA 4 AND 4A (INDUSTRIAL DISTRICT AND BUSINESS PARK DISTRICTS) OF MERRILL COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1054-151-02, 1054-161-03, 1054-201-02 AND 1054-351-02.

WHEREAS, LIBERTY PROPERTY LIMITED PARTNERSHIP ("Applicant") has filed an Application for the approval of the cancellation of Land Conservation Contract Number 70-167, File No. PWIL20-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 37.34 acres of land generally located on the South side of Eucalyptus Avenue, approximately 630 feet east of Walker Avenue and approximately 2,490 west of Carpenter Avenue at 8643 South Eucalyptus Avenue, within the Planning Area 4 and 4A (Industrial and Business Park districts) of the Merrill Commerce Center Specific Plan, and is presently improved with dairy and agriculture use; and

WHEREAS, the properties to the north of the Project site is within the Specific Plan/Agriculture Overlay (SP/AG) zoning district and is developed with dairy and agriculture uses. The properties to the east are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan and is developed with dairy and agriculture uses. The properties to the south are within the City of Chino and is developed with industrial uses and the Chino Airport. The properties are the west are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan and is developed with dairy and agriculture uses; and

WHEREAS, the subject properties were annexed into the City of Ontario on November 30, 1999; and

WHEREAS, the City of Ontario certified the *Ontario Sphere of Influence Final Environmental Impact Report* in January 7, 1998. The Final EIR evaluated the potential impacts to prime agricultural land and to agricultural productivity that would result from the full and complete build-out of the New Model Colony (NMC) pursuant the General Plan Amendment. The Final EIR concluded that the conversion of agricultural uses to urban uses within the NMC would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, the City, upon annexation, assumed responsibility for administration of the Land Conservation Contracts which existed in the annexed area; and

WHEREAS, the City Ontario certified the Environmental Impact Report for The Ontario Plan (TOP) on January 27, 2010. The adoption of TOP also included the approval of the Policy Plan (General Plan), which replaced the previous Ontario General Plan and New Model Colony General Plan Amendment. The Final TOP EIR concluded that the conversion of agricultural uses to urban uses within Ontario Ranch (NMC) would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, The City's the Agricultural Overlay Zoning District, or a "right-to-farm" ordinance (Development Code Division 6.01, Section 6.01.035), allows existing agricultural uses within Ontario Ranch to continue for as long as the landowner desires; 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 environmental impacts of this project were reviewed in conjunction with Merrill Commerce Center Specific Plan File No. PSP18-001, Environmental Impact Report (SCH#2019049079); and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; 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 review and act 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

("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, the Project is located with the Airport Influence Area of Chino Airport and must be consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics, which addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; 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 March 23, 2021, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting (6-0) to issue Resolution No. PC21-016, recommending the City Council approve the Application; and

WHEREAS, on April 20, 2021, 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 Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED 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 previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation. Based upon the facts and information contained in the previous Merrill Commerce Center Specific Plan EIR (SCH#2019049079) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the Merrill Commerce Center Specific (File No. PSP18-001), for which a Certified EIR (SCH#2019049079) was adopted by the City Council on February 16, 2021.

(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. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the approving authority for the Project, the City Council n 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, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 3. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance and Chino Airport Influence Area.*** The proposed project is located within the Safety, Noise, Airspace Protection and Overflight Zones of the ALUCP. A consistency determination was completed, and the proposed project is consistent with the policies and criteria of the ALUCP, subject to conditions. In addition, the project site is located within the Chino Airport's airport influence area (AIA) and the Chino Airport zoning overlay. Land use compatibility assessments are part of the Chino Airport Overlay (Generic Safety Zones for General Aviation Airports from the Caltrans Division of Aeronautics – California Airport Land Use Planning Handbook). Pursuant to the California Airport Land Use Planning Handbook, the Specific Plan site is within Safety Zones 1, 2, 3, 4, and 6, Traffic Pattern/Overflight Zone. Light industrial and manufacturing uses are acceptable within Zones 2, 3, 4, and 6, subject to Open Land criteria.

SECTION 4. ***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 3, above, the City Council hereby concludes as follows:

a. ***The cancellation is for land on which a Notice of Non-Renewal has been served.***

Pursuant with Government Code § 51245 a Notice of Non-Renewal of Land Conservation Contract Number 70-167, was recorded on September 21, 2017, as Instrument No. 2017-0391236, Official Records, has been served.

b. ***Cancellation is not likely to result in the removal of adjacent lands from agricultural use.***

Cancellation of the Land Conservation Contract No. 70-167 is not likely to result in the removal of adjacent lands from agricultural uses. The properties adjacent to the contracted land are part of Merrill Commerce Center Specific Plan. The change in use of the subject properties would be due to the development of the specific plan and not to the cancellation of land conservation contracts. Adjacent lands that were once subject to a Williamson Act Contract have terminated those contracts. Moreover, the

policy decision to transition uses in the area from agriculture to urban was made when the City adopted TOP Policy Plan. The environmental consequences of that decision were analyzed in the Environmental Impact Report certified in conjunction with The Ontario Plan (TOP). Thus, the City's prior planning decision, and not the cancellation of the contracts associated with this project, would be the cause of any influence on the decision to remove land from agricultural use. Additionally, to ease the transition from agricultural to urban uses and to minimize conflicts between the two uses, the City has adopted an Agricultural Overlay District.

c. ***Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.***

The subject properties are part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR).

d. ***Cancellation will not result in discontinuous patterns of urban development. The cancellation of the Land Conservation Contracts will not result in discontinuous patterns of urban development.***

The subject properties are part of Merrill Commerce Center Specific Plan. TOP Policy Plan includes requirements for subsequent approval by the City of a Specific Plan for development within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. In addition, the properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the east and west the subject properties are within the Business Park and Industrial zoning districts of the Merrill Commerce Center Specific Plan. To the south the project site is bounded by industrial development and the Chino Airport, located within the City of Chino. Due to the establish TOP Policy Plan (General Plan), which establishes the land use plan and intensity of development for the entire Ontario Ranch area and the existing developed urban areas, the subject properties and surrounding area will be urbanized in the near future. Therefore, cancellation of the Williamson Act contracts associated with the Project would not result in leap-frog development.

e. ***There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.***

The contracted land lies within the boundaries of Merrill Commerce Center Specific Plan. The adjacent non-contracted land is part of Merrill Commerce Center Specific Plan and is scheduled for future development, therefore not available. Development of the subject site and adjacent non-contracted land through Merrill

Commerce Center Specific Plan will eliminate “leapfrog” development and provide for continuous pattern of development. The properties north of Merrill Commerce Center Specific Plan have a General Plan land use designation of Medium Density Residential (11.1 -25 du/ac) and Mixed-Use, which will accommodate future residential and commercial uses. To the south, the Specific Plan is bounded by industrial development and the Chino Airport. To the east, the Specific Plan is adjacent to industrial development (West Ontario Commerce Center Specific Plan) and to the west by the future South Ontario Logistics Center Specific Plan, that is currently in the entitlement process. Furthermore, since the subject site is within Merrill Commerce Center Specific Plan, once the adjacent parcels are developed it will provide for more contiguous patterns of urban development than development of proximate non-contracted land.

SECTION 5. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Application, attached hereto as “Attachment A,” and incorporated herein by this reference.

SECTION 6. ***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 7. ***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 8. ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____
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. 2021-____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 20, 2021, 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. 2021-____ duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT “A”

Certificate of Tentative Cancellation of Land Conservation Contract 70-167

(Document follows this page)

CERTIFICATE OF TENTATIVE CANCELLATION
OF
LAND CONSERVATION CONTRACT

This certifies that in accordance with the California Government Code Article 5, Chapter 7, Division 1 of Title 5 (beginning with Section 51280), the City Council of the City of Ontario has made findings necessary to support issuance of this Certificate of Tentative Cancellation to 70-167, hereinafter referred to as OWNER, for cancellation of the Land Conservation Contract attached hereto and made a part hereof as Exhibit "A".

This Certificate concerns 37.34 Acres of real property described in Exhibit "B" (map and legal description), attached hereto and made a part hereof, which is in the City of Ontario and which is (all) (a portion) of the property subject to the provisions of the above-referenced contract ("Property").

The petition for cancellation was accompanied by a proposal for a specified alternative use of the Property, and sets forth the following proposed alternative use:

The City of Ontario Policy Plan (General Plan) zones the subject property for Specific Plan. The subject site is a part of Merrill Commerce Center Specific Plan and is planned in accordance with TOP Policy Plan depiction of Business Park (0.60 FAR) and Industrial (0.55 FAR) and is planned in accordance with the City of Ontario Policy Plan's (General Plan) land use designation of Industrial (FAR0.55 FAR) and Business Park (0.60 FAR) as illustrated by Exhibit LU-01 "Land Use Plan" of the Policy Plan (General Plan).

The City Council of the City of Ontario will, in accordance with Government Code Section 51283.4(b), within thirty (30) days of receipt of written notice from OWNER that the conditions and contingencies hereinafter set forth have been satisfied, make its determination whether or not such conditions and contingencies are, in fact, satisfied, and if it is determined that the conditions and contingencies have been satisfied, the City will execute, City Manager, a Certificate of Cancellation of the above Land Conservation Contract set forth in Exhibit "A" covering the Property and cause the same to be recorded.

The conditions and contingencies which must be satisfied prior to execution of a Certificate of Cancellation by the City Manager of the City of Ontario are as follows:

1. Payment in full of the cancellation fee, determined in accordance with Government Code Section 51283, in the amount of $5,087,500; and
2. Certification of associated Environmental Impact Report; and
3. Approval of Tentative Maps on the subject property, which are required to commence the specified alternative use; and

Should the OWNER fail to pay the cancellation fee as herein provided within one (1) year from the date this Certificate is recorded or a Certificate of Cancellation cannot otherwise be issued within one (1) year from the date this Certificate is recorded, the cancellation fee shall be recomputed.

If the OWNER has been unable to satisfy the above conditions and contingencies, owner shall so notify the City of Ontario of the particular conditions or contingencies which they are unable to satisfy. Within thirty (30) days after receipt of such notice, and upon a determination that the OWNER is in fact unable to satisfy such conditions and contingencies, the City Manager of the City of Ontario shall execute a Certificate of Withdrawal of this Certificate of Tentative Cancellation and cause such certificate to be recorded.

This Certificate of Tentative Cancellation is hereby executed on this 20th day of April 2021, by the Mayor of the City of Ontario.

_____
Scott Ochoa, City Manager

ATTEST:

_____
City Clerk

A notary public or other officer completing this certificate certifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____, Notary Public,

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

BOOK 7396 PAGE 816

792

RECORDED AT REQUEST

COUNTY

1970 FEB 27 PM 3 58

BOOK 7396 PAGE 816

OFFICIAL RECORDS SAN BERNARDINO CO. CALIF.

COUNTY RECORDER

70-167

MAIL TO (32)

NO FEE D

LAND CONSERVATION CONTRACT

THIS CONTRACT is made and entered into this 24th day of FEBRUARY, 19 70, by and between

HENRIETTA C. LEE

(All owners, including multiple owners, and spouses, must be entered above. If unmarried, so indicate.) hereinafter referred to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER possesses certain real property located within the COUNTY, which property is presently devoted to agricultural and compatible uses and is particularly described in Exhibit "A", attached hereto and made a part hereof, and

WHEREAS, said property is located in an agricultural preserve heretofore established by COUNTY by Resolution Dated 2/10/70 *, and

*with reference to preserve map

WHEREAS, both OWNER and COUNTY desire to limit the use of said property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of such lands from agricultural uses, recognizing that such land has definite public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, esthetic and economic asset to the COUNTY to maintain the agricultural economy of the COUNTY and the State of California, and

WHEREAS, both OWNER and COUNTY intend that the terms, conditions, restrictions and construction of this contract shall be such as to qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code Section 422, as amended, and

WHEREAS, it is the intent of COUNTY and OWNER that the continued existence of this contract is made dependent upon the existence of legislation or other law implementing Article XXVIII of the California Constitution so the effect of the terms, conditions and restrictions of the contract on property values for taxation purposes is as favorable to OWNER as the legislation existing on the last renewal date.

NOW, THEREFORE, the parties in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. California Land Conservation Act of 1965, as amended - This contract is made and entered into pursuant to the California Land Conservation Act of 1965, as amended, (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code commencing with Section 51200) and is subject to all the provisions, including amendments thereto which may be enacted, which are specifically applicable to such contracts.

2. Agricultural and Compatible Uses - During the term of this contract or any renewals thereof, the above described land shall not be used for any purpose, other than the production of agricultural commodities for commercial purposes and compatible uses as listed in the resolution establishing the preserve within which the land is located, a copy of such list is attached hereto and marked as Exhibit "B".

3. Additional Agricultural Uses - The Board of Supervisors of COUNTY may from time to time and during the term of this contract or any extensions thereof, by resolution add to those uses listed in the resolution establishing the preserve within which the land is located; provided, however, said Board shall not eliminate, without written consent of OWNER, a compatible use during the term of this contract or any renewals thereof.

4. Condemnation - In the event of an action in eminent domain or on acquisition in lieu of eminent domain in respect to the land, or any part thereof, described herein, this contract shall be subject to the provisions of Government Code Sections 51290 et seq.

5. Term of Contract - This contract shall be effective commencing on January 1, 1970, and shall remain in effect for a period ending December 31, 1979, and during such renewals of this contract.

This contract shall be automatically extended for an additional year on the first day of each January (so that the unexpired term is ten (10) years from the first day of each January), unless notice of non-renewal is given pursuant to Government Code Section 51245 et seq. Upon receipt of timely notice of non-renewal by either party this contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

6. No Payments by County - OWNER shall not receive any payment from COUNTY in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of this contract is the substantial public benefit to be derived therefrom and the advantage which will accrue to OWNER as a result of the effect on the method of determining the assessed value of land described herein and any reduction thereof due to the imposition of the limitations on its use contained herein.

7. Successors in Interest - This contract shall run with the land described herein, and shall be binding upon the heirs, successors and assigns of OWNER.

. . . .

. . . .

. . . .

. . . .

8. Cancellation - Except as provided in Clause 9, below, this contract may be cancelled as to any or all of the land described in Exhibit "A" by mutual agreement of OWNER and COUNTY providing such cancellation is strictly pursuant to the provisions of Government Code Sections 51280 through 51285.

9. Restrictive Law Alteration - This contract may be cancelled by mutual agreement of COUNTY and OWNER without payments or public hearing if it is replaced by an enforceable restriction authorized by Article XXVIII of the California Constitution or whenever there is no operative legislation or other law implementing said Article at the time the cancellation is requested by OWNER.

10. Division of Land under Contract - Whenever the land under this contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner of the original contract, including the right to give notice of non-renewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of divided land.

11. Information from Owner - OWNER, upon request of COUNTY, shall provide information relating to OWNER'S obligation under this contract.

12. Acts of Non-Renewal by County - Removal of land under this contract from an agricultural preserve shall be the equivalent of notice of non-renewal by COUNTY and COUNTY shall at least 60 days prior to the next renewal date following the removal, serve a notice of non-renewal as provided in Government Code Section 51245.

13. Termination Document Recordation - In the event of termination of this contract by (1) notice of non-renewal, (2) cancellation, (3) nullification by annexation or condemnation, the COUNTY shall record the appropriate documents in the County Recorder's Office and file such documents with any other governmental agency authorized to receive them.

14. Annexation of Land Within One Mile - In the event that the land of the OWNER, or any portion thereof, which is included in Exhibit "A" and is within one mile of the boundaries of a city at the time this contract is executed, is subsequently annexed by such city, but such city by its acts does not succeed to all the rights, duties and powers of this contract, then the OWNER and the land, or such portion thereof, shall be subject to a charge amounting to the differential (for the last five assessments prior to annexation, or the actual number of assessments, if less than five, during the existence of this contract) between the taxes as actually computed under this contract, and the taxes which would have been computed without the benefit of the restrictions of this contract.

15. Notices - Any notices required to be given hereunder or required to be given by law shall be given by United States Registered Mail, return receipt requested, and any notice to the COUNTY shall be sent to the Clerk to the Board of Supervisors of San Bernardino County, San Bernardino, California, and any notice to the OWNER shall be sent to the last known address as shown on the latest assessment roll. Such address shall be the proper address for every person in the case of multiple owners.

. . . .

RECORDER'S MEMO:
POOR RECORD IS DUE TO
QUALITY OF ORIGINAL DOCUMENT

16. Severability - It is understood and agreed by the parties hereto that if any of these provisions shall contravene the Land Conservation Act of 1965, as amended, or be invalid under any law, such contravention or invalidity shall not invalidate the entire contract, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

IN WITNESS WHEREOF, OWNER and COUNTY have executed this Contract on the day and year first above written.

COUNTY OF SAN BERNARDINO

By: _____
CHAIRMAN of the Board of Supervisors

ATTEST:

V. DENNIS WARDLE, County Clerk
and ex officio Clerk of the
Board of Supervisors

By: Liona Rapigan
Deputy

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On this 27th day of February, 1970, before me, Margaret F Simondes, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Reuben S. Ayala known to me to be the Chairman of the Board of Supervisors of the County of San Bernardino that executed the within Contract and acknowledged to me that said County of San Bernardino did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

OFFICIAL SEAL
MARGARET F. SIMONDES
NOTARY PUBLIC—CALIFORNIA
PRINCIPAL OFFICE IN
SAN BERNARDINO COUNTY

(SEAL)

Margaret F Simondes
NOTARY PUBLIC in and for said County and State

MARGARET F. SIMONDES
My Commission Expires June 20, 1972

NOTE: All owners, including multiple owners, and spouses, must execute this Contract. All signatures must be notarized, either separately or collectively. Please obtain the certification sheets necessary for the signatures and attach them after this page.

OWNER(S):

Henrietta C. Lee
Henrietta C. Lee

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On this 24th day of FEBRUARY, 1970, before me EDITH D. SMITH, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared HENRIETTA C. LEE

known to me to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

EDITH D. SMITH
NOTARY PUBLIC
SAN BERNARDINO COUNTY
CALIFORNIA

Edith D. Smith
NOTARY PUBLIC in and for said
County and State

EDITH D. SMITH

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19____, before me _____, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

NOTARY PUBLIC in and for said
County and State

(SEAL)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
217 122 14	Rancho Santa Ana Del Chino, Lot 14, Sec 21, T2S, R7W EX 50 per cent mineral rights 9.5 AC
217 122 15	Rancho Santa Ana Del Chino, Lot 19, Sec 21, T2S, R7W Ex 50 per cent mineral rights 9.5 AC
217 122 16	Rancho Santa Ana Del Chino, Lot 30, Sec 21 T2S, R7W Ex ST and and EX 50 percent mineral rights-8.84 AC M/L
217 122 18	Rancho Santa Ana Del Chino, Lot 3, Sec 21, T2S, R 7W EX N 63 ft. E 30 ft. W 250 Ft. thereof and EX mineral rights reservation of record 6.98 AC M/L

UNIFORM RULES AND COMPATIBLE USES
FOR AGRICULTURAL PRESERVES IN SAN BERNARDINO COUNTY

The following uses are hereby determined to be agricultural and compatible uses within an agricultural preserve, and all other uses are prohibited therein:

(1) Agricultural use, described as any use of land for the purpose of producing an agricultural commodity, consisting of any and all plant and animal products, for commercial purposes; provided such use is permitted by the applicable zoning and not prohibited by other law or ordinance.

(2) A stand for display and sale of agricultural commodities produced on the premises or on other premises within the preserve.

(3) Gas, electric, water, and communication utility facilities, and public service facilities of like nature operated by a public agency or mutual water company.

(4) Public highways.

(5) Fire protection works and facilities.

(6) Flood control works, including channel rectification and alteration.

(7) Public works required for fish and wildlife enhancement and preservation.

(8) Improvements for the primary benefit of the lands within the preserve.

(9) State improvements described in Section 51293, subsection's (f) and (g) of the California Government Code.

(10) One-family dwellings for the use only of an owner or manager of land within the agricultural preserve, or a person employed on said land, if such use is permitted by the applicable zoning, but not exceeding three (3) dwellings for each parcel of not less than ten (10) acres.

(11) Farm labor camps, including temporary trailer housing, subject to the conditions of law or ordinance otherwise applicable.

(12) Drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced.

(13) Any other use, not inconsistent with uses listed in (1) above, existing on the date the land is included within an agricultural preserve, but such use once discontinued for two (2) years shall not be resumed unless permitted under these rules.

(14) "Open space use" as defined in California Government Code Section 51201.

(15) Any use required to be permitted by any amendment to the California Land Conservation Act of 1965 hereafter adopted.

(16) Any use determined to be a compatible use in all agricultural preserves by the Board of Supervisors, after public hearing on ten (10) days' published notice and such other notice, if any, as they may specify. Thereafter such use shall be deemed a compatible use in any agricultural preserve, providing that it is not inconsistent with uses listed in paragraph (1) above.

EXHIBIT "B"

Page ___

RECORDER'S MEMO:
POOR RECORD IS DUE TO
QUALITY OF ORIGINAL DOCUMENT

EXHIBIT "A"

LEGAL DESCRRIPTION

LOTS 3, 14, 19 AND 30, OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM A 3/5THS INTEEST IN AND TO A PUMP SITE LOCATED ON THE NORTH 63.00 FEET OF THE EAST 30.00 FEET OF THE WEST 230.00 FEET OF LOT 3 IN SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, PURSUANT TO GRANT DEED RECORDED AUGUST 2, 1968, IN BOOK 7070, PAGE 513, OFFICIAL RECORDS.

EXCEPTION 25% OF ALL MINERAL, OIL, GAS AND KINDRED SUBSTANCES LYING IN, UPON AND UNDER THE PREMISES DESCRIBED ABOVE, AS CONTAINED IN THE DEED FROM WESTERN CONSUMERS FEED CO., RECORDED SEPTEMBER 1, 1965 IN BOOK 6464, PAGE 563, OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED QUARTER INTEREST IN AND TO ALL MINERAL, OIL, GAS AND KINDRED SUBSTANCES LYING IN, UPON AND UNDER THE PREMISES DESCRIBED ABOVE, TOGETHER WITH THE RIGHT OF ENTRY THEREON FOR THE PURPOSE OF DEVELOPING, EXTRACTING AND REMOVING SAID SUBSTANCES THEREFROM, AS CONTAINED IN THE DEED FROM POMONA COLLEGE, RECORDED DECEMBER 5, 1949 IN BOOK 2496, PAGE 82, OFFICIAL RECORDS.

APN

1054-151-02

1054-161-03

1054-201-02

1054-351-02

Exhibit "A" Continued

NP870A00

SAN BERNARDINO COUNTY ASSESSOR
SECURED ASSESSMENT ROLL

PAGE:132415

2006 ASSESSMENT YEAR

BILLED OR JOINT OWNER PROPERTY ADDRESS AND LEGAL DESCRIPTION	TAX RATE AREA	PARCEL BOOK PAGE LINE & SEQUENCE	LAND	IMPROVMENTS	PERSONAL PROPERTY	HOMEOWNERS EXEMPTION	SPECIAL EXEMPTIONS	TOTAL NET TAXABLE VALUE
MANABERRY FAMILY TRUST 3-14-85 LEE, HENRIETTA C TR C/O MINABERRY FAMILY LLC 8888 EUCALYPTUS AVE ONTARIO CA 91762 RANCHO SANTA ANA DEL CHINO N 63 FT E 30 FT W 230 FT LOT 3 SEC 21 TP 2S R 7W MEAS TO ST C/L EX MNL RTS RESERVATION OF RECO RD	4073	1054 161 02 0 000 DR= D BY1973	1608	4600				6208
LEE, HENRIETTA C TR 8750 HILLCREST RD BUENA PARK CA 90621 RANCHO SANTA ANA DEL CHINO LOT 3 SEC 21 TP 2S R 7W EX N 63 FT E 30 FT W 230 FT THEREOF AND EX MNL RTS RESERVATION OF RE CORD	4073	1054 161 03 0 000 DR= D BY1973	74097	202018				276115
MINABERRY FAMILY TRUST 3-14-85 C/O MINABERRY FAMILY LLC 8888 EUCALYPTUS AVE ONTARIO CA 91762 RANCHO SANTA ANA DEL CHINO ELY 165 FT WL Y 263 FT NLY 150 FT LOT 2 SEC 21 TP 2S R 7W EX MNL RTS RESERVATION OF RECORD	4073	1054 171 01 0 000 DR= D BY2004	78530	256813				335343
MINABERRY FAMILY TRUST 3-14-85 C/O MINABERRY FAMILY LLC 8888 EUCALYPTUS AVE ONTARIO CA 91762 RANCHO SANTA ANA DEL CHINO LOT 2 SEC 21 TP 2S R 7W EX ELY 165 FT WLY 263 FT NLY 150 FT AND EX MNL RTS RESERVATION OF REC ORD	4073	1054 171 02 0 000 DR= D BY2004	61261	295474				356735
		PAGE TOTALS	215496	758905				974401

FORM OF ASSESSMENT ROLL APPROVED BY THE STATE BOARD OF EQUALIZATION
PRELIMINARY ASSESSMENT ROLL PROPERTY OF THE COUNTY OF SAN BERNARDINO, CALIF.
PROPERTY ASSESSED PURSUANT TO CONSTITUTIONAL AND STATUTORY PROVISIONS
FOR DETAILED EXPLANATION OF ALL THE HEADINGS AND ENTRIES, SEE PAGE A.

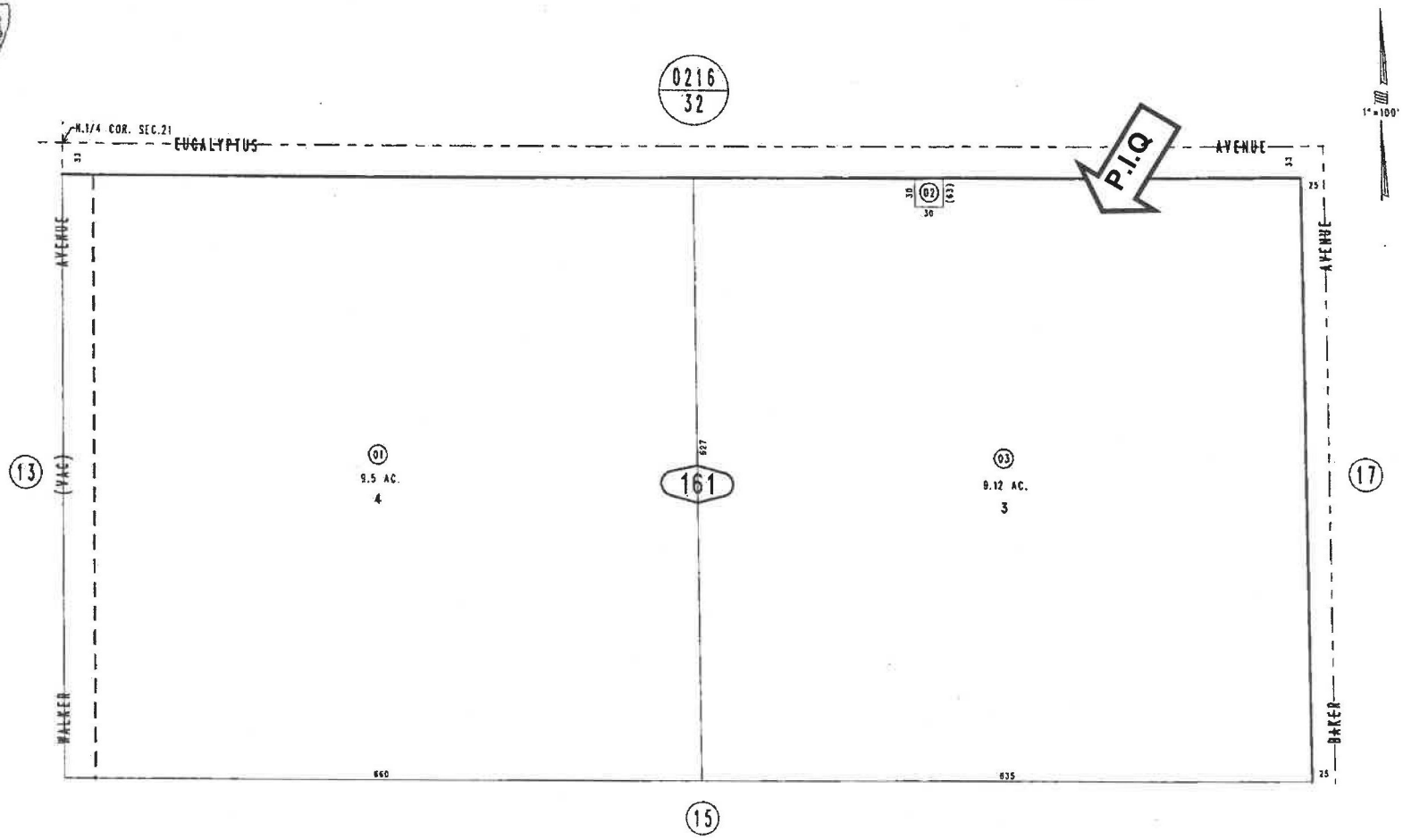
Exhibit "A" Continued

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

Ptn. Rancho Santa Ana Del Chino, M.B. 6/15

City of Ontario
Tax Rate Area
4073

1054 - 16



October 2004

Ptn. N.E.1/4, Sec.21
T.2S.,R.7W.

Assessor's Map
Book 1054 Page 16
San Bernardino County

REVISED

Exhibit "A" Continued

NP870A00

SAN BERNARDINO COUNTY ASSESSOR
SECURED ASSESSMENT ROLL

PAGE:132417

2006 ASSESSMENT YEAR

BILLED OR JOINT OWNER PROPERTY ADDRESS AND LEGAL DESCRIPTION	TAX RATE AREA	PARCEL BOOK PAGE LINE & SEQUENCE		LAND	IMPROVEMENTS	PERSONAL PROPERTY	HOMEOWNERS EXEMPTION	SPECIAL EXEMPTIONS	TOTAL NET TAXABLE VALUE
MINABERRY FAMILY TRUST 3-14-85 C/O MINABERRY FAMILY LLC 8888 EUCALYPTUS AVE ONTARIO CA 91762 RANCHO SANTA ANA DEL CHINO LOT 18 SEC 21 TP 2S R 7W EX MNL RTS RESERVATION OF RECORD	4073	1054 191 01 0 000 DR= D	BY2004	29437					29437
MINABERRY FAMILY TRUST 3-14-85 C/O MINABERRY FAMILY LLC 8888 EUCALYPTUS AVE ONTARIO CA 91762 RANCHO SANTA ANA DEL CHINO LOT 17 SEC 21 TP 2S R 7W EX ST 9.25 AC M/L	4073	1054 191 02 0 000 DR= D	BY2004	850300					850300
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 20 SEC 21 TP 2S R 7W AND E 1/2 WALKER AVE CLOSED ADJ ON W	4073	1054 201 01 0 000 DR= D	BY1973	98676					98676
LEE, HENRIETTA C TR 8750 HILLCREST RD BUENA PARK CA 90621 RANCHO SANTA ANA DEL CHINO LOT 19 SEC 21 TP 2S R 7W EX 50 PER CENT MNL RTS	4073	1054 201 02 0 000 DR= D	BY1973	68615					68615
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 22 SEC 21 TP 2S R 7W	4073	1054 211 01 0 000 DR= D	BY1973	94927					94927
		PAGE TOTALS		1141955					1141955

FORM OF ASSESSMENT ROLL APPROVED BY THE STATE BOARD OF EQUALIZATION
PRELIMINARY ASSESSMENT ROLL PROPERTY OF THE COUNTY OF SAN BERNARDINO, CALIF.
PROPERTY ASSESSED PURSUANT TO CONSTITUTIONAL AND STATUTORY PROVISIONS
FOR DETAILED EXPLANATION OF ALL THE HEADINGS AND ENTRIES, SEE PAGE A.

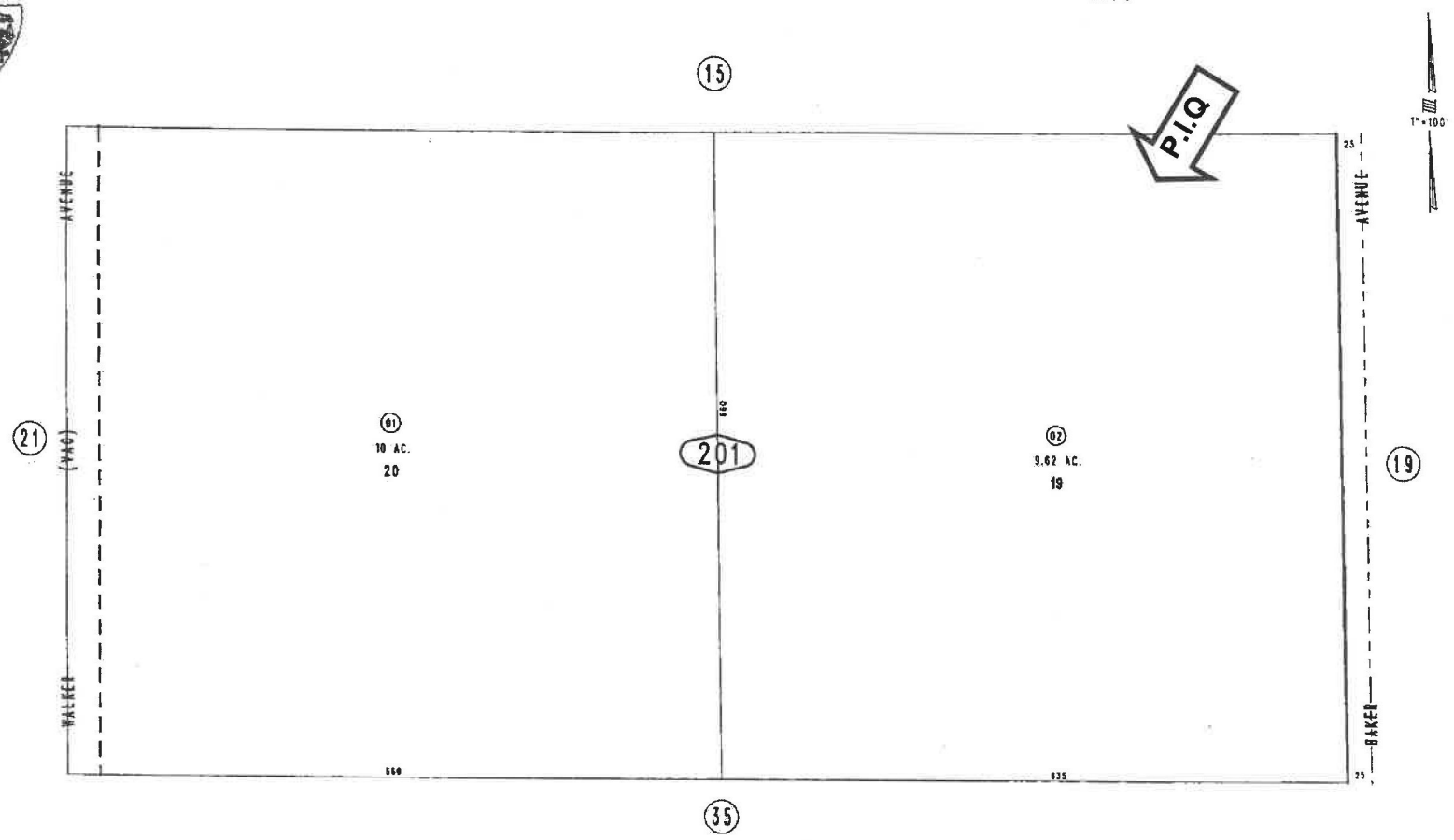
Exhibit "A" Continued

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

Ptn. Rancho Santa Ana Del Chino, M.B. 6/15

City of Ontario
Tax Rate Area
4073

1054 - 20



October 2004

Ptn. N.E.1/4, Sec.21
T.2S.,R.7W.

Assessor's Map
Book 1054 Page 20
San Bernardino County

REVISED

Exhibit "A" Continued

NP870A00 — SAN BERNARDINO COUNTY ASSESSOR — PAGE:132423

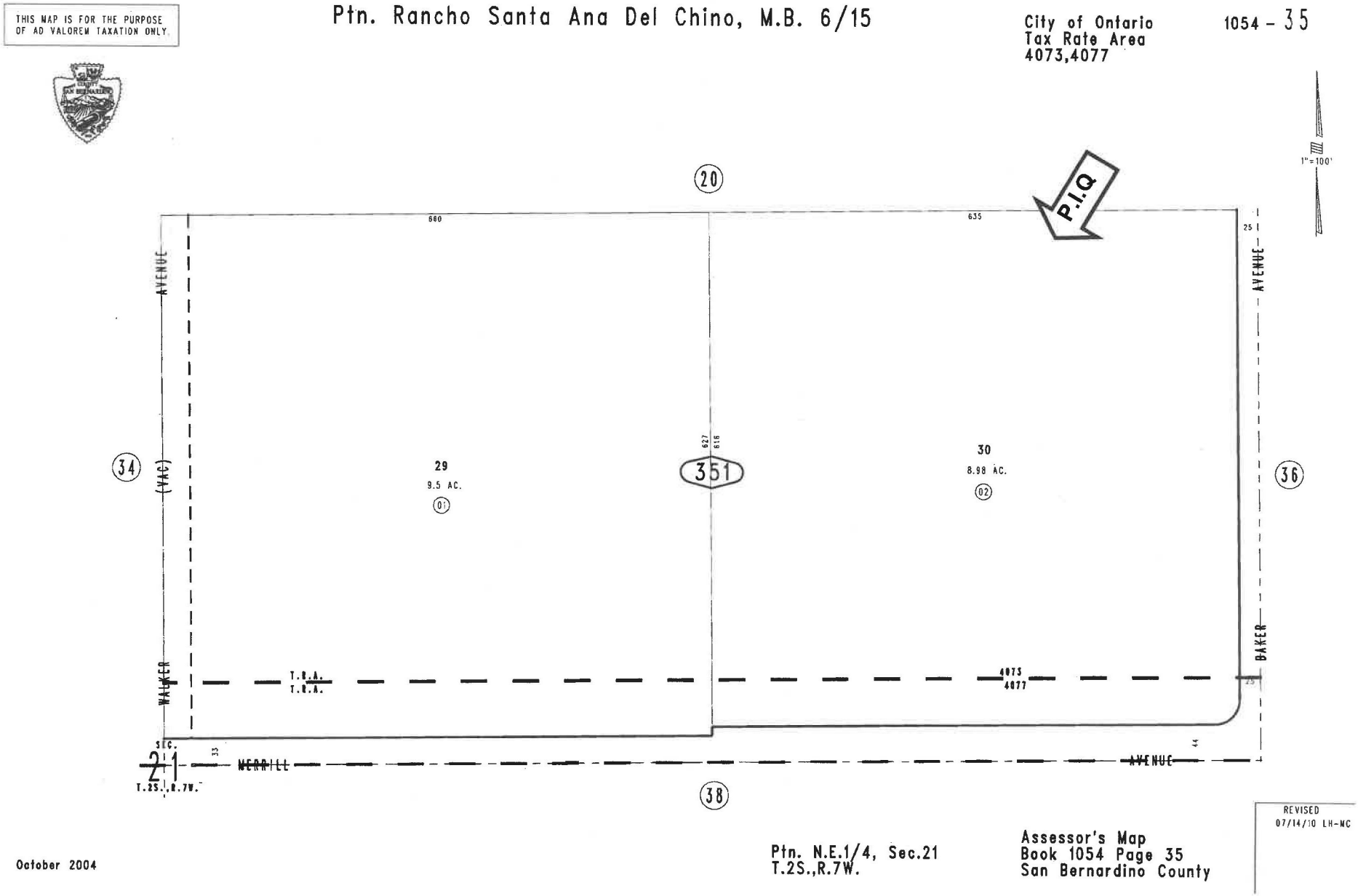
SECURED ASSESSMENT ROLL

2006 ASSESSMENT YEAR

BILLED OR JOINT OWNER PROPERTY ADDRESS AND LEGAL DESCRIPTION	TAX RATE AREA	PARCEL BOOK PAGE LINE & SEQUENCE	LAND	IMPROVEMENTS	PERSONAL PROPERTY	HOMEOWNERS EXEMPTION	SPECIAL EXEMPTIONS	TOTAL NET TAXABLE VALUE
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 27 SEC 21 TP 2S R 7W	4073	1054 341 01 0 000 DR= D BY1973	90191					90191
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 28 SEC 21 TP 2S R 7W AND W 1/2 WALKER AVE CLOSED ADJ ON E	4073	1054 341 02 0 000 DR= D BY1973	93742					93742
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 29 SEC 21 TP 2S R 7W AND E 1/2 WALKER AVE CLOSED ADJ ON W	4073	1054 351 01 0 000 DR= D BY1973	93742					93742
LEE, HENRIETTA C TR 8750 HILLCREST RD BUENA PARK CA 90621 RANCHO SANTA ANA DEL CHINO LOT 30 SEC 21 TP 2S R 7W EX ST AND EX 50 PERCENT MNL RTS	4073	1054 351 02 0 000 DR= D BY1973	64117					64117
MINABERRY FAMILY TRUST 3-14-85 C/O MINABERRY FAMILY LLC 8888 EUCALYPTUS AVE ONTARIO CA 91762 RANCHO SANTA ANA DEL CHINO LOT 31 SEC 21 TP 2S R 7W EX MNL RTS RESERVATION OF RECORD	4073	1054 361 01 0 000 DR= D BY2004	27968					27968
		PAGE TOTALS	369760					369760

FORM OF ASSESSMENT ROLL APPROVED BY THE STATE BOARD OF EQUALIZATION
PRELIMINARY ASSESSMENT ROLL PROPERTY OF THE COUNTY OF SAN BERNARDINO, CALIF.
PROPERTY ASSESSED PURSUANT TO CONSTITUTIONAL AND STATUTORY PROVISIONS
FOR DETAILED EXPLANATION OF ALL THE HEADINGS AND ENTRIES, SEE PAGE A.

Exhibit "A" Continued



October 2004

Ptn. N.E.1/4, Sec.21
T.2S.,R.7W.

Assessor's Map
Book 1054 Page 35
San Bernardino County

REVISED
07/14/10 LH-MC

Exhibit "A" Continued

NP870A00

SAN BERNARDINO COUNTY ASSESSOR
SECURED ASSESSMENT ROLL

PAGE:132414

2006 ASSESSMENT YEAR

BILLED OR JOINT OWNER PROPERTY ADDRESS AND LEGAL DESCRIPTION	TAX RATE AREA	PARCEL BOOK PAGE LINE & SEQUENCE	LAND	IMPROVMENTS	PERSONAL PROPERTY	HOMEOWNERS EXEMPTION	SPECIAL EXEMPTIONS	TOTAL NET TAXABLE VALUE
BORBA, JOSEPH A TR BORGBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 11 SEC 21 TP 2S R 7W	4073	1054 141 01 0 000 DR= D BY1973	80341					80341
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 12 SEC 21 TP 2S R 7W AND W 1/2 WALKER AVE CLOSED ADJ ON E	4073	1054 141 02 0 000 DR= D BY1973	98676					98676
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 13 SEC 21 TP 2S R 7W AND E 1/2 WALKER AVE CLOSED ADJ ON W	4073	1054 151 01 0 000 DR= D BY1973	98676					98676
LEE, HENRIETTA C TR 8750 HILLCREST RD BUENA PARK CA 90621 RANCHO SANTA ANA DEL CHINO LOT 14 SEC 21 TP 2S R 7W EX 50 PER CENT MNL RTS	4073	1054 151 02 0 000 DR= D BY1973	68615					68615
BORBA, JOSEPH A TR BORBA, DOLEEN TR 14545 S GROVE AVE CHINO CA 91710 RANCHO SANTA ANA DEL CHINO LOT 4 SEC 21 TP 2S R 7W AND E 1/2 WALKER AVE CLOSED ADJ ON W	4073	1054 161 01 0 000 DR= D BY1973	93742	491953				585695
		PAGE TOTALS	440050	491953				932003

FORM OF ASSESSMENT ROLL APPROVED BY THE STATE BOARD OF EQUALIZATION
PRELIMINARY ASSESSMENT ROLL PROPERTY OF THE COUNTY OF SAN BERNARDINO, CALIF.
PROPERTY ASSESSED PURSUANT TO CONSTITUTIONAL AND STATUTORY PROVISIONS
FOR DETAILED EXPLANATION OF ALL THE HEADINGS AND ENTRIES, SEE PAGE A.

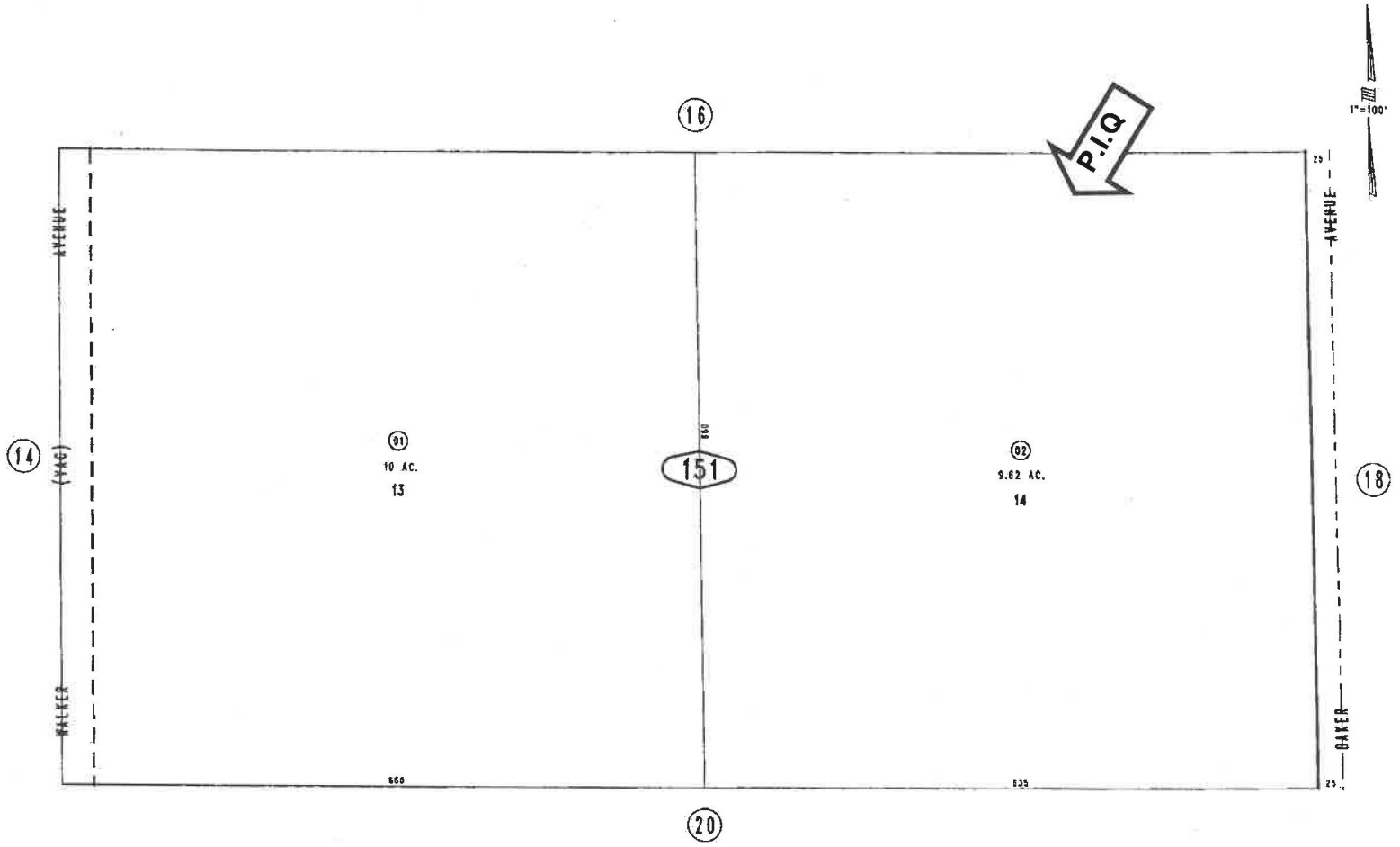
Exhibit "A" Continued

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

Ptn. Rancho Santa Ana Del Chino, M.B. 6/15

City of Ontario
Tax Rate Area
4073

1054 - 15



October 2004

Ptn. N.E.1/4, Sec.21
T.2S.,R.7W.

Assessor's Map
Book 1054 Page 15
San Bernardino County

REVISED

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **PUBLIC HEARINGS**
Department: Housing Prepared By: Katryna Gonzalez Department: Development Administration Prepared By: Derrick E Womble Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND ONTARIO EMPORIA II HOUSING PARTNERS, L.P. FOR THE DEVELOPMENT OF A 50-UNIT HOUSING DEVELOPMENT AND A GRANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO HOUSING AUTHORITY, IN AN AMOUNT NOT TO EXCEED $8,000,000, FOR APPROXIMATELY 2.15 ACRES OF LAND BORDERED BY TRANSIT STREET ON THE NORTH, FERN AVENUE ON THE WEST, EMPORIA STREET ON THE SOUTH, AND PALM AVENUE ON THE EAST.

RECOMMENDATION: That the City Council ("City") and the Board of the Ontario Housing Authority ("Authority"):

A. Adopt the attached resolutions approving the Disposition and Development Agreement ("Agreement") between the Authority and Ontario Emporia II Housing Partners, L.P. ("Developer") (on file with the Records Management Department); and
B. Approve a Grant Agreement ("Grant Agreement") between the City and the Authority, in an amount not to exceed $8,000,000 (on file with the Records Management Department); and
C. Authorize the City Manager/Executive Director or his designee to sign all documents necessary to implement the Agreements.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Developer will purchase the property from the Authority for appraised value, which is currently estimated to be $2,267,000.

The Authority will provide an estimated gap loan of $10,267,000. The loan amount will be finalized at the time of escrow closing and will be dependent upon the land appraisal amount. The Authority's gap loan is a residual receipt note that will be paid back over a 65-year term. The loan will provide funds for the acquisition of the land at a cost of $2,267,000 or appraised value. The land purchase price will be provided to the Developer in the form of a loan carryback. The land purchase principal will have an interest rate at the applicable federal rate that will be set at escrow closing. It is estimated that this interest rate will be approximately 3.25%. The remaining portion of the loan ($8,000,000) will have

zero percent interest rate.

The City's Grant Agreement to the Authority will not exceed $8,000,000 and will be funded from the following sources:

- California 2019 Budget Act Funds in the amount of $5,000,000;
- Local In-Lieu Fees in the amount of $2,263,985; and
- Permanent Local Housing Allocation (PLHA) Funds (SB2 Funds) in the amount of $736,015.

The City has available funding of $7,263,985 for the project and has been awarded PLHA funding in excess of $736,015. The PLHA funds will be available upon execution of the PLHA Grant Agreement with State of California. If the Developer is unable to secure tax credit funding or if the site remediation activities exceed $400,000, which are required for the development to proceed, the Authority will purchase from the Developer all of Developer's rights, title and interest in and to the predevelopment documents at a cost of $400,000.

BACKGROUND & ANALYSIS: The Emporia Phase II Multifamily Development ("Development") is located on approximately 2.15 acres of land, containing a one-block area bordered by Transit Street on the north, Fern Avenue on the west, Emporia Street on the south, and Palm Avenue on the east, an adjacent parking area on the south side of Emporia Street, and a portion of Fern Avenue between Emporia Street and Transit Street that is planned to be vacated as part of the Development. The area is shown on Exhibit A.

The Development offers an opportunity to continue Ontario's efforts to revitalize downtown Ontario with new "urban" high-density units. The Ontario Plan ("TOP") identifies this area as the Downtown Mixed Use District. The Downtown Mixed Use District vision is intended to create an intensive mixture of retail, office, and residential uses in a pedestrian friendly atmosphere, while ensuring that the historic character of the district is enhanced, and concentrating the most intense/dense development along Euclid Avenue and Holt Boulevard. The Development is an extension of the Emporia Place Multifamily Development and is ideally located to provide additional high density residential units next to local shopping, public transportation, and other amenities that will enhance the quality of life for future residents.

The Development will result in the construction of 50 affordable rental housing units for extremely low-, very low-, and low-income families. All of the units in the proposed development will remain affordable for a 55-year period, as required under federal tax credit guidelines. A breakdown of the current fiscal year rent schedule and unit mix is attached as Exhibit B. Rent increases are allowed to be adjusted annually by the percentage increase in incomes established by the U.S. Department of Housing and Urban Development ("HUD") for the San Bernardino Metropolitan Statistical Area.

The developer is Ontario Emporia II Housing Partners, L.P., an affiliate of Related California, located in Irvine, California. Related California ("Developer") has a 30-year history of delivering mixed-income and mixed-use developments across California. The company has developed over 16,000 housing units within California with a history of long-term ownership.

Financing of the Development is expected to utilize the Federal Low-Income Housing Tax Credit ("LIHTC") program as a primary source of project funding. This program is administered by the California Tax Credit Allocation Committee ("CTCAC") with tax credits (sold to fund project equity) allocated through a complex, competitive process. Applications for the federal income tax credit

program are due on July 1, 2021. The award of funds will be announced during September 2021. If an allocation of tax credits is awarded, the Developer estimates construction will begin no later than March 2022, and would be completed within approximately 14 months from the start of construction. However, if unsuccessful in receiving an allocation this round, the Developer will have up to three additional opportunities to submit an application for tax credits. After completion of the project, Agency staff will monitor the Development annually to certify that rents remain affordable and that the project is being properly maintained.

The estimated total development construction cost is $26,529,272. The following is a breakdown of the permanent funding sources for the Development: Tax Credit Equity ($14,813,272), Private Financing ($1,449,000), and Authority Gap Loan ($10,267,000). The repayment of the Authority gap loan will be paid through the distribution of the net cash flow. The Authority will receive 75% of the cash flow for loan repayment and the remaining 25% will be retained by the Developer. The Developer will be required to provide an independent audit at the conclusion of the construction. Any cost savings, less $15,000, which will be retained by the Developer to fund an operating reserve, will be paid to the Authority as a special repayment of the Authority Subordinate Loan Note.

The Development has been designed with the highest level of architectural features that will match the character and style of the Emporia Place Development to provide exceptional benefits to the City. A reciprocal use agreement will be executed with Emporia Place to share common amenities, such as the property manager's office, community center, BBQ area, and recreation spaces. The Phase II Development's amenities include an additional clubhouse along with outdoor amenities such as a swimming pool, teen area, and BBQ area. Copies of the proposed site plan and architectural elevations are attached as Exhibit C.

The Developer will continue its contract with EngAGE to include residents of the Phase II Development to provide social services at the site that include a robust afterschool arts program in addition to a children's afterschool tutoring program and adult programming. EngAGE has more than a 20-year track record in providing arts and lifelong learning, community building, and intergenerational programs to thousands of seniors and families living in affordable senior and family apartment communities in California, Oregon, and Minnesota.

The project will provide for an initial marketing preference for Ontario residents and those currently employed by Ontario businesses.

The site contains two standing buildings, located at 201-215 South Fern Avenue and 310 West Emporia Street. The Developer is responsible for demolition of these structures. A portion of the Authority Gap Loan in an amount not to exceed $400,000 will be used for remediation costs related to demolition and hazardous materials abatement.

Environmental Review:

The environmental impacts of this project were previously reviewed in conjunction with a Planned Unit Development, File No. PUD17-001, to establish development standards and guidelines to facilitate the future development of a high density residential apartment project at a density of approximately 25.4 dwelling units per acre on this site. An Addendum to The Ontario Plan Environmental Impact Report (SCH No. 2008101140) was adopted by the City Council on May 16, 2017. This proposed project does not contemplate any actions that would require the preparation of a subsequent or supplemental environmental document under State CEQA Guidelines section 15162, 15163, and 15164. The proposed project is consistent with the development scenarios identified and analyzed within the EIR and no further CEQA environmental review is required. Specifically: (1) execution of the Disposition

and Development Agreement (DDA) will not result in substantial changes in the project which will require major revisions of the TOP EIR; (2) no substantial changes have occurred with respect to the circumstances under which the project is undertaken requiring major revisions of the TOP EIR have occurred; and (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the TOP EIR was certified has come to light.

EXHIBIT A

PROJECT SITE



Not to Scale

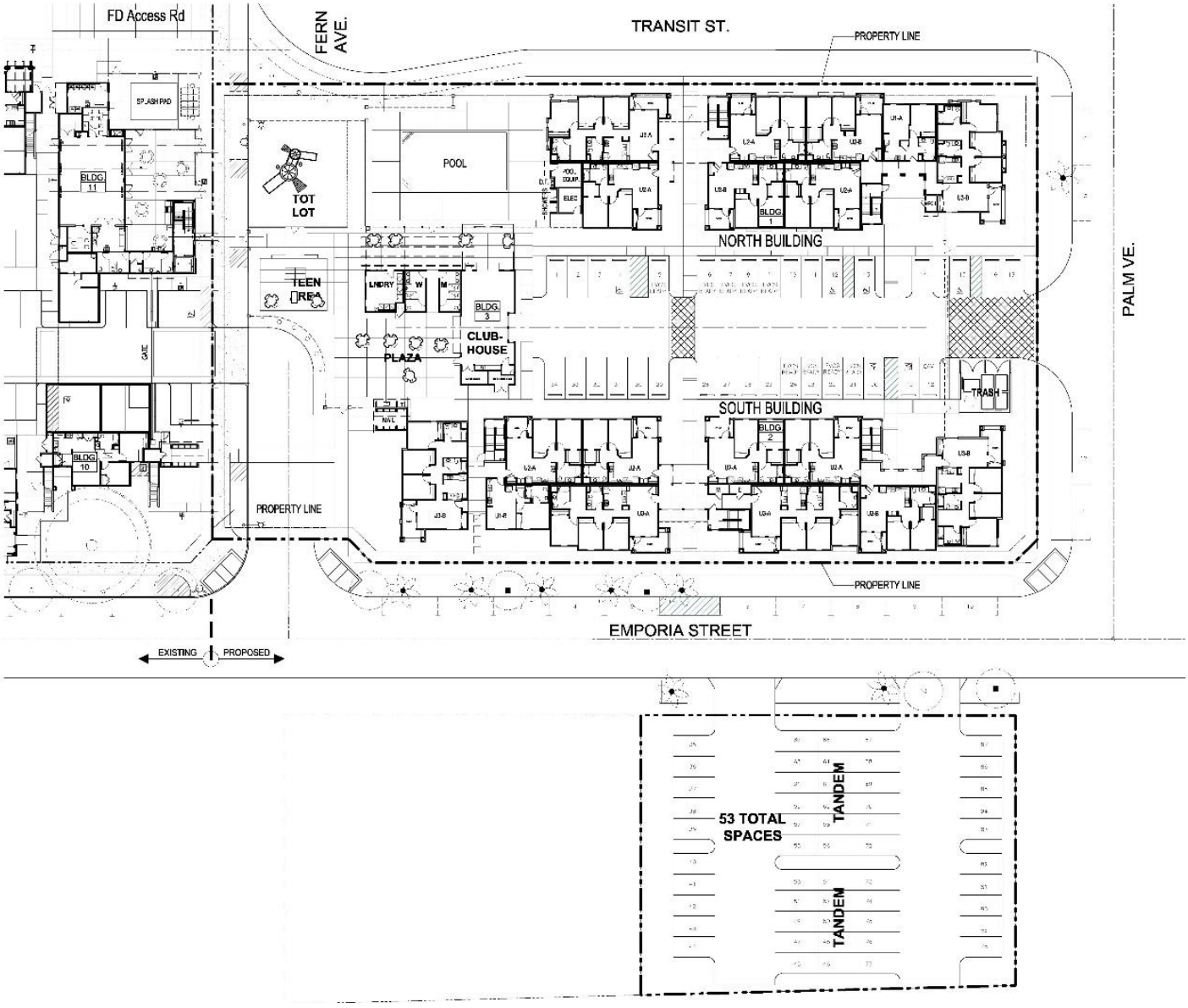
EXHIBIT B

UNIT DISTRIBUTION

Emporia II Multifamily Affordability Restrictions and Net Rents				
	1 BR	**2 BR**	**3 BR**	**Total Units**
30% of AMI Units				
# of Units	0	3	2	**5**
Est. Net Rent	N/A	$433	$496	
40% of AMI Units				
# of Units	2	6	2	**10**
Est. Net Rent	$505	$603	$692	
50% of AMI Units				
# of Units	2	9	4	**15**
Est. Net Rent	$645	$771	$887	
60% of AMI Units				
# of Units	2	10	7	**19**
Est. Net Rent	$787	$941	$1,083	
Property Manager Unit		1		**1**
TOTAL UNITS	**6**	**29**	**15**	**50**
Rents and income limits are subject to change annually				

EXHIBIT C

SITE PLAN AND ELEVATIONS





VIEW 1 - COMMUNITY BUILDING AND SWIMMING POOL





VIEW 2 - VIEW FROM CORNER OF TRANSIT ST. AND PALM AVE.



VIEW 4 - VIEW FROM CORNER OF EMPORIA ST. AND PALM AVE.



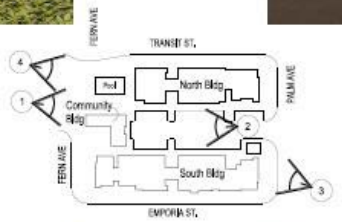
VIEW 3 - VIEW FROM PALM AVE. TOWARD PARKING LOT



VIEW 1 - COMMUNITY BUILDING AND SOUTH BUILDING



VIEW 2 - VIEW FROM PARKING LOT TOWARD COMMUNITY BUILDING





VIEW 4 - BIRD'S EYE VIEW



VIEW 3 - BIRD'S EYE VIEW

RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND ONTARIO EMPORIA II HOUSING PARTNERS, L.P., FOR DEVELOPMENT OF A MULTIFAMILY, RENTAL HOUSING PROJECT AND MAKING CERTAIN FINDINGS IN SUPPORT THEREOF (APNS: 1049-054-02, 1049-054-03, 1049-054-04, 1049-054-06, 1049-059-06, AND 1049-059-07).

WHEREAS, the Ontario Housing Authority, a California public agency ("Authority"), currently owns certain real property generally located between Transit Street and Emporia Street and Fern Avenue and Laurel Avenue and more specifically described in Exhibit A attached to this Resolution and incorporated herein by this reference ("Property"); and

WHEREAS, the Authority proposes to enter into a certain Disposition and Development Agreement (the "DDA"), dated as of April 20, 2021, with Ontario Emporia II Housing Partners, L.P. (the "Developer"), pursuant to which (a) the Authority would sell to Developer the Property, and (b) the Developer will develop thereon an approximately 50-unit, multifamily, affordable, rental housing project (the "Project"); and

WHEREAS, a limited partnership in which the general partner of Partnership served as a general partner (the "Phase I Partnership") was the developer of an affordable housing development commonly known as Ontario Emporia Place I, located on 220 S. Fern Ave., in the City of Ontario ("Ontario Emporia Phase I"); and

WHEREAS, the Project is consistent with the Housing Element of the General Plan of the City of Ontario and with the City's Consolidated Plan; and

WHEREAS, on April 6, 2021 and April 13, 2021, the Authority published notice of the public hearing to consider the disposition of the Property pursuant to the DDA; and

WHEREAS, Developer's proposed acquisition of the Property and the Developer's anticipated construction of the Project on the Property in accordance with the terms of the DDA, are in the best interest of the Authority and of the health, safety and welfare of the residents of the City, and are in accordance with the public purposes set forth in applicable law. Implementation of the DDA will further the goals and objectives of the City's general plan and the goals and objectives of the Authority by creating new, high quality affordable housing in the City, and completing the second phase of a two phased affordable housing project; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), the City of Ontario, on May 16, 2017, certified that certain Addendum to The Ontario Plan Environmental Impact Report (the "EIR"); and

WHEREAS, (a) the environmental impacts of the Project were previously reviewed by the City of Ontario in conjunction with a Planned Unit Development File No. PUD17-001, to establish development standards and guidelines to facilitate the future development of a high-density residential apartment project at a ratio of approximately 25.4 dwelling units per acre on this site; (b) this Project does not contemplate any actions that would require the preparation of a subsequent or supplemental environmental document under State CEQA Guidelines; and (c) the proposed Project is consistent with the development scenarios identified within the EIR and no further CEQA review is required; and

WHEREAS, Authority has reviewed the EIR and duly considered all of the terms and conditions of the DDA and believes that the Project is in the best interests of the City of Ontario and the health, safety, morals and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and local law and requirements.

NOW, THEREFORE, THE AUTHORITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings. The Authority intends to sell the Property to Developer in accordance with the terms of the DDA, and based on the Recitals and all other information and testimony provided, the Authority Board finds and determines that the sale and development of the Property pursuant to the DDA will provide housing for very low and low-income persons and is consistent with Authority's obligations under the California Housing Authority Law, and any obligations under the former California Redevelopment Law.

SECTION 3. Hearing. In accordance with California Health and Safety Code Section 33431, and California Health and Safety Code Section 34312.3 (the Housing Authority law) a duly noticed public hearing was held by the Authority on April 20, 2021.

SECTION 4. CEQA. The Authority finds that the Project will not cause significant environmental impacts not considered by the EIR.

SECTION 5. Notice of Determination. The Executive Director is hereby (a) directed to file a Notice of Determination for the Project under CEQA, and (b) also authorized to take such actions and execute such documents and instruments as he deems necessary or desirable for implementation of the DDA.

SECTION 6. Approval of Agreement. The Authority Board hereby approves the DDA, a copy of which is on file with the Secretary of the Authority, subject to any non-substantive revisions which do not increase the Authority's liability and are approved by the Authority counsel, and authorizes the Executive Director to sign and enter into the DDA and perform the obligations of the Authority under the DDA.

SECTION 7. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Authority declares that the Authority would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption.

The Secretary of the Ontario Housing Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____
PAUL S. LEON, CHAIRMAN

ATTEST:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

APPROVED AS TO FORM:

_____
AUTHORITY COUNSEL

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

I, SHEILA MAUTZ, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA- was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held April 20, 2021 by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OHA duly passed and adopted by the Ontario Housing Authority at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

EXHIBIT “A”
LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: LOTS 4, 5, 8 AND 9, BLOCK 58, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 9, PAGE 43 OF MAPS, RECORDS OF SAID COUNTY. EXCEPTING THE NORTH 3.25 FEET AS CONVEYED TO THE CITY OF ONTARIO, BY DEED RECORDED MAY 13, 1958 IN BOOK 4507, PAGE 433 OFFICIAL RECORDS OF SAN BERNARDINO COUNTY. APN: 1049-054-02-0-000

PARCEL 2: THE NORTH 60 FEET OF LOTS 1, 2 AND 3, BLOCK 58, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 9, PAGE 43 OF MAPS, RECORDS OF SAID COUNTY. APN: 1049-054-03-0-000

PARCEL 3: LOTS 6 AND 7, IN BLOCK 58, TOWN OF ONTARIO, AS PER PLAT RECORDED IN BOOK 9, PAGE 43 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, PURSUANT TO THAT CERTAIN CERTIFICATE APPROVING LOT LINE ADJUSTMENT NO. L-78-4, RECORDED JULY 06, 1978 IN BOOK 9468, PAGE 1350 OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: PORTIONS OF BLOCK 58, TOWN OF ONTARIO, AS PER PLAT RECORDED IN BOOK 9, PAGE 43 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY. BEGINNING AT THE NORTHWEST CORNER OF LOT 6 OF THE ABOVE DESCRIBED BLOCK, THENCE EASTERLY TO THE NORTHEAST CORNER OF SOUTH LOT 6, THENCE SOUTHERLY 210 FEET TO THE SOUTHEAST CORNER OF LOT 7 OF SAID BLOCK, THENCE WESTERLY TO THE SOUTHWEST CORNER OF SOUTH LOT 7, THENCE NORTHERLY 210 FEET TO THE POINT OF BEGINNING. APN: 1049-054-06-0-000

PARCEL 4: THAT PORTION OF BLOCK “B”, IN THE TOWN OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED I BOOK 9, PAGE 43 OF MAPS, RECORDS OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF EMPORIA AVENUE 40.6 FEET WEST OF THE EAST LINE OF SAID BLOCK “B” (THE SAME BEING 364 FEET WEST OF THE WEST LINE OF LAUREL AVENUE); RUNNING THENCE WEST ON THE SOUTH LINE OF EMPORIA AVENUE 52 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK “B” 118 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILWAY COMPANY; THENCE EAST ON SAID NORTH LINE 52 FEET, MORE OR LESS TO A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH TO THE POINT OF BEGINNING. APN: 1049-059-07-0-000

PARCEL 5: LOTS 1, 2, 3, 10, 11 AND 12, IN BLOCK 58, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 9, PAGE 43 OF MAPS, RECORDS OF SAID COUNTY. SAVING AND EXCEPTING THE NORTH 60 FEET OF LOTS 1, 2 AND 3. APN: 1049-054-04-0-000

PARCEL 6: THAT PORTION OF BLOCK "B", AS SHOWN ON THE MAP OF TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 9, PAGE 43, OF MAPS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF EMPORIA AVENUE, 50 FEET EAST OF THE WEST LINE OF BLOCK "B"; THENCE EAST ALONG THE SOUTH LINE OF EMPORIA AVENUE, 213.8 FEET TO A POINT 92.6 FEET WEST OF THE EAST LINE OF SAID BLOCK "B"; THENCE SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID BLOCK "B" 118 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF THE SOUTHERN PACIFIC RAILWAY RIGHT OF WAY; THENCE WESTERLY ALONG THE NORTH LINE OF SAID RIGHT OF WAY 214 FEET; MORE OR LESS TO A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH ON A LINE PARALLEL WITH AND 50 FEET EAST OF THE WEST LINE OF SAID BLOCK, TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THE WESTERLY 103.8 FEET. APN: 1049-059-06-0-000

RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THAT CERTAIN CITY GRANT AGREEMENT [EMPORIA PHASE II MULTIFAMILY DEVELOPMENT] CONCERNING THE GRANT OF STATE AND DEVELOPER IN-LIEU FEE FUNDS TO THE ONTARIO HOUSING AUTHORITY FOR THE EMPORIA PHASE II AFFORDABLE HOUSING PROJECT.

WHEREAS, the City of Ontario ("City") has received the following funds from the State of California: California 2019 Budget Act Funds in the amount of $5,000,000, and Permanent Local Housing Allocation Funds (SB2 funds) in the amount of $736,015.

WHEREAS, in addition, the City has collected Local In-Lieu Fees from developers in the amount of $2,263,985.

WHEREAS, the Ontario Housing Authority ("Authority") is owner or will acquire certain real property in the City comprised of 2.153 acres of land located along the south side of West Transit Street, the north side of West Emporia Street, the east side of Fern Avenue, and the west side of South Palm Ave, as well as two additional parcels to the south side of W. Emporia Street near the intersection with S. Palm Avenue (the "Property").

WHEREAS, the Authority has negotiated the terms of a Disposition and Development Agreement ("DDA") with Ontario Emporia II Housing Partners, L.P. ("Developer") setting forth the terms for the transfer of the Property to Developer and the development of a 50-unit affordable housing development (the "Development").

WHEREAS, the City desires to develop and support affordable rental housing, and stabilize the community through the grant of the funds described herein.

WHEREAS, the City wishes to extend to the Authority financial assistance in the form of a grant (the "Grant") from the following funding sources, and in the following sums: California 2019 Budget Act Funds in the amount of $5,000,000, the Permanent Local Housing Allocation Funds (SB2 funds) in the amount of $736,015 and the Local In-Lieu Fees in the amount of $2,263,985 (collectively, the "Funds").

WHEREAS, the City desires to make the Grant in accordance with the terms and conditions set forth in the City Grant Agreement [Emporia Phase II Multifamily Development] included in the agenda documents accompanying this Resolution, and the Authority desires to receive the Grant from the City.

NOW, THEREFORE, BE IT RESOLVED by the Ontario Housing Authority as follows:

SECTION 1. Recitals. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Approval of City Grant Agreement [Emporia Phase II Multifamily Development]. The Authority hereby approves the City Grant Agreement [Emporia Phase II Multifamily Development] in the form on file at the Offices of the Authority.

SECTION 3. Authorization. The Authority hereby authorizes the Executive Director (with the concurrence of the Authority Counsel) to execute and deliver on behalf of the Authority the agreement referenced herein, with such changes as may be authorized by the Authority Counsel, and such other documents and instruments as may be necessary or convenient in the furtherance of the actions authorized in this Resolution.

SECTION 4. Direction. Authority staff is hereby directed to do all that is necessary to effectuate the intent of this Resolution.

SECTION 5. CEQA Compliance. The Authority has determined that it can be seen with certainty that there is no possibility that approval of the actions authorized under this Resolution will have a significant adverse effect on the environment. Thus, the adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 6. Certification. The Authority Secretary shall certify the adoption of this Resolution.

SECTION 7. Effective Date. This Resolution shall become effective upon its adoption.

The Secretary of the Ontario Housing Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____
PAUL S. LEON, CHAIRMAN

ATTEST:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

APPROVED AS TO FORM:

_____
AUTHORITY COUNSEL

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

I, SHEILA MAUTZ, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA- was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held April 20, 2021 by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OHA duly passed and adopted by the Ontario Housing Authority at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THAT CERTAIN CITY GRANT AGREEMENT [EMPORIA PHASE II MULTIFAMILY DEVELOPMENT] CONCERNING THE GRANT OF STATE AND DEVELOPER IN-LIEU FEE FUNDS TO THE ONTARIO HOUSING AUTHORITY FOR THE EMPORIA PHASE II AFFORDABLE HOUSING PROJECT.

WHEREAS, the City of Ontario ("City") has received the following funds from the State of California: California 2019 Budget Act Funds in the amount of $5,000,000, and Permanent Local Housing Allocation Funds (SB2 funds) in the amount of $736,015.

WHEREAS, in addition, the City has collected Local In-Lieu Fees from developers in the amount of $2,263,985.

WHEREAS, the Ontario Housing Authority ("Authority") is owner or will acquire certain real property in the City comprised of 2.153 acres of land located along the south side of West Transit Street, the north side of West Emporia Street, the east side of Fern Avenue, and the west side of South Palm Ave, as well as two additional parcels to the south side of W. Emporia Street near the intersection with S. Palm Avenue (the "Property").

WHEREAS, the Authority has negotiated the terms of a Disposition and Development Agreement ("DDA") with Ontario Emporia II Housing Partners, L.P. ("Developer") setting forth the terms for the transfer of the Property to Developer and the development of a 50-unit affordable housing development (the "Development").

WHEREAS, the City desires to develop and support affordable rental housing, and stabilize the community through the grant of the funds described herein.

WHEREAS, the City wishes to extend to the Authority financial assistance in the form of a grant (the "Grant") from the following funding sources, and in the following sums: California 2019 Budget Act Funds in the amount of $5,000,000, the Permanent Local Housing Allocation Funds (SB2 funds) in the amount of $736,015 and the Local In-Lieu Fees in the amount of $2,263,985 (collectively, the "Funds").

WHEREAS, the City desires to make the Grant in accordance with the terms and conditions set forth in the City Grant Agreement [Emporia Phase II Multifamily Development] included in the agenda documents accompanying this Resolution, and the Authority desires to receive the Grant from the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario ("City Council") as follows:

SECTION 1. Recitals. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Approval of City Grant Agreement [Emporia Phase II Multifamily Development]. The City Council hereby approves the City Grant Agreement [Emporia Phase II Multifamily Development] in the form on file at the Offices of the City.

SECTION 3. Authorization. The City Council hereby authorizes the City Manager (with the concurrence of the City Attorney) to execute and deliver on behalf of the City the agreement referenced herein, with such changes as may be authorized by the City Attorney, and such other documents and instruments as may be necessary or convenient in the furtherance of the actions authorized in this Resolution.

SECTION 4. Direction. City staff is hereby directed to do all that is necessary to effectuate the intent of this Resolution.

SECTION 5. CEQA Compliance. The City has determined that it can be seen with certainty that there is no possibility that approval of the actions authorized under this Resolution will have a significant adverse effect on the environment. Thus, the adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 6. Certification. The City Clerk shall certify the adoption of this Resolution.

SECTION 7. Effective Date. 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 20th day of April 2021.

_____
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. 2021- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 20, 2021 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. 2021- duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **PUBLIC HEARINGS**
Department: Housing Prepared By: Katryna Gonzalez Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND UNITED INVESTMENT GROUP, LLC, FOR THE DEVELOPMENT OF TWO SINGLE-FAMILY HOUSING UNITS LOCATED AT 1004 SOUTH EUCLID AVENUE (APN: 1049-563-10)

RECOMMENDATION: That the Board of the Ontario Housing Authority ("Authority") adopt the attached resolution approving the Disposition and Development Agreement ("Agreement") between the Authority and United Investment Group LLC ("Developer") (on file with the Records Management Department) and authorize the Executive Director or his designee to sign all documents necessary to implement the Agreement.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Developer will purchase the property from the Authority for the fair market appraised value of $171,000. The sales price is supported by an independent appraisal completed by a certified general appraiser.

BACKGROUND & ANALYSIS: The property at 1004 South Euclid Avenue is located at the southwest corner of Euclid Avenue and Maitland Street and consists of 0.302 acres (13,146 square feet) of vacant land. The site is currently owned by the Ontario Housing Authority. The Development will result in the construction of two single-family homes. The completed units will be sold to homebuyers at market prices.

The land will be sold to the Developer based on the appraised market value and the Developer is responsible for all project financing. Funds from the sale will be considered Authority funds and will be used for future development of affordable housing.

The Developer is progressing through the entitlements process and will be required to construct the project in accordance with City guidelines and requirements. The Agreement allows the Developer 90 days to complete due diligence investigations for the site prior to close of escrow and allows 12 months to complete construction after the close of escrow. The Agreement may not be transferred or assigned without prior approval from the Authority. The Development is estimated to be completed by September 2022.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA DORST-PORADA
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

2021 DISPOSITION AND DEVELOPMENT AGREEMENT (1004 SOUTH EUCLID AVENUE)

between

ONTARIO HOUSING AUTHORITY
a public body, corporate and politic

and

UNITED INVESTMENT GROUP LLC
a California limited liability company

April 20, 2021

This 2021 DISPOSITION AND DEVELOPMENT AGREEMENT (1004 South Euclid Avenue) ("**Agreement**") is dated as of April 20, 2021 ("**Date of Agreement**"), for reference purposes only, and is entered into by and between Ontario Housing Authority, a public body, corporate and politic (the "**Authority**"), and United Investment Group LLC, a California limited liability company ("**Developer**"). The Authority and the Developer are sometimes referred to in this Agreement, each individually, as a "**Party**," or collectively, as the "**Parties**."

RECITALS

This Agreement is entered into with reference to the following recitals of fact ("**Recitals**") that Authority and Developer believe to be true as of the Effective Date of this Agreement:

A. The Authority is the owner of that certain real property located at 1004 South Euclid Avenue, Ontario (Assessor Parcel No. 1049-563-10) and more specifically described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**")

B. As of October 28, 2020, the Authority approved an exclusive right to negotiate an agreement with the Developer for potential development of the Property. The Developer proposed the acquisition and redevelopment of the Property as a housing development.

C. The Developer's proposed acquisition of the Property and subsequent construction and completion of the Project (as defined in Section 1.1.57) on the Property pursuant to the terms of this Agreement is in the best interest of the Authority and the health, safety and welfare of the City's taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City's general plan by: (i) strengthening the City's land use and social structure, (ii) increasing the housing supply; and (iii) alleviating economic and physical blight on the Property and in the surrounding community.

D. The Authority desires to sell the Property to the Developer for the development of the Project and the Developer desires to purchase the Property from the Authority for the same purpose.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Authority and Developer, the Parties agree as follows:

TERMS AND CONDITIONS

ARTICLE I

DEFINITIONS; REPRESENTATIONS AND WARRANTIES; EFFECTIVE DATE

1.1 Definitions. All initially capitalized terms not otherwise defined in this Agreement shall have the following meanings:

1.1.1 "**Additional Insureds**" has the meaning ascribed to such term in Section 5.7.

1.1.2 **"Affiliate"** means and refers to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise.

1.1.3 "**Authority**" means Ontario Housing Authority, a public body, corporate and politic.

1.1.4 "**Authority's Title Notice Response**" means the written response of the Authority to the Developer's Title Notice, in which the Authority either (i) elects to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer's Title Notice, or (ii) elects not to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer's Title Notice.

1.1.5 "**CEQA**" means the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

1.1.6 "**CEQA Documents**. Any exemption determination, any Negative Declaration (mitigated or otherwise), or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to CEQA, for Authority to perform this Agreement or issue any approval.

1.1.7 **Certificate of Completion**" means the written certification of Authority that the construction of the Project has been completed in compliance with the terms and conditions of this Agreement, substantially in the form of Exhibit G attached to this Agreement.

1.1.8 "**City**" means the City of Ontario, a municipal corporation.

1.1.9 "**City Requirements**" has the meaning ascribed to the term in Section 2.6.1.

1.1.10 "**Close of Escrow**" or "**Closing**" means the recording of the Grant Deed for the Property in the Official Records of the Recorder of the County, and completion of each of the actions set forth in ARTICLE III by the Escrow Holder for the Authority to sell the Property to the Developer and the Developer to purchase the Property from the Authority.

1.1.11 "**Completion of Construction**" means the issuance of a Certificate of Completion confirming that the final certificate of occupancy for the Project, based on the plans submitted by the Developer to the Authority, has been issued.

1.1.12 "**Construction Costs**" means the total cost incurred by Developer in acquiring the Property and constructing the Project in accordance with this Agreement.

1.1.13 "**Construction Lender**" means a Lender(s) that provide(s) a Construction Loan to the Developer to pay the Construction Costs of all or a portion of the Project.

1.1.14 "**Construction Loan**" means a Loan obtained by Developer from a Construction Lender to finance all or part of the Construction Costs in conformity with the Financing Plan.

1.1.15 "**Construction Loan Deed of Trust(s)**" means the Lien(s) required by a Construction Lender to secure the Developer's performance under the associated Construction Loan.

1.1.16 **"Control"** means and refers to possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise.

1.1.17 **"Controlling"** and **"Controlled"** mean and refer to exercising or having Control.

1.1.18 "**County**" means the County of San Bernardino, California.

1.1.19 "**Developer's Title Notice**" means a written notice from the Developer to the Authority indicating the Developer's acceptance of the state of the title to the Property, as described in the Preliminary Report, or the Developer's objection to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Property, describing in suitable detail the actions that the Developer reasonably believes are indicated to cure or correct each of the Developer's objections.

1.1.20 "**Developer's Title Notice Waiver**" means a written notice from the Developer to the Authority waiving the Developer's previous objection in the Developer's Title Notice to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Property.

1.1.21 "**Due Diligence Investigations**" means the Developer's due diligence investigations of the Property to determine the suitability of the Property for development and operation of the Project, including, without limitation, investigations of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of the Developer, all at the sole cost and expense of the Developer.

1.1.22 "**Due Diligence Investigation Conclusion Notice**" means a written notice of the Developer delivered to the Authority and the Escrow Holder, prior to the end of the Due Diligence Period, indicating the Developer's acceptance of the condition of the Property or indicating the Developer's rejection of the condition of the Property and refusal to accept a conveyance of fee title to the Property, describing in reasonable detail the actions that the Developer reasonably believes are indicated to allow the Developer to accept the condition of the Property.

1.1.23 "**Due Diligence Period**" means the date commencing on the Effective Date and ending at 5:00 p.m. on the ninetieth (90th) day following the Effective Date.

1.1.24 "**Earnest Money Deposit**" means Seventeen Thousand, One Hundred Dollars ($17,100) payable in cash or other immediately available funds.

1.1.25 "**Effective Date**" has the meaning ascribed to the term in Section 1.3.

1.1.26 **"ENA"** means the Exclusive Negotiation Agreement (1004 South Euclid Avenue) dated October 28, 2020, by and between Authority and United Investment Group LLC, a California limited liability company.

1.1.27 **[Reserved.]**

1.1.28 "**Environmental Claims**" has the meaning ascribed to the term in Section 5.6.

1.1.29 "**Environmental Laws**" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability of standards of conduct concerning any hazardous substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.1.30 "**Environmental Matters**" has the meaning ascribed to the term in Section 5.6.

1.1.31 "**Escrow**" has the meaning ascribed to the term in Section 2.1.

1.1.32 "**Escrow Closing Date**" has the meaning ascribed to the term in Section 3.6.

1.1.33 "**Escrow Holder**" means Stewart Title Company.

1.1.34 "**Escrow Opening Date**" has the meaning ascribed to the term in Section 3.1.

1.1.35 "**Event of Default**" has the meaning ascribed to the term in Section 7.1.

1.1.36 "**Executive Director**" means the Executive Director of the Authority or his or her designee or successor in function.

1.1.37 "**Financing Commitment**" means (a) one or more commitment(s) from one or more Construction Lender(s) agreeing to provide sufficient funds which, when combined with the Developer's equity contribution, is sufficient, as determined by the Authority in its reasonable discretion, to fully fund the Project's Construction Costs, or (b) a letter from one or more Construction Lender(s) indicating approval of a loan to the Developer for the development of the Property.

1.1.38 "**FIRPTA Affidavit**" means an affidavit complying with Section 1445 of the United States Internal Revenue Code.

1.1.39 "**Grant Deed**" means a deed in the form of Exhibit D to this Agreement, conveying all of the Authority's interest in the Property to the Developer.

1.1.40 "**Governmental Agency**" means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

1.1.41 "**Governmental Requirements**" means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency.

1.1.42 "**Hazardous Substances**" means, without implied limitation, substances defined as "hazardous substances," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminate" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.; the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code or, as "hazardous substances" in Section 25316 of the California Health and Safety Code; other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or

regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 USC Section 1321 or listed pursuant to 33 USC Section 1317.

1.1.43 "**Indemnified Parties**" has the meaning ascribed to the term in Section 5.6.

1.1.44 "**Lender**" means any state or federally chartered bank, savings and loan, capital investment group, or other third party financial institution which routinely makes Loans to developments and developers such as the Project and the Developer in the normal course of business and which has been approved by the Authority pursuant to Section 6.3.

1.1.45 "**Lien**" means any mortgage, deed of trust, or other security instrument encumbering Developer's fee interest in the Property and/or Project, or any part thereof, or any pledge or other agreement given as security for the repayment of a Loan and by which a Lender would be able to acquire any interest in the Developer upon the Developer's breach of any obligation under the Lender's Loan Documents.

1.1.46 "**Loan**" means any loan or third party equity/capital contribution (e.g. mezzanine financing) for the Project.

1.1.47 "**Loan Documents**" means the various documents and instruments made by and between the Developer and a Lender that evidence a Loan and the security for repayment of such Loan.

1.1.48 "**Maintenance Deficiency**" has the meaning ascribed to the term in Section 5.1.

1.1.49 "**Normal Business Hours**" means the normal business hours of the Authority. As of the Effective Date, the Authority's normal business hours are Monday through Thursday, between the hours of 7:30 a.m. and 5:30 p.m. Pacific Time.

1.1.50 "**Notice of Agreement**" means the notice in the form of Exhibit E to this Agreement to be recorded against the Property at the Close of Escrow to provide constructive record notice of the existence and application of this Agreement to the Property.

1.1.51 "**Party**" means, individually, the Authority or the Developer, as applicable.

1.1.52 "**Parties**" means, collectively, the Authority and the Developer.

1.1.53 "**PCO Statement**" means a preliminary change of ownership statement provided for in California Revenue and Taxation Code Section 480.3.

1.1.54 "**Permitted Exceptions**" means (i) any and all items shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that the Developer accepts, pursuant to Section 2.4; (ii) any exceptions from coverage under the proposed

Title Policy resulting from the Developer's activities on the Property; (iii) non-delinquent property taxes and assessments; (iv) this Agreement; or (v) the Grant Deed.

1.1.55 "**Permitted Transfer**" means and refers to any of the following types of Transfers by the Developer, where the person or entity to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument satisfactory to the Authority.

1.1.55.1 Any Transfer of stock or equity of the Developer that does not change management or operational Control of the Property or the Project;

1.1.55.2 Any Transfer of any interest in the Developer or the Property or Project or any portion thereof irrespective of the percentage of ownership (i) to any other owner of any interest in the Developer; or (ii) to any Affiliate, or (iii) to any other person or entity in which any holder of an interest (including any beneficial interest) in the Developer is a manager, officer or partner or in which any of the aforementioned is a shareholder, member or partner (including a beneficial owner); and

1.1.55.3 Any Lien given to Lender in connection with a Loan approved by the Authority pursuant to Section 6.3.

1.1.56 "**Plans and Specifications**" has the meaning ascribed to the term in Section 2.6.1.

1.1.57 "**Preliminary Report**" means a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by legible copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Title Policy. The Parties acknowledge that they may prepare one (1) or more Preliminary Reports for each parcel, or group of parcels, comprising the Property. In such case, all reports, notices, and objection letters which pertain to the Preliminary Report for the entirety of the Property shall apply separately to each Preliminary Report associated with a parcel or a group of parcels.

1.1.58 "**Project**" means the construction and redevelopment of the Property to create housing units, including all required or associated on-site and off-site improvements, if any, all hardscape and all landscaping, all as specifically described in the Scope of Development, and all to be developed in accordance with the Plans and Specifications to be approved by the Authority and any conditions imposed by the Authority in its approval of the Plans and Specifications.

1.1.59 "**Project Completion Date**" means that date set forth therefor by which a Certificate of Completion shall be issued for the Project, as more particularly provided in the Schedule of Performance. The Project Completion Date shall be no later than the date which is twelve (12) months after the Close of Escrow.

1.1.60 "**Property**" means that real property, and all current and future improvements thereon (including, without implied limitation, the Project), legally described in Exhibit A.

1.1.61 **"Property Transfer"** means and refers to any "change in ownership," as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Property.

1.1.62 "**Purchase Price**" means the amount of One Hundred Seventy-One Thousand Dollars ($171,000) in cash or immediately available funds.

1.1.63 "**Record**", "**recorded**", "**recording**" or "**recordation**" each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of San Bernardino, California.

1.1.64 "**Schedule of Performance**" means the schedule for the performance of certain actions by the Parties pursuant to this Agreement, attached to this Agreement as Exhibit C.

1.1.65 "**Scope of Development**" means the detailed description of the Project attached to this Agreement as Exhibit B.

1.1.66 "**Title Company**" means Stewart Title Company.

1.1.67 "**Title Policy**" means a standard CLTA owners' policy of title insurance issued by the Title Company, with coverage in the full amount of the Purchase Price and insuring fee title to the Property, subject only to the Permitted Exceptions. However, at Developer's option, Developer may acquire an ALTA extended coverage policy. Authority shall pay for the standard CLTA policy. Developer shall pay for any additional or ALTA extended coverage policy.

1.1.68 "**Transfer**" means any of the following:

1.1.68.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Developer of more than a 49% interest in the Developer's interest in this Agreement, the Property, or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Developer's interest in this Agreement, the Property or the Project; or

1.1.68.2 Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Developer; or

1.1.68.3 Any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or

1.1.68.4 Any Property Transfer; or

1.1.68.5 The recordation of any deed of trust, mortgage, Lien or similar encumbrance against all or any portion of the Property or the Project.

1.1.69 "**Unavoidable Delay**" means any delay that is caused by the exclusively by the other party or that is beyond the control of the Authority or the Developer, including delay caused by strikes, acts of God, weather, inability to obtain labor or materials, inability to obtain governmental permits or approvals, governmental restrictions, civil commotion, fire or similar causes, but excluding circumstances subject to Section 8.7.2.

1.2 Representations and Warranties.

1.2.1 Authority Representations and Warranties. The representations and warranties of Authority contained in this Section 1.2.1 shall be based upon the actual knowledge of the Executive Director as of the Effective Date. All representations and warranties contained in this Section 1.2.1 are true and correct as of the Effective Date. Authority's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. Authority hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by Developer has been made in material reliance by Developer on such covenants, representations and warranties:

1.2.1.1 Authority is a California public body, duly formed and operating under the laws of the State of California.

1.2.1.2 The persons executing any instruments for or on behalf of Authority have been authorized to act on behalf of Authority and this Agreement is valid and enforceable against Authority in accordance with its terms and each instrument to be executed by Authority pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against Authority in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of and compliance with this Agreement by Authority.

1.2.1.3 Authority has taken all requisite action and obtained all requisite consents for agreements or matters to which Authority is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

1.2.1.4 If the Authority becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Authority under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Authority's knowledge and/or belief as of a certain date, the Authority will give immediate written notice of such changed fact or circumstance to the Developer.

1.2.2 Developer Representations and Warranties. The representations and warranties of Developer contained in this Section 1.2.2 shall be based upon the actual knowledge of Alvaro Magana as of the Effective Date. All representations and warranties contained in this Section 1.2.2 are true and correct as of the Effective Date. Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. Developer

hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by Authority has been made in material reliance by Authority on such covenants, representations and warranties:

1.2.2.1 Developer is a California limited liability company, lawfully entitled to do business in the State of California and the Authority. Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of Developer hereby represent and warrant that such persons have the power, right and authority to bind Developer.

1.2.2.2 Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for Developer's authorization to enter into Agreement.

1.2.2.3 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which Developer is a party or by which Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to Developer or to the Property.

1.2.2.4 This Agreement is, and all agreements, instruments and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and shall be valid and legally binding upon Developer and enforceable in accordance with their respective terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of in compliance with this Agreement by Developer.

1.2.2.5 If the Developer becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Developer under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Developer's knowledge and/or belief as of a certain date, the Developer will give immediate written notice of such changed fact or circumstance to the Authority.

1.3 Effective Date. This Agreement is dated April 20, 2021 for reference purposes only. This Agreement shall not become effective until the date on which all of the following are true ("**Effective Date**"): (i) this Agreement is approved and executed by the appropriate authorities of Developer and delivered to Authority; (ii) Developer has delivered to the Authority a certified copy of the official action taken by all of the members of the Developer approving this Agreement, in the form attached to this Agreement as Exhibit F; (iii) following all legally required notices and hearings, this Agreement is approved by the Authority Board; and (iv) this Agreement is executed by the authorized representatives of Authority.

1.4 Exhibit List. The following is a list of the Exhibits attached to this Agreement. Each of the Exhibits is incorporated by this reference into the text of this Agreement.

Exhibit A	Legal Description of Property
Exhibit B	Scope of Development
Exhibit C	Schedule of Performance
Exhibit D	Form of Grant Deed
Exhibit E	Form of Notice of Agreement
Exhibit F	Form of Official Action of Developer
Exhibit G	Form of Certificate of Completion

ARTICLE II

PROPERTY DISPOSITION

2.1 Purchase and Sale. In exchange for the Purchase Price and the Developer's other covenants and undertakings set forth in this Agreement, the Authority shall sell the Property to the Developer and the Developer shall purchase the Property from the Authority pursuant to the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale from the Authority to the Developer and the purchase by the Developer from the Authority of the Property pursuant to the terms of this Agreement, the Authority and the Developer agree to open an escrow ("**Escrow**") with the Escrow Holder. ARTICLE III of this Agreement constitutes the joint escrow instructions of the Parties to the Escrow Holder for completion of the Escrow for the sale of the Property, as contemplated by this Agreement. The Developer and the Authority shall execute such further escrow instructions, consistent with the provisions of this Agreement, as may be reasonably requested by the Escrow Holder. In the event of any conflict between the provisions of this Agreement and any other escrow instructions requested by the Escrow Holder, the provisions of this Agreement shall control.

2.2 Payment of Purchase Price. The Developer shall deposit the Purchase Price into Escrow, subject to credit to the Developer for the Earnest Money Deposit.

2.3 Earnest Money Deposit. Concurrent with its opening of the Escrow, the Developer shall deposit into Escrow the Ernest Money Deposit. The Escrow Holder shall deposit the Earnest Money Deposit into an interest bearing account. All interest earned on such funds shall be added to the original principal amount of the Earnest Money Deposit and be considered part of the same. The Earnest Money Deposit shall be nonrefundable upon the conclusion of the Due Diligence Period. Upon the Close of Escrow, the Earnest Money Deposit shall be credited to the Developer toward the Purchase Price and paid to the Authority as part of the Purchase Price. Should Escrow fail to close, the Earnest Money Deposit shall be forfeited by Developer and shall be paid to the Authority upon the cancelation of Escrow in accordance with Section 3.10.

2.4 Title Approval. As soon as practicable following the opening of the Escrow, the Authority shall obtain from Title Company the Preliminary Report and deliver a copy of the Preliminary Report to the Developer. Within thirty (30) days following the Developer's receipt of a Preliminary Report for the entire Property, the Developer shall deliver the Developer's Title Notice to the Authority. If the Developer fails to deliver the Developer's Title Notice to the

Authority within thirty (30) days following the Developer's receipt of the Preliminary Report, the Developer will be deemed to disapprove the status of title to the Property and refuse to accept title to the Property, in which case the Authority shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the Authority's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder. Within twenty (20) days following receipt by the Authority of Developer's Title Notice, if any, the Authority shall serve Authority's Title Notice Response. If Developer's Title Notice does not object to any matter in the Preliminary Report, the Authority shall not be required to serve Authority's Title Notice Response. If the Authority does not serve Authority's Title Notice Response, if necessary, within twenty (20) days following its receipt of Developer's Title Notice, the Authority shall be deemed to elect not to remove any matter objected to in Developer's Title Notice, if any, from the Preliminary Report. If the Authority elects in Authority's Title Notice Response to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, the Authority shall cause the removal of each such objectionable matter from the Preliminary Report within sixty (60) days following receipt by the Developer of Authority's Title Notice Response or such other period of time that may be agreed to in writing by both the Authority and the Developer. If the Authority is unwilling or unable to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, then, within ten (10) days following the Developer's receipt of Authority's Title Notice Response stating that the Authority is unwilling to remove or cause the removal of any matter objected to in Developer's Title Notice or upon the expiration of the above sixty (60) day time period during which the Authority elected to remove such objectionable matters from the Preliminary Report and was unable to do so, the Developer may either (1) refuse to accept the title to and conveyance of the Property, in which case the Parties shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement without liability to either Party or any other person, by delivery of a written notice of termination to the Escrow Holder, or (2) waive its objection to any items set forth in Developer's Title Notice by delivering Developer's Title Notice Waiver to the Authority. Failure by the Developer to deliver Developer's Title Notice Waiver, where Authority's Title Notice Response or the Authority's failure to serve Authority's Title Notice Response indicates the Authority's election not to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, for the Authority to deliver Authority's Title Notice Response under this Agreement, will be deemed the Developer's continued refusal to accept the title to and conveyance of the Property, in which case the Authority shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the Authority's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder.

2.4.1 If at any time prior to the Close of Escrow the Title Company issues an updated Preliminary Report containing any previously undisclosed matter affecting title to the Property, or the Authority becomes aware of any previously undisclosed matter affecting title to the Property, following the delivery of the Developer's Title Notice, the Authority shall provide written notice to the Developer of such matter, together with any updated Preliminary Report related to such matter. The Authority and the Developer shall have such rights and obligations with respect to such previously undisclosed title matters as they did with respect to any title matters set forth in the original Preliminary Report as set forth in Section 2.4.

2.4.2 Before exercising any right a Party may have under this Section 2.4 to cancel the Escrow and terminate this Agreement, such Party shall notify the non-terminating Parties in writing of its election to terminate and shall, upon a non-terminating Party's request, which must be delivered, if at all, within three (3) days following its receipt of the terminating Party's notice of election to terminate, meet and confer with the non-terminating Parties for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by any Party to negotiate, in good faith, methods and means by which the objectionable title matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by any Party that an acceptable resolution of the objectionable title matter will be achieved, nor shall any Party be obligated to expend any funds or undertake any other action whatsoever with respect to such title matter unless such agreement is reduced to a writing which is approved by all Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving such title matter, or if any proposed agreement is disapproved by the Authority Board, the Escrow shall be cancelled, this Agreement shall be terminated without liability to any Party, and the Parties shall proceed pursuant to Section 3.10.

2.5 Developer Investigations.

2.5.1 The Developer shall have until the expiration of the Due Diligence Period to complete all of its Due Diligence Investigations with respect to the entirety of the Property. The Developer shall complete all of its Due Diligence Investigations within the Due Diligence Period and shall conduct all of its Due Diligence Investigations at its sole cost and expense. The Developer shall rely solely and exclusively upon the results of its Due Diligence Investigations of the Property, including, without limitation, investigations regarding geotechnical soil conditions, compliance with applicable laws pertaining to the use of the Property by the Developer and any other matters relevant to the condition or suitability of the Property for the Project, as the Developer may deem necessary or appropriate. Authority makes no representation or warranty to the Developer relating to the condition of the Property or suitability of the Property for any intended use or development by the Developer. The Developer shall deliver a Due Diligence Investigation Conclusion Notice to the Authority and the Escrow Holder prior to the end of the Due Diligence Period. If the Developer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Investigation Conclusion Notice indicating such acceptance prior to the end of the Due Diligence Period, the Developer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by the Developer, then the Authority shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the Authority's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder. The Developer shall accept all conditions of the Property, without any liability of the Authority whatsoever, upon the Developer's acceptance of the condition of the Property indicated in its Due Diligence Investigation Conclusion Notice. The Developer's delivery of its Due Diligence Investigation Conclusion Notice indicating the Developer's unconditional acceptance of the condition of the Property shall evidence the acceptance of the condition of the Property by the Developer in its existing "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition, as of the last day of the Due Diligence Period. In its sole discretion, the Developer may accept the Property in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition at any time before the end

of the Due Diligence Period. The Developer shall conduct during the Due Diligence Period such environmental assessment(s) of the Property as the Developer deems appropriate. If such assessment(s) do reveal the presence of any Hazardous Substances on the Property in levels that exceed applicable Governmental Requirements, then the Authority and the Developer shall negotiate in good faith in an effort to reach agreement as to the allocation of responsibility and cost of remediation thereof.

2.5.2 Any Due Diligence Investigations of the Property by the Developer shall not unreasonably disrupt any then existing use or occupancy of the Property or the operations of the Authority. The Developer shall be liable for any damage or injury to any person or property arising from the acts of the Developer, its employees, agents or representatives during the course of any Due Diligence Investigations on the Property and the Developer shall indemnify, defend with counsel reasonably acceptable to the Authority and hold harmless the Authority and its elected officials, officers, directors, attorneys, contractors, agents and employees from any and all actual or alleged liens, claims, demands or liability arising from any Due Diligence Investigations by the Developer on the Property. Prior to commencing any Due Diligence Investigations on the Property, the Developer shall deliver copies of policies or certificates of insurance to the Authority evidencing compliance by the Developer with the insurance requirements of Section 5.6.

2.5.3 Before exercising any right a Party may have under this Section 2.5 to cancel the Escrow and terminate this Agreement, such Party shall notify the non-terminating Parties in writing of its election to terminate and shall, upon a non-terminating Party's request, which must be delivered, if at all, within three (3) days following its receipt of the terminating Party's notice of election to terminate, meet and confer with the non-terminating Parties for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by any Party to negotiate, in good faith, methods and means by which the objectionable Due Diligence matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by any Party that an acceptable resolution of the objectionable Due Diligence matter will be achieved, nor shall any Party be obligated to expend any funds or undertake any other action whatsoever with respect to such Due Diligence matter unless such obligation is reduced to a writing which is approved by all Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving the objectionable Due Diligence matter, or if any proposed agreement is disapproved by the Authority Board, the Escrow shall be cancelled, this Agreement shall be terminated without liability to any Party, and the Parties shall proceed pursuant to Section 3.10.

2.6 Developer to Obtain all Project Entitlements.

2.6.1 Pursuant to the ENA, Developer has developed and presented to Authority staff and the Authority Board, for review, the following (collectively, the "**Plans and Specifications**"):

2.6.1.1 A proposed complete conceptual development plan for the Project on the Property that describes and depicts: (1) the location and placement of proposed buildings and (2) the architecture and elevations of the proposed buildings;

2.6.1.2 Proposed zoning change or changes to the City's General Plan, if any, necessary to accommodate the Project on the Property;

2.6.1.3 Anticipated sales prices for the housing units to be developed on the Property, as developed with the Project;

2.6.1.4 A proposed time schedule and cost estimates for the development of the Project on the Property; and

2.6.1.5 A proposed financing plan identifying financing sources for all private and public improvements proposed for the Project.

2.6.2 The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval, policies, practice or elsewhere) (collectively, the "**City Requirements**"), shall be applicable to the use and development of the Project on the Property by the Developer. The Developer acknowledges that all Plans and Specifications and any changes to the Plans and Specifications shall be subject to the City Requirements. No action by the Authority with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any City Requirements regarding the Property, the Project, the Developer, any successor-in-interest of the Developer or any successor-in-interest to the Property. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. No entitlement, permit or other approval from the City for development of the Project on the Property shall attach to any portion of the Property or otherwise become effective to allow the Developer to develop the Project on the Property until after the Developer owns fee title to that portion of the Property to which such entitlement, permit or other approval pertains. Under no circumstances shall the Developer commence development of any portion of the Project on the Property prior to the Developer owning fee title to the Property.

2.6.3 The approval of the Scope of Development shall not be binding on the Authority Board or the Planning Commission of the City regarding any approvals of the Project required by such bodies. the Developer obtains no right to develop the Project on the Property or any portion of the Property by virtue of this Agreement, except that following the Close of Escrow, the Developer shall possess the same rights as any other owner of property within the Property that desires to develop its property in a manner consistent with the City's General Plan. If any revisions of the Scope of Development are required by a Governmental Agency (other than the Authority) having jurisdiction over the Property or the Project, the Developer shall promptly make any such revisions that are generally consistent with the Scope of Development.

2.6.4 Notwithstanding any provision to the contrary in this Agreement, following the Close of Escrow, the Developer agrees to accept and comply fully with any and all conditions of approval applicable to all approvals, permits and other governmental actions regarding the development or operation of the Project on the Property, so long as such conditions of approval are consistent with the Scope of Development and this Agreement in all material respects.

2.6.5 Developer to Pay All Costs and Expenses. The Parties agree that the Authority shall not provide any financial assistance to the Developer in connection with the Project. The Developer shall be solely responsible for paying for the costs of all design work, construction, labor, materials, fees and permit expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by the Authority, any other Governmental Agency and utility service providers, including the costs of preparation of all required construction, planning and other documents reasonably required by a Governmental Agency pertinent to the development or operation of the Project on the Property, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. The Developer shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the Project, whether located on or off of the Property. The Developer shall obtain any and all necessary approvals, prior to the commencement of applicable portions of construction, and the Developer shall take reasonable precautions to ensure the safety and stability of surrounding properties during said construction. In accordance with this Section 2.6.5, Developer shall be responsible for the costs, or immediate reimbursement to the Authority upon delivery of an invoice for the costs, of the following:

2.6.5.1 all fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by the Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Property or the Project or the negotiation of this Agreement that may be undertaken by the Developer;

2.6.5.2 all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the Authority of any and all applications and other documents and information to be submitted to the Authority by the Developer pursuant to this Agreement or otherwise associated with the Project; and

2.6.6 The Developer shall obtain all entitlements, permits and other approvals for use and development of the Project on the Property from each Governmental Agency, within the time period for such actions specifically set forth in the Schedule of Performance, subject to any extensions of time authorized by this Agreement upon the occurrence of an Unavoidable Delay.

2.6.7 No Commitment to Development. Authority's approval of this Agreement does not constitute approval by Authority or City of any development of the Property or of other activity on the Property that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) Moreover, Developer's future use or development of the Property is expressly conditioned on CEQA compliance. City shall conduct environmental review, as may be required, in accordance with CEQA prior to taking any discretionary action with regard to any proposed development of the Property. Nothing in this Agreement shall be construed to limit Authority's or City's discretion to consider and adopt any mitigation measure or project alternative, including the alternative of rejecting any proposed development of the Property, as provided in Public Resources Code section 21002. Following

completion of the City's environmental review of any proposed development of the Property, the City shall file any required notice of such approval as provided in Public Resources Code section 21152. Developer's purchase of the Property will serve the current needs of the Authority and City.

Developer and Authority shall work together to conduct any required environmental review in accordance with CEQA before City takes action on any plan or entitlement or before the Parties Close of Escrow under this Agreement. The Parties agree and acknowledge that any proposed development of the Property might change as a result of various environmental factors. On or before the Close of Escrow, the scope and location of proposed development and the design of the anticipated improvements might well change to account for changes required by the CEQA process.

ARTICLE III

ESCROW INSTRUCTIONS

3.1 Opening of Escrow. For purposes of this Agreement, the opening of Escrow shall be the first date on which a fully executed copy of this Agreement and Earnest Money Deposit are deposited with Escrow Holder ("**Escrow Opening Date**"). The Developer shall cause the Escrow to be opened within five (5) days following the Effective Date. Escrow Holder shall promptly confirm in writing to each of the Parties the date of the Escrow Opening Date. This ARTICLE III shall constitute the joint escrow instructions of the Authority and the Developer to Escrow Holder for conduct of the Escrow to complete the purchase and sale of the Property between them, as contemplated in this Agreement.

3.2 Conditions to Close of Escrow. The conditions set forth below shall be satisfied or waived in writing by the respective benefited Party on or before the Escrow Closing Date or the Party benefited by any unsatisfied condition shall not be required to proceed to close Escrow.

3.2.1 Developer's Conditions to Close of Escrow. The Developer's obligation to purchase the Property from the Authority on the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, each of which can only be waived in writing by the Developer:

3.2.1.1 The Developer agrees to accept the title to and conveyance of the Property, pursuant to Section 2.4;

3.2.1.2 The Developer delivers its Due Diligence Investigation Conclusion Notice to both the Authority and Escrow Holder indicating the Developer's unconditional acceptance of the condition of the Property, prior to the expiration of the Due Diligence Period;

3.2.1.3 The City's planning commission finds, pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan;

3.2.1.4 Adoption, approval or certification of any CEQA Documents required for final City approvals;

3.2.1.5 The Title Company is unconditionally committed to issue the Title Policy for the Property, subject to any Permitted Exceptions, to the Developer;

3.2.1.6 The Authority deposits the items into the Escrow required by Section 3.4;

3.2.1.7 The representations, warranties and covenants of the Authority set forth in Section 1.2.1 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date;

3.2.1.8 The Developer has obtained all entitlements required in connection with the development of the Property, subject to conditions of approval acceptable to Developer in Developer's sole discretion, any applicable appeal period has expired without appeal having been filed or, if an appeal is filed, such appeal has been denied, and no legal action has been instituted against Developer or the Authority alleging the invalidity of such entitlements; and

3.2.1.9 The Authority has completed all of their material obligations required by this Agreement to be completed prior to the Close of Escrow.

3.2.2 Authority's Conditions to Close of Escrow. The Authority's obligation to sell the Property to the Developer on or before the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, which can only be waived in writing by the Authority:

3.2.2.1 The Developer has deposited the Purchase Price, less the Earnest Money Deposit, into Escrow;

3.2.2.2 The Developer agrees to accept the title to and conveyance of the Property, pursuant to Section 2.4;

3.2.2.3 The Developer delivers its Due Diligence Investigation Conclusion Notice to both the Authority and Escrow Holder indicating the Developer's unconditional acceptance of the physical condition of the Property, prior to the expiration of the Due Diligence Period;

3.2.2.4 The City's planning commission finds, pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan;

3.2.2.5 Adoption, approval or certification of any CEQA Documents required for final City approvals;

3.2.2.6 The Title Company is unconditionally committed to issue the Title Policy for the Property, subject to any Permitted Exceptions, to the Developer;

3.2.2.7 The Developer submits to the Authority, at least five (5) business days prior to the Escrow Closing Date, evidence satisfactory to the Authority, in the Authority's reasonable discretion, that the Developer has obtained all entitlements necessary for the development of the Property from each applicable Governmental Agency, including the City;

3.2.2.8 The Developer delivers to the Authority, at least thirty (30) days prior to the Escrow Closing Date, in form and substance acceptable to the Authority, the Financing Commitment(s) applicable to the Property;

3.2.2.9 The Developer obtains the Authority's approval of the Construction Loan and Construction Lender applicable to the Property, in accordance with Section 6.3, which approval shall not be unreasonably withheld;

3.2.2.10 The Developer has completed all of its material obligations required by this Agreement to be completed prior to the Close of Escrow;

3.2.2.11 The representations, warranties and covenants of the Developer set forth in Section 1.2.2 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date; and

3.2.2.12 The Developer deposits the funds and items into the Escrow required by Section 3.3 for the Escrow.

3.3 Developer's Escrow Deposits. Following satisfaction or waiver of each of the Developer's conditions to Close of Escrow set forth in Sections 3.2.1, as applicable, the Developer shall deposit the following funds and documents into Escrow at least two (2) business days prior to the Escrow Closing Date in a writing delivered to the Parties:

3.3.1 Purchase Price and Other Funds. Purchase Price, less the amount of the Earnest Money Deposit, plus any additional funds required to be deposited into Escrow by the Developer under the terms of this Agreement to close the Escrow, all in immediately available funds.

3.3.2 PCO Statement. A PCO Statement executed by the authorized representative(s) of the Developer.

3.3.3 Acceptance of Grant Deed. The Certificate of Acceptance of the Deed, in the form attached to the Grant Deed, executed by the authorized representative(s) of the Developer in recordable form.

3.3.4 Notice of Agreement. The Notice of Agreement executed by the authorized representative(s) of the Developer in recordable form.

3.4 Authority's Escrow Deposits. Following satisfaction or waiver of each of the Authority's conditions to Close of Escrow set forth in Sections 3.2.2, as applicable, the Authority shall deposit the following documents into Escrow at least two (2) business days prior to the Escrow Closing Date:

3.4.1 Grant Deed. The Grant Deed executed by the authorized representative(s) of the Authority in recordable form.

3.4.2 FIRPTA Affidavit (Authority). The FIRPTA Affidavit completed and executed by the authorized representative(s) of the Authority.

3.4.3 **Notice of Agreement.** The Notice of Agreement executed by the authorized representative(s) of the Authority in recordable form.

3.5 **Closing Procedure.** When each of the Developer's Escrow required deposits, as set forth in Section 3.3, and each of the Authority's Escrow required deposits, as set forth in Section 3.4, are deposited into Escrow, Escrow Holder shall request confirmation in writing from both the Authority and the Developer that each of their respective conditions to the Close of Escrow, as set forth in Section 3.2, are satisfied or waived. Upon Escrow Holder's receipt of written confirmation from both the Authority and the Developer that each of their respective conditions to the Close of Escrow are either satisfied or waived, Escrow Holder shall close the Escrow for the Property by doing all of the following:

3.5.1 **Recordation of Documents.** File the following with the Office of the Recorder of the County, for recordation in the order set forth in Section 3.7 (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) if applicable, the Construction Loan Deed of Trust.

3.5.2 **Distribution of Recorded Documents.** Distribute each recorded document to the Party or person designated for such distribution in Section 3.7.

3.5.3 **PCO Statement.** File the PCO Statement with the Office of the Recorder of the County.

3.5.4 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service.

3.5.5 **Title Policy.** Obtain and deliver the Title Policy to the Developer.

3.5.6 **Purchase Price.** Deliver the Purchase Price to the Authority, less the Authority's share of Escrow closing costs, and less any other charges to the account of the Authority, and return any remaining funds held by Escrow Holder for the account of the Developer to the Developer, less the Developer's share of Escrow closing costs, and less any other charges to the account of the Developer.

3.6 **Close of Escrow.** Close of Escrow shall occur no later than the earlier of: (1) the tenth (10th) business day following Escrow Holder's receipt of written confirmation from both the Authority and the Developer of the satisfaction or waiver of all conditions precedent to the Close of Escrow for the Property, or (2) thirty (30) days from the end of the Due Diligence Period (the "**Escrow Closing Date**"). If for any reason the Close of Escrow has not occurred by the Escrow Closing Date, then any Party not then in default of this Agreement may cancel the Escrow and terminate this Agreement, subject to the notice and cure provisions of Section 7.1 (to the extent applicable), without liability to any other Party or any other person for such termination and cancellation, by delivering written notice of termination to the other Party(ies) and Escrow Holder and, thereafter, the Parties shall proceed pursuant to Section 3.10 if the non-terminating Party is not in default or pursuant to Section 7.2 or 7.3 (as applicable) if the non-terminating Party is in default. Without limiting the right of any Party to terminate this Agreement, pursuant to the preceding sentence, if Escrow does not close on or before the Escrow Closing Date, and no Party has exercised its contractual right to cancel Escrow and terminate this Agreement before such time,

then Escrow shall close as soon as reasonably possible following the first date on which Escrow Holder is in a position to close the Escrow pursuant to the terms and conditions of this Agreement.

3.7 Recordation and Distribution of Documents. As applicable, Escrow Holder shall cause the following documents to be recorded in the official records of the Recorder of the County in the following order of priority at the Close of Escrow: (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, (iii) the Construction Loan Deed of Trust, if applicable, and (iv) any other documents to be recorded through Escrow upon the joint instructions of the Parties. All recorded documents shall provide that they are to be returned to Escrow Holder after recordation. When originals of such recorded documents are returned to Escrow Holder, Escrow Holder shall deliver: (i) the original Grant Deed, with the Developer's original certificate of acceptance attached, to the Developer and copies to the Authority, each showing all recording information, (ii) the original of the Notice of Agreement to the Authority, with copies to the Developer, each showing all recording information, (iii) the Construction Loan Deed of Trust to the Construction Lender for the Project, with copies to the Developer and the Authority, each showing all recording information, and (iv) the original of any other document recorded at the close of Escrow to the Party or other person designated in the joint escrow instructions of the Parties for such recordation and a copy of each such document to the other Party or Parties, each showing all recording information.

3.8 Escrow Closing Costs, Taxes and Title Policy Premium. The Authority and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as Escrow Holder may charge for the conduct of the Escrow. Escrow Holder shall notify the Developer and the Authority of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Holder's estimated closing/settlement statement to both the Authority and the Developer at least four (4) business days prior to the Escrow Closing Date. The Authority shall pay the premium charged by the Title Company for the standard Title Policy for the Property, exclusive of any endorsements or other supplements to the coverage of such Title Policy that may be requested by the Developer, as well as documentary transfer taxes and any and all other charges, fees and taxes levied by a Governmental Authority relative to the conveyance of any portion of the Property through the Escrow transaction contemplated in this Agreement. The Developer shall pay any and all recording fees relative to the conveyance of any portion of the Property through the Escrow transaction contemplated in this Agreement.

3.9 Escrow Cancellation Charges. If the Escrow fails to close due to either the Authority's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the Authority shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close due to the Developer's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close for any reason other than the material default of either the Developer or the Authority and the Escrow is cancelled and this Agreement is terminated, the Developer and the Authority shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges.

3.10 Escrow Cancellation. If this Agreement is terminated and the Escrow cancelled pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement

and cancel the Escrow, other than due to the material default of another Party, the Parties shall do each of the following:

3.10.1 Cancellation Instructions. The Parties shall, within three (3) business days of receipt of Escrow Holder's written request, execute any reasonable Escrow cancellation instructions requested by Escrow Holder;

3.10.2 Return of Funds and Documents. Within ten (10) days of receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Holder: (i) the Developer or Escrow Holder shall return to the Authority any documents previously delivered by the Authority to the Developer or Escrow Holder, (ii) the Authority or Escrow Holder shall return to the Developer all documents previously delivered by the Developer to the Authority or Escrow Holder; (iii) Escrow Holder shall return to the Developer any funds deposited by Developer into Escrow, including the Earnest Money Deposit, less the Developer's share of customary and reasonable Escrow and title order cancellation charges, if any; and (iv) Escrow Holder shall return to the Authority any funds deposited by Authority into Escrow if it has already been deposited, less the Authority's share of customary and reasonable Escrow and title order cancellation charges, if any.

3.11 Report to IRS. Following the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, Escrow Holder shall report the gross proceeds of the purchase and sale of the Property to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Section 6045(e). Upon the filing of such reporting form with the Internal Revenue Service, Escrow Holder shall deliver a copy of the filed form to the Authority and the Developer.

ARTICLE IV

PROJECT DEVELOPMENT

4.1 Developer Covenant to Undertake Project. The Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the Authority, that the Developer shall commence and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The covenants of this Section 4.1 shall run with the land of the Property until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

4.2 Developer Changes to Plans and Specifications During Course of Construction. The Developer shall have the right during the course of construction of the Project

to make "**minor field changes**," without seeking the approval of the Authority, if such changes do not affect the type of use to be conducted within all or any portion of a structure. "**Minor field changes**" shall be defined as those changes from the approved Plans and Specifications that have no substantial effect on the Project or are made in order to expedite the work of construction in response to field conditions. The Developer shall submit all other changes, i.e. those changes which are not **"minor field changes"**, to the Authority for its review and approval no less than fifteen (15) days prior to the date that the Developer intends to implement such changes. The Authority shall have ten (10) days from its receipt of such proposed changes to review the same and advise the Developer in writing whether such changes are acceptable to the Authority in its reasonable discretion. Any proposed changes which are not disapproved by the Authority within such ten (10) day period shall be deemed approved. Nothing contained in this Section 4.2 shall be deemed to constitute a waiver of or change in the Authority requirements governing "**minor field changes**" or other changes or in any approvals by the Authority otherwise required for "**minor field changes"** or other changes.

4.3 Construction Start and Completion of Project. The Developer shall commence construction of the Project in accordance with the Schedule of Performance and, thereafter, shall diligently proceed to complete the construction of the Project in a good and workmanlike manner in substantial conformity with the approved plans, specifications, and conditions for the Project approved by the Authority and the Schedule of Performance. The Developer shall obtain a Certificate of Completion on or before the Project Completion Date. The Developer will, promptly upon completion of construction of the Project, cause the Project to be inspected by each Governmental Agency with jurisdiction over the Project, shall correct any defects and deficiencies that may be disclosed by any such inspection and shall cause to be duly issued all occupancy certificates and other licenses, permits and authorizations necessary for the operation and occupancy of the completed Project. The Developer shall do and perform all of the foregoing acts and things and cause to be issued and executed all such occupancy certificates, licenses, and authorizations for the Project on or before the date set forth therefor in the Schedule of Performance as the completion date for the Project. After commencement of the work of improvement of the Project, the Developer shall not permit the work of improvement of the Project to cease or be suspended for a time period in excess of thirty (30) consecutive calendar days, subject to Unavoidable Delays.

4.4 Compliance with Laws. All work by Developer performed in connection with the development of the Project shall comply with all Governmental Requirements.

4.5 Schedule of Performance. The Schedule of Performance establishes various dates and times for the accomplishment of various tasks assigned to the Authority and the Developer and the satisfaction of the conditions precedent to the close of the Escrow. The Parties agree that time is of the essence in the performance of such tasks and the satisfaction of conditions precedent, in view of the large investment of resources that all Parties recognize will be required for assembly of the Property and the undertaking of the Project. If the date or time for the performance of a task or the satisfaction of a condition, as set forth in either the text of this Agreement or in the Schedule of Performance, may not be achieved, then prior to such date or time set forth in the text of this Agreement or the Schedule of Performance, the Parties shall consider whether a modification to the text of this Agreement or to the Schedule of Performance is indicated. Any decision to approve a modification to a time or date established in either the text of this Agreement

or the Schedule of Performance shall be subject to the sole discretion of each Party. Any modification of a time or date for performance of a particular task or satisfaction of a particular condition that does not result in a change of more than one hundred eighty (180) days may be approved on behalf of the Authority by the Executive Director, in his or her reasonable discretion. A modification of a time or date for performance of a task or satisfaction of a condition (or a series of such modifications) that results in an aggregate change of more than one hundred eighty (180) days shall be subject to the approval of the Authority Board, in its sole and absolute discretion. If performance of a task or satisfaction of a condition in the Schedule Performance is prevented or delayed by Unavoidable Delays, the deadline for completion of such task or satisfaction of such condition shall be extended by the period of such Unavoidable Delays.

4.6 Developer Attendance at Authority Meetings. The Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement and the development of the Project, such that such person(s) can meaningfully respond to Authority questions regarding the progress of the Project, attend Authority Board meetings, when requested to do so on not less than ten (10) days prior written notice by Authority staff.

4.7 Authority's Right to Inspect Project and Property. Officers, employees, agents and representatives of the Authority shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project. Such officers, employees, agents or representatives of the Authority shall be those persons who are designated by the Executive Director. Any and all officers, employees, agents or representatives of the Authority who enter the Property shall identify themselves at the construction management office on the Property, upon their entrance on to the Property, and shall at all times be accompanied by a representative of the Developer, while on the Property. The Developer shall make a representative of the Developer available for this purpose at all times during normal construction hours, upon reasonable notice from the Authority. The Authority shall indemnify and hold the Developer harmless from injury, property damage or liability arising out of the exercise by the Authority of the right of access to the Property provided in this Section 4.7, other than injury, property damage or liability arising from the negligence or willful misconduct of the Developer or its officers, agents or employees. The Authority shall inspect relevant portions of the Property, prior to issuing any written statements reflecting adversely on the Developer's compliance with the terms and conditions of this Agreement pertaining to development of the Project. If in the Authority's reasonable judgment it is necessary, the Authority shall have the further right, from time to time, to retain a consultant or consultants to inspect the Project and verify compliance by the Developer with the provisions of this Agreement. The Developer acknowledges and agrees that any such inspections are for the sole purpose of protecting the Authority's rights under this Agreement, are made solely for the Authority's benefit, that the inspections may be superficial and general in nature, and are for the purposes of informing the Authority of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and that the Developer shall not be entitled to rely on any such inspection(s) as constituting an approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. The Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to the Developer. The Developer also agrees to immediately notify the Authority in writing should the Developer's inspections show any

matters that will prevent the entire Project from being completed by the Project Completion Date set forth therefore in the Schedule of Performance. Without limiting the foregoing, the Developer shall permit the Authority upon reasonable notice to examine and copy all books and account records and other papers relating to the Property and the construction of the Project. The Developer will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the Authority to enable such examination.

4.8 Cost of Construction. The cost and expense of undertaking and completing the Project, including, without limitation, constructing all legally imposed on- and off-site improvements, and providing all utilities therefor, shall be borne by Developer at its sole cost, expense and liability. Developer shall be solely responsible for payment of all City land use, construction, inspection, plan check and development impact fees (collectively, "**Development Fees**") imposed by the City with respect to the development of the Project. Developer shall bear all costs and expenses associated with the processing and obtaining of the entitlements and shall bear all costs and expenses (except to the extent expressly set forth otherwise in this Agreement), associated with any and all terms, conditions, requirements, mitigation measures and other exactions imposed on, or required in connection with, the entitlements.

4.9 Prevailing Wages.

4.9.1 The Developer acknowledges that the Authority has not made any representation, express or implied, to the Developer or any person associated with the Developer regarding whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, et seq. The Developer agrees with the Authority that the Developer shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification.

4.9.2 The Developer, on behalf of itself, its successors, and assigns, waives and releases the Authority from any right of action that may be available to it pursuant to Labor Code Sections 1726 and 1781. The Developer acknowledges the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 4.9, which reads as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 4.9.2.

4.9.3 Additionally, in accordance with Section 7.8, the Developer shall indemnify, defend with counsel acceptable to the Authority and hold the Authority harmless against any claims pursuant to Labor Code Sections 1726 and 1781 arising from this Agreement or the construction or operation of the Project.

4.10 Certificate of Completion.

4.10.1 Following the substantial completion of construction of the Project, and upon written request from the Developer for issuance of a Certificate of Completion for the Project, the Authority shall inspect the Project to determine whether or not the Project has been substantially completed in compliance with this Agreement. If the Authority determines that the Project is complete and in compliance with this Agreement, the Executive Director shall furnish the Developer with a Certificate of Completion for the Project. If the Authority determines that the Project is not in compliance with this Agreement, the Executive Director shall send written notice of each non-conformity to the Developer. Upon issuance of the final certificate of occupancy for the development of the Project, based on the plans submitted by the Developer to the Authority, the Authority shall furnish the Developer with a Certificate of Completion for the Project.

4.10.2 Upon the Developer's substantial completion of the Project, the Developer shall request and be entitled to receive a Certificate of Completion, including the right of the Executive Director to issue the Certificate of Completion, except that the Certificate of Completion, upon issuance, shall be evidence of the Authority's conclusive determination of satisfactory substantial completion of the entirety of the Project pursuant to the terms of this Agreement.

4.10.3 The Authority shall not unreasonably withhold the issuance of a Certificate of Completion. A Certificate of Completion shall be evidence of the Authority's conclusive determination of satisfactory completion of the Project to which it pertains pursuant to the terms of this Agreement. After the recordation of a Certificate of Completion for the Project, any person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property improved with the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction or installation of the Project except that such person shall be bound by any reservations, covenants, conditions, restrictions and other interests recorded against the Property pursuant to this Agreement and the Grant Deed.

4.10.4 If the Authority fails or refuses to issue a Certificate of Completion following written request from the Developer, the Authority shall, within fifteen (15) calendar days of the Developer's written request or within three (3) calendar days after the next regular meeting of the Authority Board, whichever date occurs later, provide the Developer with a written statement setting forth the reasons for the Authority's failure or refusal to issue a Certificate of Completion. The statement shall also contain the Authority's opinion of the action(s) the Developer must take to obtain a Certificate of Completion from the Authority. If the reason for the Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to the Developer or other minor building "**punch-list**" items, the Authority may issue its Certificate of

Completion upon the posting of a bond or irrevocable standby letter of credit by the Developer in a form reasonably acceptable to the Authority in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by the Authority. If the Authority fails to provide such written statement, within the specified time period, the Developer shall be deemed conclusively and without further action of the Authority to have satisfied the requirements of this Agreement with respect to the Project, as if a Certificate of Completion had been issued by the Authority pursuant to this Agreement.

4.10.5 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any parts thereof. A Certificate of Completion shall not be deemed to constitute a notice of completion under Section 3093 of the California Civil Code, nor shall it act to terminate the continuing covenants, restrictions or conditions contained in the Grant Deed or any other instruments recorded against the Property pursuant to this Agreement. A Certificate of Completion is not evidence of the compliance of the Project with any Authority requirements, the City Requirements or any building code, conditions of approval, land use, zoning or other requirements of any Governmental Agency with jurisdiction over the Property, other than the Authority.

ARTICLE V

DEVELOPER COVENANTS

5.1 Maintenance Condition of the Property. The Developer for itself, its successors (excluding any third party purchaser of a residential unit developed on the Property) and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.1.1 The areas of the Property that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described above (a "**Maintenance Deficiency**"), then the Authority shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the Authority shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the Authority to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the Authority for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.1.1 shall become a lien on the Property, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the Authority to the Developer, the Authority shall have the right to enforce the lien in the manner provided in Section 5.1.3.

5.1.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be

removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within ninety-six (96) hours following the time of the discovery of the graffiti, the Authority shall have the right to enter the Property and remove the graffiti, without notice to the Developer. Any sum reasonably expended by the Authority for the removal of graffiti from the Property pursuant to this Section 5.1.2, shall be a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the Authority, the Authority shall have the right to enforce its lien in the manner provided in Section 5.1.3.

5.1.3 The Parties further mutually understand and agree that the rights conferred upon the Authority under this Section 5.1.3 expressly include a grant by the Developer of a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under Section 5.1.1 or Section 5.1.2, including the reasonable attorneys' fees and costs of the Authority associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the Authority Counsel and the lawyers employed in the Office of the Authority Counsel.

5.1.4 The provisions of this Section 5.1.4 shall be a covenant running with the land of the Property, and shall be enforceable against the Developer and its successors and assigns, but shall not apply to any third party purchaser of a residential unit developed on the Property by Developer.

5.1.5 Nothing in the foregoing provisions of this Section 5.1.4 shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that any such changes comply with applicable zoning and building regulations of the City.

5.2 Obligation to Refrain from Discrimination. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.2.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 5.2 shall run with the land of the Property and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

5.2.2 The covenant of this Section 5.2 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.3 Form of Non-Discrimination and Non-Segregation Clauses. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.3.1 The Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.3.1.1 In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

5.3.1.2 In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

5.3.1.3 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

5.3.2 The covenant of this Section 5.3 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.4 Survival of Special Development Covenants. All of the covenants set forth in ARTICLE V, inclusive, shall be a covenant running with the land of the Property and each such special development covenant shall survive the Close of Escrow, execution and recordation of the Grant Deed, and issuance and recordation of any Certificate of Completion for the time period specifically set forth in each such special development covenant. The Parties acknowledge that although the special development covenants apply to the entirety of the Property, portions of the Project and Property may, in accordance with the Permitted Transfer requirements, be sold or otherwise transferred to various successors and assigns of the Developer. Accordingly, the Authority agrees that with respect to enforcement of any of the special development covenants, it is understood and agreed that, in the event of a breach of any of the special development covenants, the Authority will seek to enforce those covenants only against the then-current owner(s) of that portion of the Property which is not in compliance with any one or more the special development covenants. No owner of any portion of the Property which is in compliance with the special development covenants shall be liable for the breach of any of the special development covenants by any other owner of any other portion of the Property; provided, however, that the foregoing shall not preclude Authority from seeking damages against any prior owner of any portion of the Property if, during the tenure of such owner's ownership, such owner's portion of the Property was not in compliance with any one or more of the special development covenants.

5.5 Developer Covenant to Defend this Agreement. The Developer acknowledges that the Authority is a "**public entity**" and/or "**public agency**" as defined under applicable California law. Therefore, the Authority must satisfy the requirements of certain California statutes relating to the actions of public entities and public agencies including, without limitation, CEQA. Also, as a public body, the Authority's action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. The Developer assumes the risk of delays and damages that may result to the Developer from any third-party legal actions related to the Authority's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the Authority is determined to have occurred. If a third-party files a legal action regarding the Authority's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, either the Authority may terminate this Agreement on thirty (30) days written notice to the Developer of the Authority's intent to terminate this Agreement, referencing this Section 5.5, without any further obligation to perform the terms of this Agreement and without any liability to the Developer resulting from such termination, unless the Developer unconditionally agrees to indemnify and defend the Authority, with legal counsel acceptable to the Authority, against such third-party legal action, as provided in the next sentence. Within thirty (30) days of receipt of the Authority's notice of intent to terminate this Agreement, as provided in the preceding sentence, the Developer may offer to defend the Authority, with legal counsel reasonably acceptable to the Authority, in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from the Developer must be in writing and reasonably acceptable to the Authority in both form and substance. Nothing contained in this Section 5.5 shall be deemed or construed to be an express or

implied admission that the Authority is liable to the Developer or any other person or entity for damages alleged from any alleged or established failure of the Authority to comply with any statute, including, without limitation, CEQA. The Developer's defense of such third party actions as described in this Section 5.5 shall constitute an Unavoidable Delay.

5.6 Environmental Indemnity of the Authority by the Developer. The Developer agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend (with counsel selected by the Developer and approved by the Authority) the Authority, the City and their commissions, agents, attorneys, officers, employees, and authorized representatives (collectively, the "**Indemnified Parties**"), from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever (collectively, "**Environmental Claims**") that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, the Indemnified Parties, directly or indirectly relating to or arising from any of the following "**Environmental Matters**" existing or occurring during or arising from the Developer's ownership of the Property or construction or operation of the Project:

5.6.1 The presence of Hazardous Materials on, in, under, from or affecting all or any portion of the Property or the Project.

5.6.2 The storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.6.3 The violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by the Developer, its agents or contractors, relating to or governing in any way Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.6.4 The failure of the Developer, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with the Developer's activities on the Property or regarding the Project.

5.6.5 The implementation and enforcement by the Developer, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.6.6 The failure of the Developer, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain, transport or dispose of any Hazardous Materials existing, stored or generated on, in, under or from the Property or the Project.

5.6.7 Any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any Hazardous Materials on, in, under,

from or affecting the Property or the Project or the violation of any Environmental Law relating to the Property or the Project.

5.6.8 The Developer shall pay to the Indemnified Parties all costs and expenses including, without limitation, reasonable attorneys' fees and costs, incurred by the Indemnified Parties in connection with enforcement of the aforementioned environmental indemnity.

5.7 Insurance. In order to protect the Authority, the City and their commissions, agents, attorneys, officers, employees and authorized representatives (collectively, "**Additional Insureds**") against any and all claims and liability for death, injury, loss and damage resulting from the Developer's actions in connection with this Agreement, the Property, and the Project, the Developer shall secure and maintain the insurance coverage, described in and required by this Section 5.7. The Authority shall not have any obligation under this Agreement until the Developer provides the required policies and/or certificates evidencing the insurance required by this Section 5.7 to the Authority and the Authority approves such evidence of insurance. The Developer shall pay any deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Agreement. Developer shall retain all insurance policies as set forth in this Section 5.7 until recordation of the Certificate of Completion.

5.7.1 Workers' Compensation Insurance Requirement. The Developer shall submit written proof that the Developer is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code. By executing this Agreement, the Developer makes the following certification, required by Section 1861 of the Labor Code:

> "I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement."

The Developer shall require each contractor and sub-contractor performing work on the Project to provide workers' compensation coverage for all of such contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by workers' compensation insurance provided by the Developer. If any class of employees engaged in work or services performed in connection with the Project is not covered by Labor Code Section 3700, the Developer shall provide and/or require each contractor or sub-contractor to provide adequate workers' compensation insurance covering such employees. Each workers' compensation policy procured pursuant to this Section 5.7.1 shall contain a full waiver of subrogation clause in favor of the Additional Insureds.

5.7.2 Liability and Insurance Requirements.

5.7.2.1 The Developer shall maintain in full force and effect, until the issuance of the Certificate of Completion, subject to Section 5.7.2.4, the following insurance coverage:

5.7.2.1.1 Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically covering all indemnity obligations of the Developer pursuant to this Agreement), Products-Completed Operations Hazards, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the construction of the Project and/or the Developer's operations concerning the Property or the Project. The commercial general liability insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of TWO MILLION DOLLARS ($2,000,000) each occurrence and FOUR MILLION DOLLARS ($4,000,000) aggregate.

5.7.2.1.2 Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used by the Developer with minimum limits for Bodily Injury and Property Damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

5.7.2.1.3 If the Developer hires a consultant to provide design services, such as architectural or engineering services in connection with the Project, or any portion of the Project, the Developer shall require each such consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of such design services, with limits of not less than ONE MILLION DOLLARS ($1,000,000).

5.7.2.1.4 Upon acceptance of the Project or any portion thereof, from each contractor, the Developer shall maintain Fire and Extended Coverage Insurance on the Project on a blanket basis or with an agreed amount clause in amounts not less than 100% of the replacement value of all portions of the Project so accepted.

5.7.2.2 During the construction of the Project, the Developer shall require that each contractor performing work on the Project maintain the following insurance coverage, as specified below, at all times during the performance of said work, or the Developer shall provide for such contractors "wrap" coverage, as specified below, at all times during the performance of said work:

5.7.2.2.1 The Developer shall maintain Builder's Risk Insurance to be written on an All Risk Completed Value form, in an aggregate amount equal to 100% of the completed insurable value of the Project or portion of the Project on which such contractor is performing work.

5.7.2.2.2 Each general contractor and each sub-contractor shall maintain Commercial General Liability Insurance with limits of not less than ONE MILLION

DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate to protect the Developer during the construction of the Project from claims involving bodily injury and/or death and damage to the property of others.

5.7.2.2.3 Each general contractor and each sub-contractor shall maintain Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used in the performance of the contractor's obligations with minimum limits for bodily injury and property damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such automobile liability insurance shall be provided by a business or commercial vehicle policy.

5.7.2.3 The insurance required in Section 5.7.2.1 and Section 5.7.2.2 above shall include endorsements naming the Additional Insureds as additional insured for liability arising out of this Agreement and any operation related to this Agreement.

5.7.2.4 Any insurance coverage required under this Agreement shall not be written on a "claims made" basis. The applicable certificate of insurance must clearly provide that the coverage is on an "occurrence" basis. The requirements of this Section 5.7.2.4 shall survive any expiration or termination of this Agreement and the recordation of the Grant Deed and any Certificate of Completion.

5.7.2.5 Receipt by the Authority of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements of this Agreement.

5.7.2.6 Subject to Section 5.7.2.4, all of the insurance coverage required under this Section 5.7 shall be maintained by the Developer or its contractors, as required by the terms of this Agreement, until the issuance of the Certificate of Completion and shall not be reduced, modified, or canceled without, at least, thirty (30) days prior written notice to the Authority. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Additional Insureds. The Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

5.7.2.7 All insurance to be obtained and maintained by the Developer under this Section 5.7 shall be issued by a company or companies listed in the then current "Best's Key Rating Guide" publication with a minimum of an "A:VII" rating and be admitted to conduct business in the State of California by the State of California Department of Insurance.

5.7.2.8 The Authority will not accept self-insurance in satisfaction of the insurance requirements of this Section 5.7.

5.7.2.9 All insurance obtained and maintained by the Developer in satisfaction of the requirements of this Agreement shall be primary to and not contributing to any insurance maintained by the Additional Insureds.

5.7.2.10 Insurance coverage in the minimum amounts set forth in this Section 5.7 shall not be construed to relieve the Developer of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the Additional Insureds from taking such other actions as are available to them under any other provision of this Agreement or otherwise at law.

5.7.3 Failure by the Developer to maintain all insurance coverage required by this Section 5.7 in effect shall be an Event of Default by the Developer. The Authority, at its sole option, may exercise any remedy available to them in connection with such an Event of Default. Alternatively, the Authority may, at its sole option, purchase any such required insurance coverage and the Authority shall be entitled to immediate payment from the Developer for any premiums and associated costs paid by the Authority for such insurance coverage. Any election by the Authority to purchase or not to purchase insurance otherwise required to be carried by the Developer shall not relieve the Developer of its obligation to obtain and maintain the insurance coverage required by this Agreement.

ARTICLE VI

PROJECT FINANCING

6.1 Recordation of Construction Loan Deed of Trust. The Developer covenants to the Authority that, if Developer has arranged any secured Construction Loan, the Developer shall cause the Construction Loan Deed of Trust(s) to be recorded against the Property within sixty (60) days following the Close of Escrow.

6.2 Unauthorized Liens. Except as provided in Section 6.3, until recordation of the Certificate of Completion, the Developer shall not record, and shall not allow to be recorded, against the Property, or any portion thereof, any Lien not expressly authorized by this Agreement. Until recordation of the Certificate of Completion, the Developer shall remove, or shall have removed, any unauthorized Lien made or recorded against the Property or any portion of the Property, or shall assure the satisfaction thereof to the satisfaction of the Authority. After one hundred twenty (120) calendar days prior written notice to the Developer, the Authority shall have the right, but not the obligation, to satisfy any unauthorized Lien made or recorded prior to recordation of the Certificate of Completion and receive reimbursement from the Developer for any amounts paid or incurred in satisfying any such Lien, upon demand. Nothing in this Section 6.2, though, shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien, or charge that the Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject the Property, or any portion thereof, to forfeiture or sale.

6.3 Rights of Lenders and Authority Regarding Permitted Loans and Liens.

6.3.1 The Authority shall have the right of reasonable review and approval of any Lender from which the Developer proposes to obtain any Loan, whether or not such Loan is secured by a Lien against the Property or any portion thereof. The Authority shall not unreasonably withhold, condition or delay its approval of any proposed Lender or Loan. In deciding whether to give, condition or withhold such approval, the Authority may consider, among

other matters, whether or not the proposed Lender is a state or federally chartered bank, savings and loan, or other financial institution which routinely provides construction financing to development projects such as the Project, whether the terms of the Loan are reasonable and customary when compared to the financing terms of similar development projects in the County, the size and financial strength of the proposed Lender, and what effect, if any, any changes requested by the Lender to either this Agreement or any of the exhibits to this Agreement may have upon the Authority's rights and remedies hereunder. In connection therewith, in any notice requesting approval of a proposed Lender and Loan, the Developer shall include a statement identifying any amendments, modifications, or other changes to this Agreement or its exhibits which the proposed Lender will request in connection with the Developer's obtaining of the Loan. The Authority agrees to reasonably consider, but shall not be obligated to accept, any amendment, modification, or other change to this Agreement or any of the exhibits to this Agreement which materially restricts, diminishes, or burdens the Authority's rights and remedies.

6.3.2 Whenever the Authority delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the Authority to terminate this Agreement, the Authority shall send a copy of such notice to each affected Lender of which the Authority has received notice and a contact address for transmittal of such notices. Whenever the Authority delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the Authority to exercise its power of termination of the fee estate of all or any portion of the Property pursuant to Section 7.7, the Authority shall at the same time send a copy of such notice or demand to each affected Lender of which the Authority has received notice and a contact address for transmittal of such notice. Each affected Lender receiving a copy of any such notice shall have the right, at its option, to commence the cure or remedy of any such default of the Developer and to diligently and continuously proceed with such cure or remedy, within one hundred eighty (180) calendar days following its receipt of notice of the default. If a default of the Developer under this Agreement cannot, with diligence, be remedied or cured, or the remedy or cure of such default cannot be commenced, within such one hundred eighty (180) calendar day period, the Lender shall have such additional time as is reasonably necessary to remedy or cure such default of the Developer, but in no event beyond three hundred sixty five (365) calendar days following its receipt of notice of the default. If such default of the Developer can only be remedied or cured by the Lender upon obtaining possession of the Property, the Lender shall seek to obtain possession of the Property with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default of the Developer within one hundred eighty (180) calendar days after obtaining possession of the Property. Nothing contained in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue the construction of any portion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made), without expressly assuming the Developer's obligations under this Agreement by written agreement approved by the Authority, in which the Lender agrees to complete, in the manner provided in this Agreement, the improvements to which the Lien or title of the Lender relates, which approval shall not unreasonably be withheld, delayed, or conditioned by the Authority.

6.3.3 In any case where, one hundred eighty (180) calendar days after delivery of notice of a default of the Developer under Section 6.3.2, an affected Lender has not exercised the option provided in Section 6.3.2 to construct the applicable portions of the Project, or has

exercised the option, but has not proceeded diligently and continuously with construction, the Authority shall have the option, in the Authority's sole and absolute discretion, to purchase the Loan of such Lender and any security interest of such Lender under its Loan Documents by payment to the Lender of the amount of the unpaid Loan, including principal, accrued and unpaid interest, late charges, costs, expenses and other amounts payable to the Lender by the Developer under its Loan Documents and, if the ownership of the Property or any portion of the Property has previously vested in such Lender, the Authority, at its option but not as its obligation, shall be entitled to a conveyance of any title or interest in the Property vested in such Lender from such Lender.

6.3.4 After expiration of the one hundred eighty (180) calendar day period provided for in Section 6.3.3, any affected Lender may demand, in writing, that the Authority act to exercise or forego the option granted in Section 6.3.3. If the Authority fails to exercise the right granted in Section 6.3.3 within sixty (60) calendar days from the date of the Authority's receipt of such written demand from a Lender, the Authority shall be conclusively deemed to have waived its right of purchase of that Lender's interest pursuant to Section 6.3.3.

6.3.5 In the event of a default or breach by the Developer under any Loan Documents, where the Lender has not exercised its option to complete the Project under Section 6.3.2, the Authority may cure the default of the Developer under the applicable Loan Documents, but is under no obligation to do so, prior to completion of any sale or foreclosure of the Property or any portion thereof under the applicable Loan Documents. The Authority shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Authority in curing any default of the Developer under any Loan Documents.

6.3.6 In any case where a Lender has acquired title to all or any portion of the Property or Project through foreclosure, deed in lieu of foreclosure, or any other means, and such Lender proposes to enter into an agreement to transfer the Property and/or Project, or any portion thereof, to a third party transferee, the Lender shall provide the Authority with written notice thereof, which notice shall include a reasonably detailed description of the terms and conditions of the proposed transaction. The Authority shall have the option, but not the obligation, to purchase the Property and/or Project on substantially the same terms as described in the Lender's notice, which option, if ever, shall be exercised by written notice from the Authority to the Lender within twenty (20) days following the Authority's receipt of the Lender's notice. If the Authority elects not to exercise its option, then, subject to Section 8.2.2, the Lender may complete the transaction described in its notice, provided that such transaction is closed on materially identical terms and conditions as those described in the Lender's notice to the Authority. If the Lender and third party transferee desire to materially amend the terms of their proposed transaction, the Lender shall give the Authority written notice of the proposed modifications and the Authority shall once again have the right to elect to acquire the Property and the Project (or portion thereof) on terms and conditions substantially similar to those modified terms. If, for any reason, the proposed transaction between the Lender and third party transferee fails to close within two hundred forty (240) days following the date on which the Authority first receives notice of the proposed transaction (or notice of the proposed modified transaction, whichever is later), then the Authority once again have the right to elect to acquire the Property and/or Project pursuant to this Section 6.3.6.

6.3.7 The restrictions set forth in this Section 6.3 shall remain in effect only until the recordation of the Certificate of Completion for the Project.

ARTICLE VII

ARTICLE VIIIDEFAULTS, REMEDIES AND TERMINATION

8.1 Defaults - General.

8.1.1 Subject to any extensions of time provided for in this Agreement, failure or delay by any Party to perform any term or provision of this Agreement shall constitute an "Event of Default" under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default, within thirty (30) calendar days after receipt of written notice from the injured Party specifying such default, and shall diligently and continuously prosecute such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), such Party shall not be deemed to be in default under this Agreement and no Event of Default shall be deemed to have occurred.

8.1.2 The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

8.1.3 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of its rights and/or remedies shall not deprive that Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

8.1.4 In addition to other acts or omissions of the Developer that may legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events, prior to the issuance of a Certificate of Completion for the Project, shall constitute an "Event of Default" under this Agreement and shall not be subject to the notice and cure provisions of Section 7.1.1:

8.1.4.1 Any material default by the Developer under any Loan Documents for any purpose or reason that remains uncured following any applicable notice and expiration of any applicable cure period under such Loan Documents.

8.1.4.2 Any representation, warranty or disclosure made to the Authority by the Developer regarding this Agreement or the Project is materially false or misleading, whether or not such representation or disclosure appears in this Agreement.

8.1.4.3 The Developer fails to make any payment or deposit of funds required under this Agreement or to pay any other charge set forth in this Agreement, following seven (7) days' written notice to the Developer from the Authority of such failure.

8.1.4.4 The construction of the Project is delayed or suspended for a period in excess of that permitted under Section 4.3 or the Developer has not been issued, or entitled to be issued, a Certificate of Completion by the Project Completion Date.

8.1.4.5 There occurs any event of dissolution, reorganization or termination of the Developer that adversely and materially affects the operation or value of the Property or the Project, and such event is not corrected within five (5) days following written notice of such event from the Authority to the Developer.

8.1.4.6 The Developer Transfers its interest in this Agreement, the Property, or the Project, or any portion thereof, whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement and such action is not cured within the period prescribed in Section 8.2.2.

8.1.4.7 The Developer becomes insolvent or a receiver is appointed to conduct the affairs of the Developer under state or federal law.

8.1.4.8 The Developer's legal status as a California limited liability company authorized by the Secretary of State of the State of California to transact business in California is suspended or terminated.

8.2 LIQUIDATED DAMAGES TO THE AUTHORITY. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE AUTHORITY MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE AUTHORITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY THE PROPERTY OR ANY PORTION THEREOF AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE AUTHORITY TO THE DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE AUTHORITY AND THE DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE, TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE AUTHORITY IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE AUTHORITY WOULD SUFFER IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE AUTHORITY AND THE DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF THE AUTHORITY'S DAMAGES IN SUCH EVENT IS THE TOTAL SUM OF SEVENTEEN THOUSAND, ONE HUNDRED DOLLARS ($17,100) (THE "**LIQUIDATED DAMAGES AMOUNT**"). THEREFORE, UPON THE CANCELLATION OF THE ESCROW BY THE AUTHORITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF THE ESCROW, ESCROW HOLDER SHALL IMMEDIATELY CANCEL THE ESCROW AND PAY THE LIQUIDATED DAMAGES AMOUNT TO THE AUTHORITY, IN PART, FROM THE EARNEST MONEY DEPOSIT

WITHIN FIVE (5) DAYS OF ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE THE AUTHORITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW.

AUTHORITY'S INITIALS: _____ DEVELOPER'S INITIALS: 

8.3 DEVELOPER'S ELECTION RE: SPECIFIC ENFORCEMENT OF AGREEMENT OR WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT PERTAINING TO THE CONVEYANCE OF THE PROPERTY BY THE AUTHORITY UNDER THIS AGREEMENT PRIOR TO CLOSE OF ESCROW, THE DEVELOPER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY, HAVE THE RIGHT TO EXERCISE ONE OF THE ALTERNATIVE REMEDIES DESCRIBED IN SECTIONS 7.3.1 AND 7.3.2. THE DEVELOPER'S ELECTION, ONCE MADE, SHALL BE IRREVOCABLE.

8.3.1 WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES. THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.2 AND MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE DEVELOPER SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO PURCHASE OR ACCEPT TITLE TO THE PROPERTY AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE DEVELOPER TO THE AUTHORITY OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE DEVELOPER SHALL BE LIMITED TO RECOVERING ANY AMOUNTS ACTUALLY EXPENDED BY THE DEVELOPER IN REASONABLE RELIANCE ON THIS AGREEMENT PRIOR TO THE DATE OF THE OCCURRENCE OF THE EVENT OF DEFAULT BY THE AUTHORITY, NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000). THE DEVELOPER WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE AUTHORITY ARISING FROM AN EVENT OF DEFAULT BY THE AUTHORITY PRIOR TO THE CLOSE OF ESCROW. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.3.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.3.1.

DEVELOPER'S INITIALS _____

IN CONNECTION WITH THE WAIVERS OF THIS SECTION 7.3.1, THE DEVELOPER FURTHER WAIVES THE RIGHT TO RECORD A NOTICE OF PENDENCY OF ACTION AGAINST ALL OR ANY PORTION OF THE PROPERTY EXCEPT DEVELOPER MAY RECORD SUCH A NOTICE IN CONNECTION WITH ANY SUIT FOR SPECIFIC PERFORMANCE PERMITTED HEREUNDER IN THE EVENT DEVELOPER ELECTS NOT TO WAIVE ITS RIGHT TO SEEK SPECIFIC PERFORMANCE UNDER SECTION 7.3.2.

8.3.2 SPECIFIC PERFORMANCE. THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.1 AND, IN ACCORDANCE WITH CIVIL CODE SECTION 3384, ET SEQ., INSTITUTE AN ACTION AGAINST THE AUTHORITY FOR SPECIFIC PERFORMANCE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT WHICH WERE TO HAVE BEEN COMPLETED BY THE AUTHORITY PRIOR TO THE CLOSE OF ESCROW.

8.4 Termination for Convenience. Notwithstanding any other provision of this Agreement, if a Governing Agency determines that this Agreement or the transaction contemplated herein is not in accordance with California law, the Authority shall have the right to terminate this Agreement for convenience, without liability to either Party.

8.5 Legal Actions.

8.5.1 Except as otherwise provided by Section 7.3, any Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity. Such legal actions must be instituted in the Superior Court of the State of California in and for the County of San Bernardino, California, in any other appropriate court within the County of San Bernardino, California.

8.5.2 The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Ontario, County of San Bernardino, California.

8.6 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this ARTICLE VII are non-exclusive and cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party(ies).

8.7 Authority Power of Termination Regarding the Property.

8.7.1 The Authority hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the City, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Developer referencing this Section 7.7, to terminate the fee interest of the Developer in the Property and/or any improvements to the Property and revest such fee title in the Authority and take possession of all or any portion of such real property and improvements, without compensation to the Developer, upon the occurrence of an Event of Default by the Developer following the Close of Escrow and prior to the issuance of the Certificate of Completion.

8.7.2 The thirty (30) calendar day written notice specified Section 7.7.1 shall specify the Event of Default by the Developer triggering the Authority's exercise of its power of termination. The Authority shall proceed with its remedy set forth in Section 7.7.1 only if the Developer continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

8.7.3 The rights of the Authority under this Section 7.7 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

8.7.3.1 Each Lien recorded against the Property and specifically authorized by this Agreement as a Permitted Transfer;

8.7.3.2 Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement as a Permitted Transfer.

8.7.4 Upon the Authority's exercise of its power of termination pursuant to this Section 7.7, the Developer or its successors or assigns shall convey by grant deed to the Authority title to the Property, as specified in the Authority's notice pursuant to Section 7.7.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Developer and a notary in a manner suitable for recordation. The Authority may enforce its rights pursuant to this Section 7.7 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

8.7.5 Upon the revesting in the Authority of title to the Property, whether by grant deed or court decree, the Authority shall exercise its reasonable good faith efforts to resell the Property at its then fair market value, as soon and in such manner as the Authority shall, in its sole discretion, find feasible and consistent with the objectives of the City's General Plan, to a qualified and responsible person or persons (as reasonably determined by the City) who will assume the Developer's obligations to begin and/or complete and/or operate that portion of the Project located on the Property, or such other replacement development acceptable to the Authority, in its sole and absolute discretion. Upon any such resale of the Property (or any portion thereof), the proceeds to the Authority from such sale shall be applied as follows:

8.7.5.1 First, to pay any and all amounts required to release/reconvey any Lien recorded against all or any portion of the Property; and

8.7.5.2 Second, to reimburse the Authority on its own behalf or on behalf of the Authority for all actual internal and third-party costs and expenses previously or currently incurred by the Authority related to the Property, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Property or any part thereof; all taxes, assessments and utility charges paid by the Authority with respect to the Property or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Developer with respect to the acquisition of the Property or the construction of the Project; and amounts otherwise owing to the Authority by the Developer or its successors or assigns pursuant to the terms of this Agreement; and

8.7.5.3 Third, to the extent that any proceeds from such resale are, thereafter, available, taking into account any prior encumbrances with a claim thereto, to reimburse the Developer, or its successors in interest to the equal to the sum of: (1) the Purchase Price; and (2) the third-party costs actually incurred and paid by the Developer regarding the development of the Project located on the Property, including, but not limited to, pro rata costs of carry, taxes, and other items as set forth in a cost certification to be made by the Developer to the Authority prior to any such reimbursement, which certification shall be subject to the Authority's reasonable approval; provided, however, that the Developer shall not be entitled to reimbursement for any expenses to the extent that such expenses relate to any loans, Liens or other encumbrances that are paid by the Authority pursuant to the provisions of sub-sections 7.7.5.1 or 7.7.5.2 above.

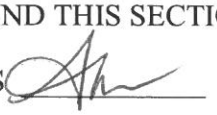
8.7.5.4 Any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by the Authority as their sole and exclusive property.

8.7.6 IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 7.7.1, ABOVE, THE AUTHORITY, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE DEVELOPER. BY INITIALING BELOW, THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

DEVELOPER'S INITIALS 

8.7.7 THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE AUTHORITY'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 7.7 MAY WORK A FORFEITURE OF THE ESTATE IN THE

DEFAULTED PORTION OF THE PROPERTY CONVEYED TO THE DEVELOPER THROUGH THE GRANT DEED. THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE DEVELOPER MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE DEVELOPER FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE DEVELOPER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE AUTHORITY'S POWER OF TERMINATION PROVIDED IN THIS SECTION 7.7 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 7.7.6. AND THIS SECTION 7.7.7.

DEVELOPER'S INITIALS 

8.8 Developer Indemnification. In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement, the Developer agrees to indemnify, defend (upon written request by the Authority and with counsel reasonably acceptable to the Authority and hold harmless the Indemnified Parties, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses, including, but not limited to reasonable attorney's fees of counsel retained by the Indemnified Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature, that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of the Developer or the Developer's officers, agents, employees, independent contractors or subcontractors of any tier, relating in any manner to this Agreement, any work to be performed by the Developer related to this Agreement, the Property, or the Project, or any authority or obligation exercised or undertaken by the Developer under this Agreement. Without limiting the generality of the foregoing, the Developer's obligation to indemnify the Indemnified Parties shall include injury or death to any person or persons, damage to any property, regardless of where located, including the property of the Indemnified Parties, any workers' compensation or prevailing wage determination, claim or suit or any other matter arising from or connected with any goods or materials provided or services or labor performed regarding the Project or the Property on behalf of the Developer by any person or entity.

ARTICLE IX

GENERAL PROVISIONS.

9.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

9.2 Restrictions on Transfers.

9.2.1 The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to the Authority. The Developer further recognizes and acknowledges that the Authority has relied and is relying on the specific qualifications and identity of the Developer in entering into this Agreement with the Developer and, as a consequence, Transfers are permitted only as expressly provided in this Agreement. The Developer shall promptly notify the Authority in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of the Developer, as well as any and all changes in the interest or the degree of control of the Developer by any such person, of which information the Developer or any of its partners, members or officers are notified or may otherwise have knowledge or information.

9.2.2 Except as expressly permitted in this Agreement, the Developer represents to the Authority that it has not made and agrees that it will not make or create, or suffer to be made or created, any Transfer other than a Permitted Transfer, either voluntarily, involuntarily or by operation of law, until after the recordation of a Certificate of Completion for the Project subject to the Transfer; provided, however, that the Authority may approve in its reasonable discretion, Transfers other than Permitted Transfers prior to the recordation of a Certificate of Completion. In deciding whether to approve or disapprove any proposed Transfer, the Authority may consider the proposed transferee's financial strength and the experience of the proposed transferee and its senior management in undertaking and successfully completing projects of a similar type and size as the Project or that portion of the Project proposed to be transferred. Any Transfer made in contravention of this Section 8.2 shall be voidable at the election of the Authority and this Agreement may be terminated by the Authority or the Authority may exercise any other remedy available to the Authority under the terms of this Agreement, provided, however, that (i) the Authority shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to commence and, thereafter, diligently and continuously proceed to cure the default of the Developer and submit evidence of the initiation and satisfactory completion of such cure to the Authority, in a form and substance reasonably satisfactory to the Authority.

9.2.3 The Developer shall provide the Authority no less than thirty (30) days prior written notice of any proposed Permitted Transfer which the Developer desires to enter into prior to the recordation of a Certificate of Completion for the Project subject to the Transfer, other than a Permitted Transfer for which no notice shall be required. The Developer shall have the burden of demonstrating to the Authority's reasonable satisfaction that the proposed Permitted Transfer meets the conditions and requirements of this Agreement with respect to Permitted Transfers.

9.2.4 In connection with the Authority's review of any request for approval of any proposed Transfer under this Section 8.2, or of any Lender or Loan under Section 6.3, the Developer agrees to reimburse the Authority for those third party costs and expenses incurred by the Authority in connection with its review of the Developer's request for approval, including, without implied limitation, the reasonable fees and costs of those outside consultants and legal

counsel retained by the Authority to assist it in its review of the Developer's request, including the Authority Counsel.

9.2.5 Anything in this Agreement to the contrary notwithstanding, the restrictions and prohibitions on Transfers contained in this Section 8.2 shall terminate upon issuance of a Certificate of Completion for the Project.

9.3 Notices, Demands and Communications Between the Parties.

9.3.1 Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States Mail, postage prepaid, return receipt requested, to the principal office of the Authority or the Developer, as applicable, as designated in Section 8.3.2. Such written notices, demands or communications may be sent in the same manner to such other addresses as either Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States Mail, as provided in this Section 8.3.

9.3.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

TO DEVELOPER:	United Investment Group LLC 9500 7th Street, Suite U Rancho Cucamonga, CA 91730 Attn: Alvaro Magana
TO AUTHORITY:	Ontario Housing Authority 303 East B Street Ontario, CA 91764 Attn: Katryna Gonzalez, Housing Director
COPY TO:	Best Best & Krieger LLP 3390 University Ave 5th Floor, Riverside, CA 92501 Attn: A. Haviva Shane, Legal Counsel

9.4 Conflict of Interest. No member, official or employee of the Authority, having any conflict of interest, direct or indirect, related to this Agreement, the Property, or the development or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

9.5 Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 8.5,

shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Developer.

9.6 Non-liability of Authority, Officials and Employees. No member, official or employee of the Authority shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any default or breach by the Authority under this Agreement or for any amount that may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement, except as may arise from the gross negligence or willful acts of such member, official or employee.

9.7 Unavoidable Delay; Extension of Time of Performance.

9.7.1 Subject to specific provisions of this Agreement, performance by any Party under this Agreement shall not be deemed, or considered to be, in default where any such default is due to an Unavoidable Delay that is not attributable to the fault of the Party claiming an extension of time to perform. An extension of time for any Unavoidable Delay shall be for the period of the Unavoidable Delay and shall commence to run from the date of occurrence of the Unavoidable Delay, if the Party asserting the existence of the Unavoidable Delay provides the other Parties with written notice of the occurrence of the Unavoidable Delay, within ten (10) days of the commencement of such asserted Unavoidable Delay. Otherwise, the extension of time for an Unavoidable Delay shall commence on the date of receipt of written notice of the occurrence of the Unavoidable Delay by the Parties not requesting an extension of time to perform due to such Unavoidable Delay.

9.7.2 The Parties expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of either of them that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, do not constitute an Unavoidable Delay and do not provide any Party with grounds for asserting the existence of an Unavoidable Delay in the performance of any covenant or undertaking arising under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement.

9.8 Inspection of Books and Records. The Authority shall have the right at all reasonable times, at the Authority's cost and expense, to inspect the books and records of the Developer pertaining to the Property and/or the Project. The Developer shall also have the right at all reasonable times, at the Developer's sole cost and expense, to inspect the books and records of the Authority pertaining to the Property and/or the Project, to the extent relevant to the Developer's obligations under this Agreement. Nothing in this Section 8.8 or elsewhere in this Agreement shall, however, constitute a waiver or modification of any right or privilege which any Party may have with respect to any document, statement, or other record, including, without implied limitation, the attorney-client privilege, the attorney-work product privilege, any privilege arising under any state or federal evidentiary code or rule, or any privilege or exclusionary right arising under any state or federal freedom of information or public records disclosure law.

9.9 Real Estate Commissions. The Authority shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement. The Developer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

9.10 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

9.11 Entire Agreement.

9.11.1 This Agreement shall be executed in three (3) duplicate originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement includes seventy-nine (79) pages (exclusive of signature pages) and six (6) exhibits, that constitute the entire understanding and agreement of the Parties regarding the Property, the Project, and the other subjects addressed in this Agreement.

9.11.2 This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Property, the Project, and the other subjects addressed in this Agreement.

9.11.3 None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property and this Agreement shall continue in full force and effect before and after such conveyances.

9.11.4 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of all Parties.

9.12 Execution of this Agreement. Following execution of three (3) originals of this Agreement by the authorized representative(s) of the Developer and prompt delivery of such originals, thereafter, to the Authority, accompanied by an official action of the governing body of the Developer authorizing the individuals executing this Agreement on behalf of the Developer to execute and perform this Agreement, in form and substance acceptable to the Authority, this Agreement shall be subject to the review and approval by the Authority Board, in their sole and absolute discretion, no later than forty-five (45) calendar days after such date of delivery to the Authority. If the Authority have not approved, executed, and delivered an original of this Agreement to the Developer within the foregoing time period, then no provision of this Agreement shall be of any force or effect for any purpose.

9.13 Survival of Indemnity Obligations. All general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement, the execution or recordation of the Grant Deed, and/or the issuance and recordation of any Certificate of Completion.

9.14 Time Declared to be of the Essence. As to the performance of any obligation hereunder as to which time is a component thereof, the performance of such obligation within the time provided is of the essence.

[Signatures on Following Pages]

SIGNATURE PAGE
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

AUTHORITY:

ONTARIO HOUSING AUTHORITY
a public body, corporate and politic

Dated:_____, 2021

By:_____
Executive Director

ATTEST:

_____
Authority Secretary

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Authority Counsel

SIGNATURE PAGE
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

DEVELOPER:

UNITED INVESTMENT GROUP LLC, a
California limited liability company

Dated: 4/6/21

By: _____
Alvaro Magana, President

EXHIBIT A
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Legal Description of the Property

1004 South Euclid Avenue

APN: 1049-563-10

Legal Description:

Lot 4, Block 145, Villa Plots South Side Tract, per map recorded in Book 6, Page 11 of Maps, in the office of the County Recorder, County of San Bernardino, California.

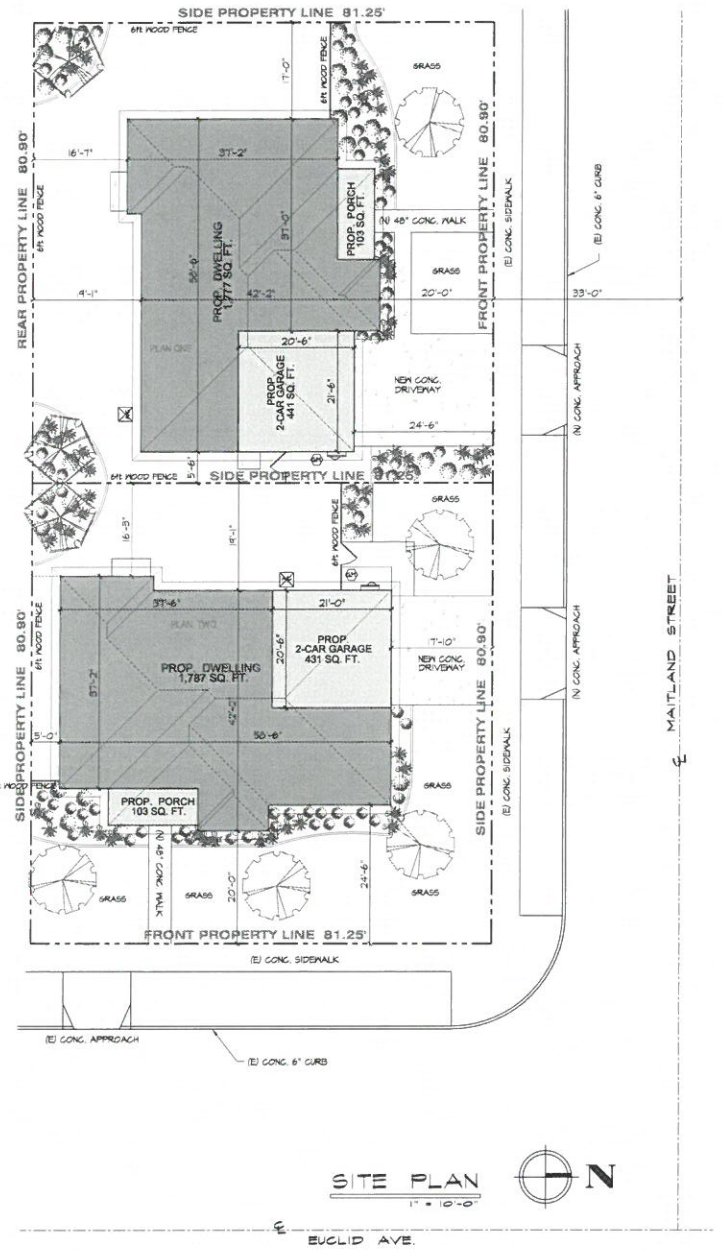
EXHIBIT B
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Scope of Development

The development will include two single-family residences that will be approximately 1,800 square feet including an attached two-car garage. One home will front onto Euclid Avenue and one home will front onto Maitland Street. Each home will contain four bedrooms and three bathrooms.

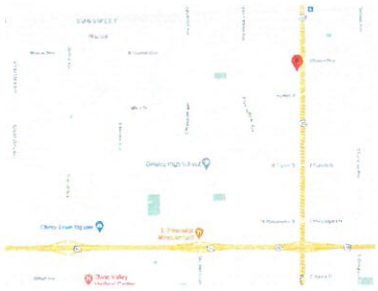
PROPOSED DWELLING FOR:

UNITED INVESTMENT GROUP LLC



SITE PLAN

1" = 10'-0"



VICINITY MAP N.T.S.

SHEET INDEX

TITLE	SHEET #
COVER SHEET & SITE PLAN	G-1
FLOOR & ROOF PLAN-PLAN ONE	A-1
FLOOR & ROOF PLAN-PLAN TWO	A-1.1
EXTERIOR ELEVATIONS-PLAN ONE	A-2
EXTERIOR ELEVATIONS-PLAN TWO	A-2.2

BUILDING ANALYSIS:

SINGLE FAMILY WOOD FRAMED RESID.

ZONING: R1

OCCUPANCY: R-3/U

TYPE OF CONSTR.: V-B

FIRE SPRINKLERS: NO

NUMBER OF STORIES: TWO

BUILDING CODES:

2016 CALIFORNIA ADMINISTRATIVE CODE,
2016 CALIFORNIA RESIDENTIAL CODE,
2016 CALIFORNIA ELECTRICAL CODE,
2016 CALIFORNIA MECHANICAL CODE,
2016 CALIFORNIA PLUMBING CODE,
2016 CALIFORNIA GREEN BUILDING STANDARDS CODE,
2016 CALIFORNIA ENERGY CODE,
WITH CITY AMENDMENTS.

BUILDING SUMMARY:

LOT SIZE=	6,575 SQ. FT.
2-CAR GARAGE=	441 SQ. FT.
PORCH=	103 SQ. FT.
LIVING AREA=	1,777 SQ. FT.
FOOTPRINT=	2,321 SQ. FT.
FLOOR AREA RATIO=	2,218 SQ. FT.
LOT COVERAGE=	35.3%

LEGAL DESCRIPTION:

TRACT#

LOT#

APN#: 1048-563-10

CITY: ONTARIO

COUNTY: SAN BERNARDINO

STATE: CALIFORNIA

SITE ADDRESS:

1004 S. EUCLID AVE
ONTARIO, CA. 91762

MBGA DRAFTING INC.
2456-D ONEIDA ST.
MORENO VALLEY, CA. 92553
BUS: (951) 751 7813
mbgadrafting@gmail.com

OWNER/CLIENT:
UNITED INVESTMENT GROUP LLC
ADDRESS: 1004 S. EUCLID AVE
ONTARIO, CA. 91762
PH: (909) 229 4475
EMAIL: allsmiadconstruction@gmail.com

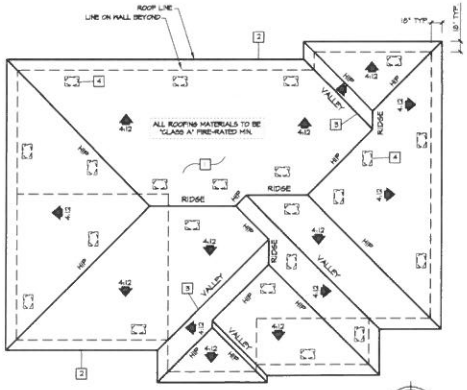
PROJECT:
PROPOSED
SINGLE-FAM. DWELLING

PROJECT LOCATION:
1004 S. EUCLID AVE
ONTARIO, CA. 91762

SHEET TITLE:
COVER SHEET &
SITE PLAN

REVISIONS DATE

JOB #: 2009-UNI
DATE: 9/03/2020
SCALE: 1"=10'-0"
DRAWN BY: M.B.
SHEET
C-1



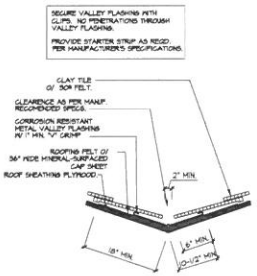
ROOF PLAN
1/8" = 1'-0"

ROOF PLAN KEYNOTES

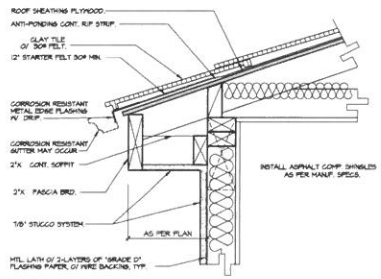
1. 'U.S.TILE' BY BORAL ROOFING TILE, LLC (ONE-PIECE S) CLAY, I.C.C.# ES-0017 ES-932' ROOF SHEATHING PLYWOOD (STRUCT. IV), NAILED W/ 30# FELT, W/ 10'D' COMMON NAILS. COLOR: 'SANTA BARBARA' BLEND
2. 2"X8" FASCIA BOARD INSTALLED W/ 8 GALV. NAILS. (2 NAILS MIN. PER RAFTER)
3. 26ga GALV. METAL CONT. FLASHING ALONG VALLEY.
4. 24"X22" 'MODEL 'S' (ROOST) O'HAGIN'S GLOAKED VENTS NET FREE AREA= 120 SQ. IN. I.C.C.# ESR-4852A. COLOR OF VENTS SHALL MATCH COLOR OF ROOFING MATERIAL. & TO BE PROTECTED BY 1/8" CORROSION RESISTANT METAL MESH.

ROOF PLAN NOTES:

1. ALL ROOFING MATERIALS TO BE 'CLASS A' FIRE-RATED MIN.
2. FLASH ALL ROOF OPENINGS W/ 26ga. GALV. MTL. FLASHING, TYP.
3. ALL ROOF PITCH TO BE 4:12 UNLESS NOTED OTHERWISE.
4. ALL ROOF TILE TO BE '1/8 TILE' BY BORAL ROOFING TILE BRAND OR EQUALLY APPROVED. I.C.C.# ES-1017.
5. INSTALL ROOF TILE AS PER MANUF. SPECIFICATIONS.
6. PROVIDE GALV. MTL. FLASHING @ ALL VALLEYS.



2 VALLEY FLASHING
2" = 1'-0"



1 EAVE DTL.
N.T.S.

ATTIC VENTILATION

AREA 1 — ROOF COVERED FLOOR AREA= 2321 SQ. FT.
CROSS VENT. FACTOR= 1/150= 0.0066

CROSS VENTILATION REQD.= 2321 / 150 X 144= 2228 SQ. IN.

UPPER VENT. REQD.= 1114 SQ. IN. PROVIDE 11- 24"X22" O'HAGIN'S
LOWER VENT. REQD.= 1114 SQ. IN. PROVIDE 11- 24"X22" O'HAGIN'S

50% OF VENTILATION REQUIRED IN THE UPPER PORTION OF ROOF AT LEAST 3'-0" ABOVE EAVE, BY MEANS OF 24"X22" MODEL #SOOST-18 O'HAGIN'S CLOAKED VENTS. NET FREE AREA= 473 SQ. IN. = 0.81 SQ. FT.

50% OF VENTILATION REQUIRED IN THE LOWER PORTION OF ROOF AT WITHIN 12" OF THE EAVE LINE, BY MEANS OF 24"X22" MODEL #SOOST-18 O'HAGIN'S CLOAKED VENTS. NET FREE AREA= 473 SQ. IN. = 0.81 SQ. FT. COLOR OF VENTS SHALL MATCH ROOFING MATERIALS. INSTALL O'HAGIN'S CLOAKED VENTS AS SHOWN ON ROOF PLAN.



PLAN ONE

FLOOR PLAN
1/4" = 1'-0"

SQUARE FOOTAGE	
2-CAR GARAGE=	441 SQ. FT.
PORCH=	103 SQ. FT.
LIVING AREA=	1777 SQ. FT.
FOOTPRINT=	2321 SQ. FT.
FLOOR AREA RATIO=	2218 SQ. FT.

MBGA DRAFTING INC.
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mbgadrafting@gmail.com

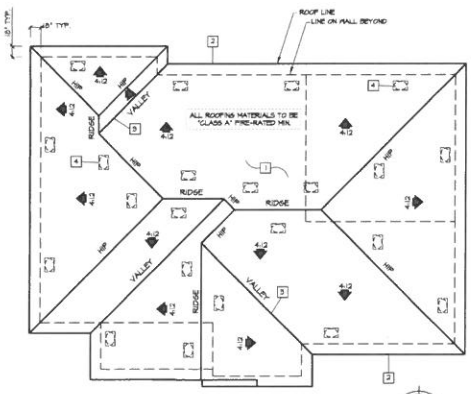
OWNER/CLIENT:
UNITED INVESTMENT GROUP LLC
ADDRESS: 118 W MAITLAND STREET ONTARIO, CA 91762
PH: (909) 229 4475
EMAIL: allunitedconstruction@gmail.com

PROJECT:
PROPOSED SINGLE-FAM. DWELLING
PROJECT LOCATION:
118 W MAITLAND STREET ONTARIO, CA 91762

SHEET TITLE:
FLOOR PLAN
ROOF PLAN

REVISIONS DATE
△
△
△

JOB #: 2009-UNI
DATE: 9/08/2020
SCALE: 1/4"=1'-0"
DRAWN BY: M.B.
SHEET
A-1



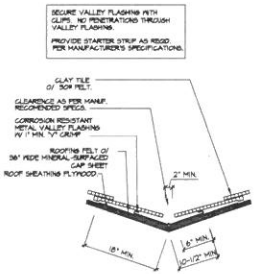
ROOF PLAN
1/8" = 1'-0"

ROOF PLAN KEYNOTES

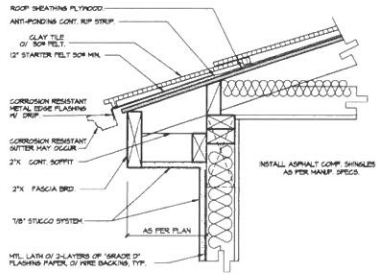
1. "U.S. TILE" BY BORAL ROOFING TILE, LLC (ONE-PIECE S) CLAY, I.C.C.# ESR-1017 (S/S2) ROOF SHEATHING PLYWOOD (STRUCT. #) NAILED (2) SQ# FELT, (2) #) 10'D COMMON NAILS. COLOR: SANTA BARBARA BLEND
2. 2"X8" FASCIA BOARD INSTALLED #) @ 8ALV. NAILS. (2 NAILS MIN. PER RAFTER)
3. 28ga 8ALV. METAL CONT. FLASHING ALONG VALLEY.
4. 24"X22", MODEL "S" ROOST O'HAGINS CLOAKED VENTS NET FREE AREA= 120 SQ. IN. I.C.C.# ESR-4655A. COLOR OF VENTS SHALL MATCH COLOR OF ROOFING MATERIAL. # TO BE PROTECTED BY 1/8" CORROSION RESISTANT METAL MESH.

ROOF PLAN NOTES:

1. ALL ROOFING MATERIALS TO BE "CLASS A" FIRE-RATED MIN.
2. FLASH ALL ROOF OPENINGS #) 26ga. 8ALV. MTL. FLASHING, TYP
3. ALL ROOF PITCH TO BE 4:12 UNLESS NOTED OTHERWISE.
4. ALL ROOF TILE TO BE "US TILE" BY BORAL ROOFING TILE BRAND OR EQUALLY APPROVED. (I.C.C.# ESR-1017)
5. INSTALL ROOF TILE AS PER MANUF. SPECIFICATIONS.
6. PROVIDE 8ALV. MTL. FLASHING @ ALL VALLEYS.



2 VALLEY FLASHING
3" = 1'-0"



1 EAVE DTL.
N.T.S.

ATTIC VENTILATION

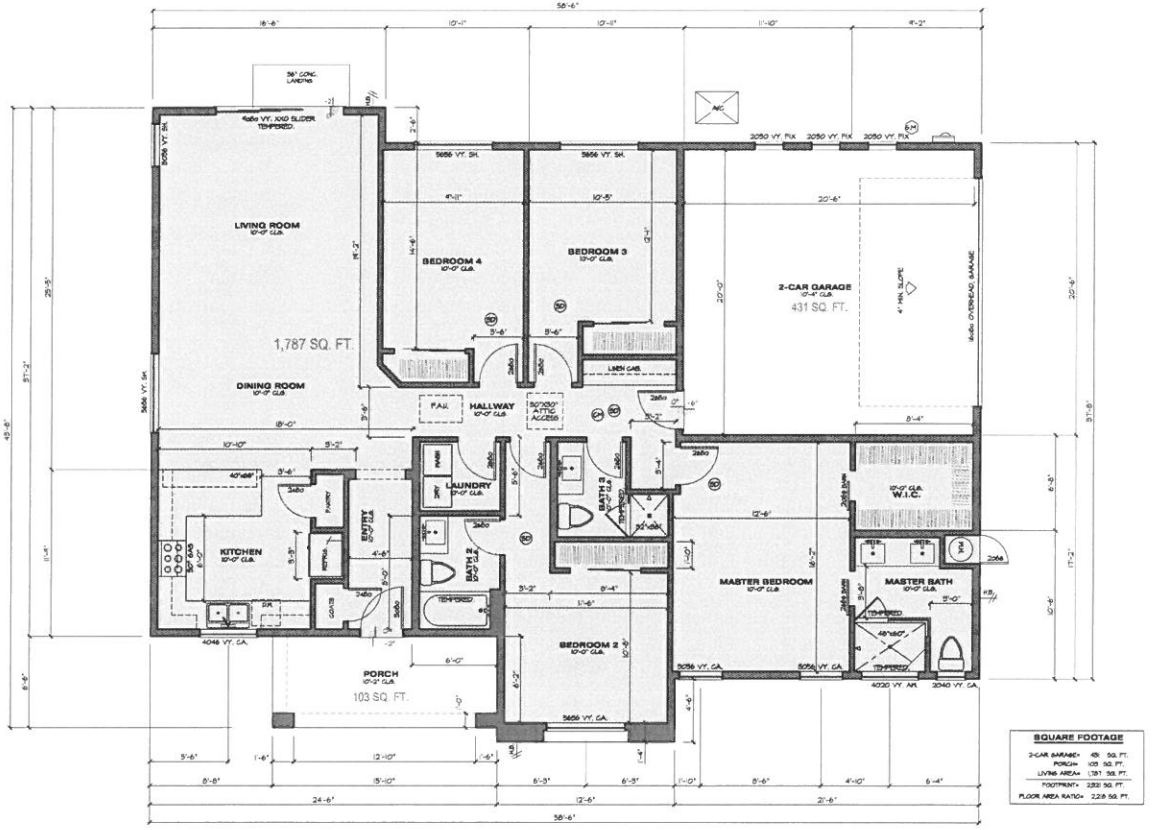
AREA 1 — ROOF COVERED FLOOR AREA= 2321 SQ. FT.
GROSS VENT. FACTOR= 1/150= 0.0066

GROSS VENTILATION REQ'D = 2321 (SQ. FT.) X 144= 2828 SQ. IN.

UPPER VENT. REQ'D = 1/4 SQ. IN. PROVIDE (- 24"X22" O'HAGINS
LOWER VENT. REQ'D = 1/4 SQ. IN. PROVIDE (- 24"X22" O'HAGINS

50% OF VENTILATION REQUIRED IN THE UPPER PORTION OF ROOF AT LEAST 3'-0" ABOVE EAVE, BY MEANS OF 24"X22" MODEL #SOOST-S O'HAGINS CLOAKED VENTS. NET FREE AREA= 475 SQ. IN. = 0.87 SQ. FT.

50% OF VENTILATION REQUIRED IN THE LOWER PORTION OF ROOF AT WITHIN 12" OF THE EAVE LINE, BY MEANS OF 24"X22" MODEL #SOOST-S O'HAGINS CLOAKED VENTS. NET FREE AREA= 475 SQ. IN. = 0.87 SQ. FT. COLOR OF VENTS SHALL MATCH ROOFING MATERIALS. INSTALL O'HAGINS CLOAKED VENTS AS SHOWN ON ROOF PLAN.


LIVING ROOM
10'-0" CLG.
1,787 SQ. FT.
DINING ROOM
10'-0" CLG.
BEDROOM 4
10'-0" CLG.
BEDROOM 3
10'-0" CLG.
2-CAR GARAGE
10'-4" CLG.
431 SQ. FT.
HALLWAY
10'-0" CLG.
LAUNDRY
10'-0" CLG.
KITCHEN
10'-0" CLG.
BATH 3
10'-0" CLG.
BATH 2
10'-0" CLG.
MASTER BEDROOM
10'-0" CLG.
MASTER BATH
10'-0" CLG.
BEDROOM 2
10'-0" CLG.
PORCH
10'-2" CLG.
103 SQ. FT.
10'-0" CLG. W.I.C.
4" MIN. SLOPE
8x8o OVERHEAD GARAGE
36" CONC. LANDING
4x8o VY. SLIDER TEMPERED
3656 VY. SH.
2050 VY. FIX
3656 VY. GA.
4046 VY. GA.
5056 VY. GA.
4020 VY. AW.
2040 VY. GA.
2868 SWG
2468 SWG
2868 SWG
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2480
2880
2480
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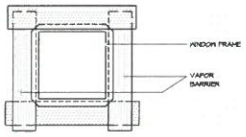
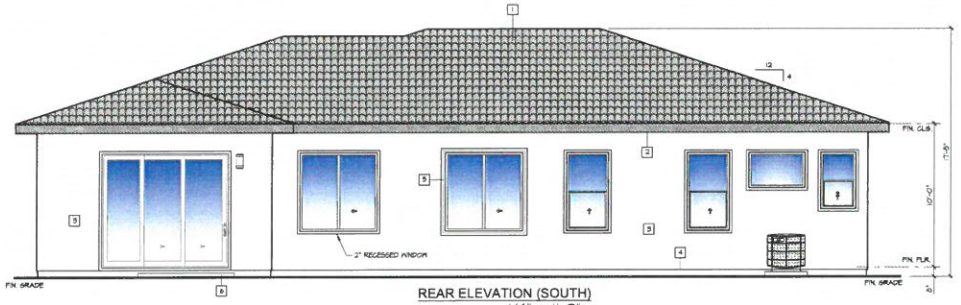
2480



FIRST: SILL STRIP UNDER NAIL FLANGE
SECOND: SIDE STRIP UNDER NAIL FLANGE AND OVER SILL STRIP
THIRD: SIDE STRIP UNDER NAIL FLANGE AND OVER SILL STRIP
FOURTH: SIDE STRIP UNDER NAIL FLANGE AND OVER SILL STRIP
LAST: HEAD STRIP OVER NAIL FLANGE & OVER SIDE STRIPS

VAPOR BARRIER



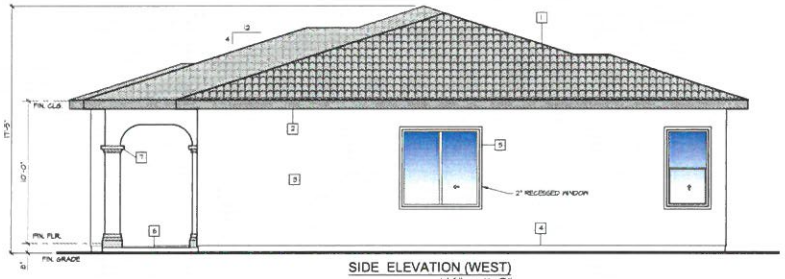
REAR ELEVATION (SOUTH)
1/4" = 1'-0"

EXTERIOR ELEVATIONS KEYNOTES

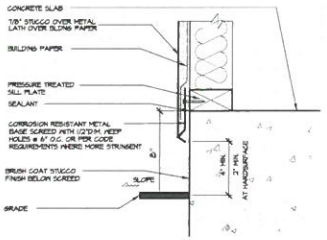
1. "LISTILE" BY BORAL ROOFING TILE, LLC (ONE-PIECE S) CLAY, I.C.C.# ES-1017 5/8" ROOF SHEATHING PLYWOOD (STRUCT II) NAILED W/ 30# FELT, W/ 10'D COMMON NAILS. COLOR: SANTA BARBARA BLEND
2. 2"X8" FASCIA BOARD INSTALLED W/ 16 GALV. NAILS. (2 NAILS MIN. PER RAFTER) COLOR: WHITE DEM 380
3. 7/8" STUCCO SYSTEM "LA HABRA" I.C.C.# ESR-2564 O/ LATH, O/ 2 LAYERS OF GRADE D" FLASHING PAPER, O/ WIRE BACKING, TYP. SMOOTH FINISH
4. 26ga GALVANIZED METAL WEEP SCREED
5. 2" RECESSED DOOR/WINDOW TYP. FOR ALL DOORS & WINDOWS
6. CONCRETE LANDING. (2" MIN. BELOW FIN. FLOOR)
7. DECO. FOAM ACCENT TRIM AROUND SQUARE COLUMNS



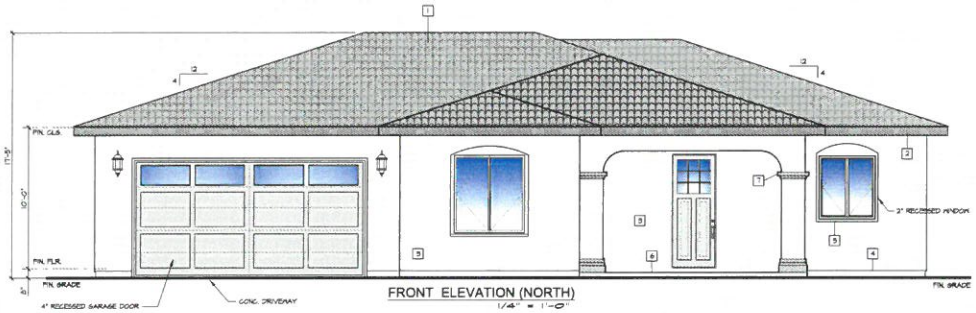
SIDE ELEVATION (EAST)
1/4" = 1'-0"



SIDE ELEVATION (WEST)
1/4" = 1'-0"



A 26ga. GALV. WEEP SCREED
3" = 1'-0"



FRONT ELEVATION (NORTH)
1/4" = 1'-0"

PLAN ONE

MBGA DRAFTING INC.
24560 ONEIDA ST.
MORENO VALLEY, CA 92553
BUS: (951) 751 7813
mbgadrafting@gmail.com

OWNER/CLIENT:
UNITED INVESTMENT GROUP LLC
ADDRESS: 118 W. MAITLAND STREET ONTARIO, CA 91762
PH: (909) 224 9475
EMAIL: allunitedconstruction@gmail.com

PROJECT:
PROPOSED SINGLE-FAM. DWELLING
PROJECT LOCATION:
118 W. MAITLAND STREET ONTARIO, CA 91762

SHEET TITLE:
EXTERIOR ELEVATIONS

REVISIONS DATE
△
△
△

JOB #: 2009-UNI
DATE: 9/09/2020
SCALE: 1/4"=1'-0"
DRAWN BY: M.B.
SHEET
A-2

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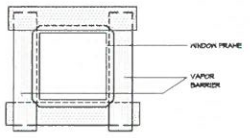
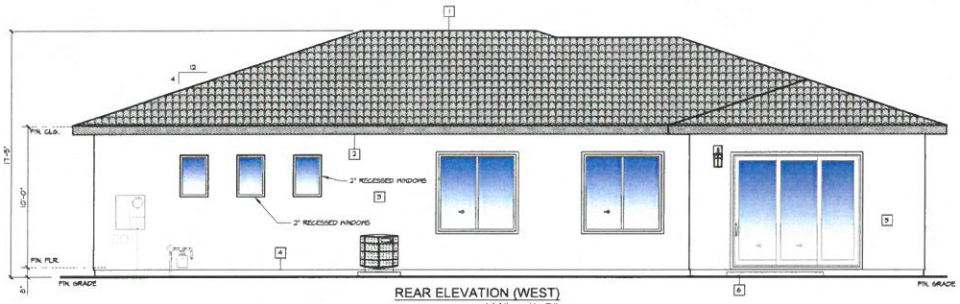


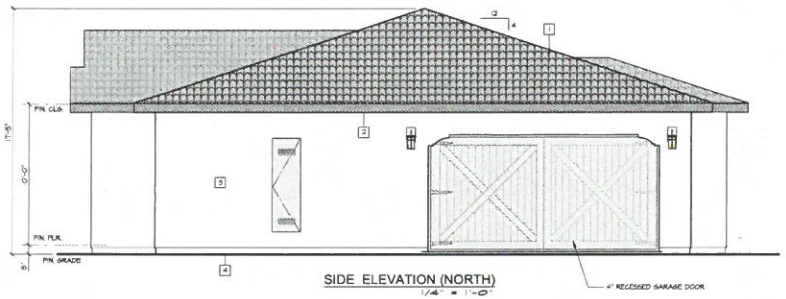
VAPOR BARRIER



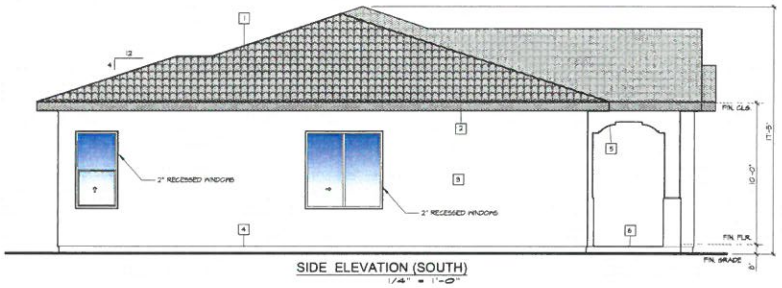
REAR ELEVATION (WEST)
1/4" = 1'-0"

EXTERIOR ELEVATIONS KEYNOTES

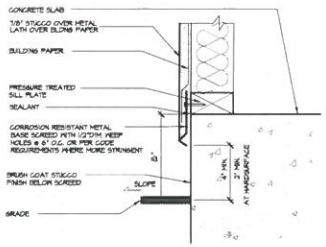
1. 1/8 TILE" BY BORAL ROOFING TILE LLC (ONE-PIECE S) CLAY, I.C.C.# ES-1017 5/8"2" ROOF SHEATHING PLYWOOD (STRUCT #1) NAILED W/ 30# FELT, W/ 10'D COMMON NAILS. COLOR: SANTA BARBARA BLEND
2. 2"X8" FASCIA BOARD INSTALLED W/ 8 GALV NAILS (2 NAILS MIN. PER RAFTER) COLOR: PINTE DEA 580
3. 7/8" STUCCO SYSTEM "LA HABRA" I.C.C.# ESR-2564, O/ LATH, O/ 2 LAYERS OF GRADE D" FLASHING PAPER, O/ WIRE BACKING, TYP. SMOOTH FINISH
4. 26ga GALVANIZED METAL WEEP SCREED
5. DECO. FOAM CORBEL ACCENT
6. CONCRETE LANDING, (2" MIN. BELOW FIN. FLOOR)
7. DECO. WOOD SHUTTERS
8. DECO. SPANISH CLAY DECO. GABLE VENTS



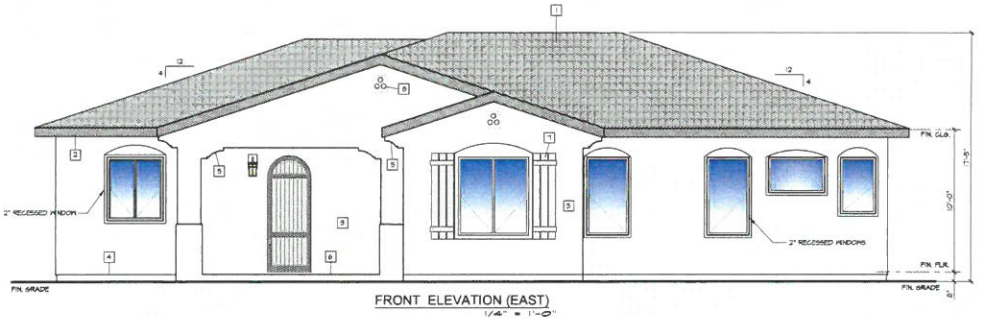
SIDE ELEVATION (NORTH)
1/4" = 1'-0"



SIDE ELEVATION (SOUTH)
1/4" = 1'-0"



A 26ga. GALV. WEEP SCREED
3" = 1'-0"



FRONT ELEVATION (EAST)
1/4" = 1'-0"

PLAN TWO

MBGA DRAFTING INC.
24568 ONEIDA ST.
MORENO VALLEY, CA 92553
BUS: (951) 751 7813
mbgadrafting@gmail.com

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UNITED INVESTMENT GROUP LLC
ADDRESS: 119 N. MAITLAND STREET
ONTARIO, CA 91762
PH: (909) 229 9475
EMAIL: allunitedconstruction@gmail.com

PROJECT:
PROPOSED
SINGLE-FAM. DWELLING
PROJECT LOCATION:
119 N. MAITLAND STREET
ONTARIO, CA 91762

SHEET TITLE:
EXTERIOR ELEVATIONS

REVISIONS	DATE
△	
△	
△	

JOB #: 2009-UNI
DATE: 9/03/2020
SCALE: 1/4"=1'-0"
DRAWN BY: M.B.
SHEET
A-2.2

NOTICE: ANY UNAUTHORIZED USE OF THESE DRAWINGS SHALL VOID THE PROFESSIONAL CONTRACT AND SHALL MAKE THE RESPONSIBLE PARTY LIABLE FOR ANY DAMAGES INCURRED BY MBGA DRAFTING INC. THESE DRAWINGS ARE THE EXCLUSIVE PROPERTY OF MBGA DRAFTING INC. UNDERSIGNED AND SHALL NOT BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE EXPRESS WRITTEN CONSENT OF MBGA DRAFTING INC.

EXHIBIT C
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Schedule of Performance

	Action	**Date Action to be Completed By**
1.	Effective Date	See Section 1.3
2.	Developer to open Escrow and, concurrently, deposit Earnest Money Deposit into Escrow	Within 5 days following the Effective Date
3.	Due Diligence Period commences	The date of the Escrow Opening Date
4.	Authority to deliver Preliminary Report to Developer	Within 3 days following Authority's receipt of the Preliminary Report from Title Company
5.	Developer to deliver Developer's Title Notice to Agency	Within 30 days following Developer's receipt of the Preliminary Report
6.	Authority to deliver Authority's Title Notice Response to Developer, if appropriate	Within 20 days following Authority's Receipt of Developer's Title Notice
7.	Developer to deliver Developer's Title Notice Waiver, if appropriate	Within 10 days following Developer's receipt of Authority's Title Notice Response
8.	Developer to deliver its Due Diligence Investigation Conclusion Notice	On or before the end of the Due Diligence Period
9.	Due Diligence Period ends	On the 90th day following the Escrow Opening Date

	Action	Date Action to be Completed By
15.	Escrow Closing Date	No later than 30 days from the end of the Due Diligence Period
16.	Developer to commence construction of the Project; Developer to transmit Project Commencement Notice to Authority	No later than 10 days after the close of escrow
17.	Developer to complete construction and installation of the Project (issuance of certificate of occupancy for the entire Project by the Authority)	No later than August 18, 2022

EXHIBIT D
TO 2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Form of Grant Deed

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____

ONTARIO HOUSING AUTHORITY
GRANT DEED
(1004 SOUTH EUCLID AVENUE)

PART ONE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

ONTARIO HOUSING AUTHORITY, a public body, corporate and politic ("**Grantor**"),

hereby grants to

("**Grantee**"),

that certain real property located in the City of Ontario, County of San Bernardino, State of California, specifically described in Exhibit "A" attached to this Grant Deed ("**Property**") and made a part of this Grant Deed by this reference.

PART TWO

The conveyance of the Property by the Grantor to the Grantee in Part One is subject to the following community development terms, conditions, covenants and restrictions:

Section 1. Conveyance Subject to Terms of a Disposition and Development Agreement. The Property is conveyed subject to that certain 2021 Disposition and Development Agreement (1004 South Euclid Avenue) dated as of _____, 2021, between the Grantor and the Grantee (the "**Agreement**"). The provisions of the Agreement are incorporated into this Grant Deed by this reference and are deemed to be a part of this Grant Deed, as though fully set forth in this Grant Deed.

Section 2. Condition of Property. The Grantee acknowledges and agrees that the Property is conveyed by the Grantor to the Grantee in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS CONDITION," as of the date of recordation of this Grant Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Property, the presence or absence of any patent or latent environmental or other physical condition on or in the Property, or any other matters affecting the Property.

Section 3. Obligation to Refrain from Discrimination. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

3.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or

ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Grantee, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 3 shall run with the land of the Property and shall be enforceable against the Grantee and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

3.2 The covenant of this Section 4 shall run with the land of the Property in perpetuity, shall be enforceable against the Grantee and its successors and assigns, and shall be covenants set forth in the Grant Deed.

Section 4. Form of Non-Discrimination and Non-Segregation Clauses. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

4.1 The Grantee, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

(a) In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination

or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

4.2 The covenants of this Section 4 shall run with the land of the Property in perpetuity.

Section 5. Maintenance Condition of the Property. The Grantee for itself, its successors (excluding any third party purchaser of a residential unit developed on the Property) and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.1 The areas of the Property that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described above (a "**Maintenance Deficiency**"), then the Grantor shall notify the Grantee in writing of the Maintenance Deficiency. If the Grantee fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the Grantor shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the Grantor to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the Grantor for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.1 shall become a lien on the Property, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the Grantor to the Grantee, the Grantor shall have the right to enforce the lien in the manner provided in Section 5.1.

5.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Grantee by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti and is not removed within ninety-six (96) hours following the time of the discovery of the graffiti, the Grantor shall have the right to enter the Property and remove the graffiti, without notice to the Grantee. Any sum expended by the Grantor for the removal of graffiti from the Property pursuant to this Section 5.2, shall be a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand to the Grantee from the Grantor, the Grantor shall have the right to enforce its lien in the manner provided in Section 5.2.

5.3 The Parties further mutually understand and agree that the rights conferred upon the Grantor under this Section 5.3 expressly include a grant by the Grantee of a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Grantee and it successors under Section 5.1 or Section

5.2, including the reasonable attorneys' fees and costs of the Grantor associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "**reasonable attorneys' fees and costs of the Grantor**" mean and include the salaries, benefits and costs of the Authority Counsel and the lawyers employed in the Office of the Authority Counsel.

5.4 The provisions of this Section 5.4, shall be a covenant running with the land of the Property, shall be enforceable against the Grantee and its successors (excluding any third party purchaser of a residential unit developed on the Property) and assigns. This covenant shall terminate as to each portion of the Property transferred to a third party purchaser of a residential unit on the Property, at the time of such purchase and sale. Nothing in the foregoing provisions of this Section shall be deemed to preclude the Grantee from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that any such changes comply with applicable zoning and building regulations of the City.

Section 6 Grantor Power of Termination Regarding the Property.

6.1 The Grantor hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the Grantor, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Grantee referencing this Section 6.1, to terminate the fee interest of the Grantee in the Property and/or any improvements to the Property and revest such fee title in the Grantor and take possession of all or any portion of such real property and improvements, without compensation to the Grantee, upon the occurrence of an Event of Default by the Grantee following the Close of Escrow and prior to the issuance of the Certificate of Completion for Property.

6.2 The thirty (30) calendar day written notice specified Section 6.1 shall specify the Event of Default by the Grantee triggering the Grantor's exercise of its power of termination. The Grantor shall proceed with its remedy set forth in Section 6.1 only if the Grantee continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

6.3 The rights of the Grantor under this Section 8 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

(1) Each Lien recorded against the Property and specifically authorized by this Agreement as a Permitted Transfer;

(2) Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement as a Permitted Transfer.

6.4 Upon the Grantor's exercise of its power of termination pursuant to this Section 6, the Grantee or its successors or assigns shall convey by grant deed to the Grantor title to the Property, as specified in the Grantor's notice pursuant to Section 6.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be

amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Grantee and a notary in a manner suitable for recordation. The Grantor may enforce its rights pursuant to this Section 6.4 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

6.5 Upon the revesting in the Grantor of the Property, whether by grant deed or court decree, the Grantor shall exercise its reasonable good faith efforts to resell the Property at its then fair market value, as soon and in such manner as the Grantor shall, in its sole discretion, find feasible and consistent with the objectives of the City's General Plan, to a qualified and responsible person or persons (as reasonably determined by the Grantor) who will assume the Grantee's obligations to begin and/or complete and/or operate the Project located on the Property, or such other replacement development acceptable to the Grantor, in its sole and absolute discretion. Upon any such resale of the Defaulted Portion of the Property (or any portion thereof), the proceeds to the Grantor from such sale shall be applied as follows:

(1) First, to pay any and all amounts required to release/reconvey any Lien recorded against all or any portion of the Property; and

(2) Second, to reimburse the Grantor on its own behalf or on behalf of the Authority for all actual internal and third-party costs and expenses previously or currently incurred by the Grantor, or the Authority related to the Property, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Property or any part thereof; all taxes, assessments and utility charges paid by the Authority and/or the Grantor or authority with respect to the Property or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Grantee with respect to the acquisition of the Property or the construction of the Project and amounts otherwise owing to the Grantor or authority by the Grantee or its successors or assigns pursuant to the terms of this Agreement; and

(3) Third, to the extent that any proceeds from such resale are, thereafter, available, taking into account any prior encumbrances with a claim thereto, to reimburse the Grantee, or its successors in interest to the equal to the sum of: (1) Purchase Price; and (2) the third-party costs actually incurred and paid by the Grantee regarding the development of the Project, including, but not limited to, pro rata costs of carry, taxes, and other items as set forth in a cost certification to be made by the Grantee to the Grantor prior to any such reimbursement, which certification shall be subject to the Grantor's reasonable approval; provided, however, that the Grantee shall not be entitled to reimbursement for any expenses to the extent that such expenses

relate to any loans, Liens or other encumbrances that are paid by the Grantor pursuant to the provisions of sub-sections (1) or (2) above.

(4) Any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by the Grantor as its sole and exclusive property.

6.6 IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 6.1, ABOVE, THE GRANTOR, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE GRANTEE. BY INITIALING BELOW, THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

GRANTEE'S INITIALS _____

6.7 THE GRANTEE ACKNOWLEDGES AND AGREES THAT THE GRANTOR'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 6.7 MAY WORK A FORFEITURE OF THE ESTATE IN THE PROPERTY CONVEYED TO THE GRANTEE THROUGH THE GRANT DEED. THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE GRANTEE MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE GRANTEE FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE GRANTEE ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THE AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE GRANTOR'S POWER OF TERMINATION PROVIDED IN THIS SECTION 6.7 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 8.6 AND THIS SECTION 6.7.

GRANTEE'S INITIALS _____

PART THREE

Section 7. Developer Covenant to Undertake Project. The Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer

shall commence and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The covenants of this Section 7 shall run with the land of the Property until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

Section 8. Covenants Run with the Land of the Property. Each of the covenants and agreements contained in this Grant Deed touch and concern the Property and each of them is expressly declared to be a community development covenant that runs with the land for the benefit of the Grantor, and such covenants run with the land in favor of the Grantor for the entire period that such covenants are in full force and effect, regardless of whether the Grantor is or remains an owner of any land or interest in land to which such covenants relate. The Grantor, in the event of any breach of any such covenants, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in the Agreement or by law. The covenants contained in this Grant Deed are for the benefit of and are enforceable only by the Grantor, and shall survive the execution and recordation of this Grantor Deed and the issuance and recordation of each and every Certificate of Completion, for the time period set forth above for each covenant.

Section 9. Costs and Attorneys' Fees for Enforcement Proceeding. If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Grant Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

Section 10. Effect of Unlawful Provision; Severability. In the event that any provision of this Grant Deed is held to be invalid or unlawful by a final judgment of a court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Grant Deed.

[Signature on following page]

SIGNATURE PAGE
TO
ONTARIO HOUSING AUTHORITY
GRANT DEED
(1004 SOUTH EUCLID AVENUE)

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be executed by its authorized representative(s) on this ____ day of _____, 2021.

GRANTOR:

ONTARIO HOUSING AUTHORITY
a public body, corporate and politic

By: _____
Executive Director

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT D

EXHIBIT A
TO
GRANT DEED

Property Legal Description

1004 South Euclid Avenue

APN: 1049-563-10

Legal Description:

Lot 4, Block 145, Villa Plots South Side Tract, per map recorded in Book 6, Page 11 of Maps, in the office of the County Recorder, County of San Bernardino, California.

CERTIFICATE OF ACCEPTANCE OF
GRANT DEED

The undersigned hereby acknowledges acceptance by United Investment Group LLC, a California limited liability company, the Grantee in the within Grant Deed, of the delivery of the subject Property described in the within Grant Deed from Ontario Housing Authority.

GRANTEE:

UNITED INVESTMENT GROUP LLC, a
California limited liability company

Dated: _____ By: _____
[TITLE]

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT D

EXHIBIT E
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Form of Notice of Agreement

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Ontario Housing Authority
303 East B Street
Ontario, California 91764
Attn: Executive Director

Exempt from Recording fee
pursuant to Gov't Code § 27383

NOTICE OF AGREEMENT

2021 Disposition and Development Agreement
(1004 South Euclid Avenue)

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that United Investment Group LLC, a California limited liability company, (the "**Developer**") and Ontario Housing Authority, a public body, corporate and politic (the "**Authority**") entered into an agreement entitled 2021 Disposition and Development Agreement (1004 South Euclid Avenue), dated as of _____, 2021 (the "**Agreement**"). A copy of the Agreement is on file with the Authority and is available for inspection and copying by interested persons as a public record of the Authority at the Authority's offices located at 303 East B Street, Ontario, California 91764 during the Authority's regular business hours.

The Agreement affects the real property described in Exhibit A attached to this Notice of Agreement (the "**Property**"). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain development covenants running with the land of the Property and other agreements between the Developer and the Authority affecting the Property, as set forth below (all section references are to the Agreement):

Section 4.1 of the Agreement provides:

4.1 **Developer Covenant to Undertake Project**. The Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer shall commence and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The

covenants of this Section 4.1 shall run with the land of the Property until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

Section 5.1 of the Agreement provides:

5.4 **Maintenance Condition of the Property**. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.4.1 The areas of the Property that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described above (a "Maintenance Deficiency"), then the Authority shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the Authority shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the Authority to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the Authority for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.4.1 shall become a lien on the Property, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the Authority to the Developer, the Authority shall have the right to enforce the lien in the manner provided in Section 5.4.3.

5.4.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within ninety-six (96) hours following the time of the discovery of the graffiti, the Authority shall have the right to enter the Property and remove the graffiti, without notice to the Developer. Any sum reasonably expended by the Authority for the removal of graffiti from the Property pursuant to this Section 5.4.2, shall be a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the City, the Authority shall have the right to enforce its lien in the manner provided in Section 5.4.3.

5.4.3 The Parties further mutually understand and agree that the rights conferred upon the Authority under this Section 5.4 expressly include a grant by the Developer of a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under Section 5.4.1 or Section 5.4.2, including the reasonable attorneys' fees and costs of the Authority associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include

the salaries, benefits and costs of the Authority Counsel and the lawyers employed in the Office of the Authority Counsel.

5.4.4 The provisions of this Section 5.4, shall be a covenant running with the land of the Property, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed. Nothing in the foregoing provisions of this Section 5.3 shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that any such changes comply with applicable zoning and building regulations of the City.

Section 5.5 of the Agreement provides:

5.5 **Obligation to Refrain from Discrimination**. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.5.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 5.5 shall run with the land of the Property and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

5.5.2 The covenant of this Section 5.5 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

[Signatures on following pages]

This NOTICE OF AGREEMENT is dated as of _____, 2021, and has been executed on behalf of the Developer and the Authority by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

AUTHORITY:

ONTARIO HOUSING AUTHORITY
a public body, corporate and politic

Dated: _____, 2021

By: _____
Executive Director

ATTEST:

_____
Authority Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Authority Counsel

DEVELOPER:

UNITED INVESTMENT GROUP LLC, a
California limited liability company

Dated: _____ By: _____
[TITLE]

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT A
TO
NOTICE OF AGREEMENT

Legal Description of Property

1004 South Euclid Avenue

APN: 1049-563-10

Legal Description:

Lot 4, Block 145, Villa Plots South Side Tract, per map recorded in Book 6, Page 11 of Maps, in the office of the County Recorder, County of San Bernardino, California.

EXHIBIT F
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Form of Official Action of Developer

CERTIFICATION OF LLC AUTHORITY

The undersigned members of _____, a California limited liability company (the "**LLC**"), do certify that we are all of the members of the LLC and that there are no other members.

We further certify that any one (1) of the following named persons, individually:

[INSERT NAMES]

be, and they are, authorized and empowered for and on behalf of and in the name of the LLC to execute and deliver that certain Disposition and Development Agreement (_____), dated _____, 20__, between Ontario Housing Authority, a public body, corporate and politic (the "**Authority**"), and the LLC (the "**Agreement**"), to purchase certain real property located in the City of Ontario, California, as specifically described in the Agreement, and all other documents to be executed by the LLC in connection with the transactions contemplated in the Agreement, and to take all actions that may be considered necessary to conclude the transactions contemplated in the Agreement and perform the other obligations of the LLC pursuant to the Agreement.

The authority conferred shall be considered retroactive, and any and all acts authorized in this document that were performed before the execution of this Certificate are approved and ratified. The authority conferred shall continue in full force and effect until the Authority shall have received notice in writing from the LLC of the revocation of this Certificate.

We further certify that the activities covered by the foregoing certifications constitute duly authorized activities of the LLC; that these certifications are now in full force and effect; and that there is no provision in any document under which the LLC is organized and/or that governs the LLC's continued existence, limiting the power of the undersigned to make the certifications set forth in this certificate, and that such certifications are in conformity with the provisions of all such documents.

LLC Members:

_____

_____

EXHIBIT G
TO
2021 DISPOSITION AND DEVELOPMENT AGREEMENT
(1004 SOUTH EUCLID AVENUE)

Form of Certificate of Completion

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
_____
Attention:

Exempt from Recording fee
pursuant to Gov't Code § 27383

ONTARIO HOUSING AUTHORITY
CERTIFICATE OF COMPLETION
(1004 SOUTH EUCLID AVENUE)

I, Scott Ochoa, Executive Director of the Ontario Housing Authority (the "Authority") certify that:

Section 1. The Project described as development of housing units required to be constructed in accordance with that certain 2021 Disposition and Development Agreement (1004 South Euclid Avenue), dated _____, 2021 ("DDA"), between the Authority and United Investment Group LLC, a California limited liability company (the "**Developer**"), on that certain real property specifically described in the legal description(s) attached to this Certificate of Completion as **Exhibit A** (the "**Property**"), is complete in accordance with the provisions of the Agreement.

This Certificate of Completion constitutes conclusive evidence of the Authority's determination of the Developer's satisfaction of its obligation under the Agreement to construct and install the Project on the Property, including any and all buildings, parking areas, landscaping areas and related improvements necessary to support or meet any requirements applicable to the Project and its use and occupancy on the Project, whether or not such improvements are located on or off the Property or on other property subject to the Agreement. Notwithstanding any provision of this Certificate of Completion, the Authority may enforce any covenant surviving this Certificate of Completion in accordance with the terms and conditions of the Agreement and the Grant Deed by which the Property was conveyed to the Developer by the Authority under the Agreement. The Agreement is an official record of the Authority and a copy of the Agreement may be inspected at the Authority's office located at 303 East B Street, Ontario, California 91764 during the Authority's regular business hours.

DATED AND ISSUED this _____ day of _____, _____.

ONTARIO HOUSING AUTHORITY
a public body, corporate and politic

By: _____
Executive Director

EXHIBIT A
TO
CERTIFICATE OF COMPLETION

Legal Description of the Property

1004 South Euclid Avenue

APN: 1049-563-10

Legal Description:

Lot 4, Block 145, Villa Plots South Side Tract, per map recorded in Book 6, Page 11 of Maps, in the office of the County Recorder, County of San Bernardino, California.

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)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public

RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE ONTARIO HOUSING AUTHORITY AND UNITED INVESTMENT GROUP, LLC FOR THE DEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED AT 1004 SOUTH EUCLID AVENUE, ONTARIO (APN: 1049-563-10).

WHEREAS, the Ontario Housing Authority, a California public agency ("Authority"), currently owns certain real property generally located at 1004 South Euclid Avenue, Ontario (APN: 1049-563-10) and more specifically described in Exhibit A attached to this Resolution and incorporated herein by this reference ("Property"); and

WHEREAS, the Authority and United Investment Group, LLC, a California limited liability company ("Developer") have been in exclusive negotiations regarding the development of the Property since October 28, 2020 following submittal of a proposal by Developer to construct two single-family residences on the Property ("Project"); and

WHEREAS, the Authority and Developer have negotiated a Disposition and Development Agreement (the "Agreement"), a copy of which is attached to the agenda report associated with this Resolution. The Agreement provides for the sale of the Property at fair market value, and binds Developer to construct the Project in a timely manner, and in accordance with the terms therein; and

WHEREAS, on April 6, 2021 and April 13, 2021, the Authority published notice of the public hearing to consider the disposition of the Property pursuant to the Agreement; and

WHEREAS, the proceeds of the sale of the Property, net of the cost of sale, will be set aside and used by the Authority to directly assist a housing project for persons of low income; and

WHEREAS, Developer's proposed acquisition of the Property and the Developer's anticipated construction of the Project on the Property in accordance with the terms of the Agreement, are in the best interest of the Authority and of the health, safety and welfare of the residents of the City, and are in accordance with the public purposes set forth in applicable law. Implementation of the Agreement will further the goals and objectives of the City's general plan and the goals and objectives of the Authority by: (i) creating new housing, and (ii) providing funding to be set aside for future development by the Authority of housing for persons of low income.

NOW, THEREFORE, THE AUTHORITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings. The Authority intends to sell the Property to Developer and, based on the Recitals and all other information and testimony provided, the Authority Board finds that the sale of the Property pursuant to the Agreement will further the goals and purposes of the Authority, provide funding for future development of housing for low income persons, and benefit residents of the City by creating new housing.

SECTION 3. Hearing. In accordance with California Health and Safety Code Section 33431, and California Health and Safety Code Section 34312.3 (the Housing Authority law) a duly noticed public hearing was held by the Authority on April 20, 2021.

SECTION 4. CEQA. The Authority's approval of the Agreement does not constitute approval by the Authority or the City of any development of the Property or of other activity on the Property that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) Moreover, the Agreement and Developer's future use or development of the Property is expressly conditioned on CEQA compliance.

SECTION 5. Approval of Agreement. The Authority Board hereby approves the Agreement in substantially the form presented, subject to any non-substantive revisions which do not increase the Authority's liability and are approved by the Authority counsel, and authorizes the Executive Director to sign and enter into the Agreement and perform the obligations of the Authority under the Agreement.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Authority declares that the Authority would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

The Secretary of the Ontario Housing Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____

PAUL S. LEON, CHAIRMAN

ATTEST:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

APPROVED AS TO FORM:

_____
AUTHORITY COUNSEL

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

I, SHEILA MAUTZ, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA- was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held April 20, 2021 by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OHA duly passed and adopted by the Ontario Housing Authority at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

EXHIBIT “A”

Legal Description of the Property

1004 South Euclid Avenue
APN: 1049-563-10
Legal Description: Lot 4, Block 145, Villa Plots South Side Tract, per map recorded in Book 6, Page 11 of Maps, in the office of the County Recorder, County of San Bernardino, State of California.

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **PUBLIC HEARINGS**
Department: Economic Development Prepared By: Karla Tavera Staff Member Presenting: John P. Andrews, Executive Director Economic Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: A PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT SUBSIDY REPORT AND OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND HOME DEPOT U.S.A, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083.1; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS

RECOMMENDATION: That the City Council take the following actions:

A. Hold the public hearing;
B. Adopt the resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083.1 regarding an Operating Covenant Agreement (on file in the Records Management Department) by and between the City of Ontario and Home Depot U.S.A, Inc., hereinafter referred to as "Home Depot";
C. Adopt a resolution approving the Operating Covenant Agreement, hereinafter referred to as the "Agreement," and authorizing the City Manager to execute the Agreement, and making related findings; and
D. Direct City staff to file a Notice of Exemption based upon the City Council's finding that the impacts of this Agreement do not constitute a project and are not subject to environmental review and that there is no possibility that the activity in question will have a significant effect on the environment.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner

FISCAL IMPACT: Pursuant to the terms of the proposed Agreement, the operating covenant payment between the City and Home Depot is calculated based on Home Depot's sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of the local sales tax revenue received. Per the Economic Development Subsidy Report (Exhibit A), payment to Home Depot is estimated at $1,500,000 annually for the duration of the agreement- based on an estimated three million dollar ($3,000,000) increase in annual sales tax revenue due to the operation of the new Home Depot facility in the City. Over the 15-year term of the Agreement, therefore, the total subsidy, will equal up to twenty two million five hundred thousand dollars ($22,500,000). However, Home Depot's covenants to the City will cause Home Depot's taxable sales to be paid to the City, which sales are estimated to be

forty-five million dollars ($45,000,000) over the 15-year term of the agreement. In addition, Home Depot estimates that it will pay property taxes for the Facility, and the value of those new improvements associated with the business are expected to be approximately thirty million dollars ($30,000,000) and will result in additional real property taxes in the amount of three hundred nineteen thousand five hundred thirty dollars ($319,530) annually. The three existing distribution facilities in Ontario have a combined taxable value of one hundred forty-five million two hundred ninety-four thousand dollars ($145,294,000), resulting in real property taxes in the amount of approximately one million five hundred fifty-one thousand thirty one dollars ($1,551,031) annually. Finally, the City anticipates receiving an estimated twenty thousand dollars ($20,000) in business license tax from Home Depot annually for the Facility. Currently, Home Depot pays approximately twelve thousand one hundred dollars ($12,100) in business license fees to the City for their facilities.

Entering into the Agreement (Exhibit B) ensures that local sales tax revenue generated by Home Depot will remain in the City for no less than 15 years.

BACKGROUND & ANALYSIS: The Bradley-Burns Uniform Local Sales and Use Tax Law (the "Sales and Use Tax Law") authorizes counties and cities to impose local sales and use taxes in conformity with its terms. Under the Sales and Use Tax Law, the City of Ontario receives one percent (1%) of all taxable sales generated within the City. Sales and Use Tax revenues are important to the City, because they are used to provide essential City services, such as police, fire, and infrastructure maintenance and community facilities maintenance and repair.

Home Depot is currently in a site selection process to determine where to locate a new e-commerce distribution facility in the City of Ontario. The proposed Agreement provides an economic subsidy by the City to Home Depot to incentivize the leasing of a new build-to-suit facility of between 600,000 and 900,000 sq. ft., or to locate a new point of sale in an existing facility. Home Depot currently has three distribution center facilities in the City of Ontario, and depending on the site selection process, will either lease a new build-to-suit facility in the City, or locate a new point of sale in an existing facility. The incentives provided in this Agreement are intended to ensure that Home Depot expands its operations and remains in Ontario for no less than 15 years. Pursuant to the terms of the Agreement, Home Depot will utilize an initial 5 year period (subject to provisions for extension as included in the Agreement), during which they will conduct and conclude the above referenced site selection process.

Entering into this Agreement will generate substantial revenue for the City and create approximately 100-250 new permanent jobs. Further, the expansion of Home Depot serves the additional public purpose of fostering a positive business and civic environment that may attract additional businesses and investment in the community. The availability of increased public and private services and economic activity resulting therefrom, will assist the City in its goal of furthering the development of the community. Considering the potential benefits Home Depot will bring to the community, Staff recommends the approval of this Operating Covenant Agreement to incentivize Home Depot to establish its expanded business operations in the City.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083.1 REGARDING THE DEVELOPMENT AND RETENTION OF AN E-COMMERCE DISTRIBUTION FACILITY BY HOME DEPOT U.S.A., INC, IN THE CITY OF ONTARIO AND APPROVING AN OPERATING COVENANT AGREEMENT BETWEEN THE PARTIES.

WHEREAS, the City of Ontario ("City") and Home Depot U.S.A, Inc.("Owner") have negotiated an Operating Covenant Agreement ("Agreement") with respect to the establishment and retention of an E-Commerce Distribution Facility ("Facility") within the City; and

WHEREAS, pursuant to that Agreement, Owner is committed to operating the Facility in the City for at least 15 years following the Agreement's effective date; and

WHEREAS, Owner is also covenanted to, among other things, designate the City as the point of sale for sales transactions out of that Facility; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to:

- Fifty percent (50%) of the all sales tax revenue over the 15-year term; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the allocation of funds to Owner pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the establishment and retention of the Facility will provide numerous public benefits including:

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and

- The creation of hundreds of full-time, seasonal or temporary jobs throughout the term of this Agreement.

- Helping the City achieve the building blocks set forth in the Ontario Plan (adopted by the City Council in 2010) including taking actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community; and

- Entering into this Agreement and ensuring the Facility's presence in Ontario may attract additional businesses and investment in the community due to increased services and economic activity in the area.

WHEREAS, in accordance with Government Code Section 53083.1, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a public hearing on April 20, 2021 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, Owner is a duly formed Delaware corporation and the establishment and retention of the Facility serves Owner's business purposes in that the advantageous location of the City and its business conducive environment will permit Owner to operate more efficiently and effectively, will better serve its customers, and may provide an avenue for business expansion in the future; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council hereby finds that:

(a) Entering into this Agreement will serve the following public purposes:

(1) Through this Agreement, Owner, will be committed to operating a Home Depot E-Commerce Distribution Facility in the City.

(2) The establishment and retention of the Facility within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

(3) By having a company like Home Depot establish and retain an E-Commerce Distribution Facility in the City, the City will be adding diversity to and generating new opportunities for economic growth.

(4) Further, the establishment of the Facility serves the public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. The increased economic activity resulting from the Facility and Owner's increased footprint in the City will improve the economic and social viability and vitality of the local community.

(5) Entering into this Covenant Agreement will also further the City's efforts to achieve certain goals set forth in the 2010 Ontario Plan. The Ontario Plan included certain building blocks for the economic growth and improvement of the community. The Plan called upon the City to take actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community. The establishment of the Facility is another step in achieving those goals.

(b) Based upon these and other public benefits the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Contingent Obligations. The City finds that each City obligation is contingent upon separate consideration by Owner including but not limited to quarterly sales tax generation.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply 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.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that the Economic Development Subsidy Report (Exhibit A) is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in substantially final form as attached to this Resolution as Exhibit B. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to make any non-financially substantive changes determined to be appropriate and in the City's interest and execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of April 2021.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST AND 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. 2021- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 20, 2021 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. 2021- duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083.1

FOR A WAREHOUSE DISTRIBUTION CENTER OPERATING COVENANT AGREEMENT
BY AND BETWEEN
CITY OF ONTARIO
AND
HOME DEPOT U.S.A., INC.

Pursuant to Government Code Section 53083.1, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario ("City") and Home Depot U.S.A., INC. (Home Depot") (the "Agreement"). The Agreement provides an economic subsidy by the City to Home Depot to incentivize the leasing of a new build-to-suit facility of between 600,000 and 900,000 square feet, or locate a new point of sale in an existing facility, to operate an E-Commerce Distribution Facility ("Facility").

Notice was published in the local newspaper for a public hearing to be held on April 20, 2021.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083.1 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

1. The name and address of all corporations, including members of a commonly controlled group or members of a combined reporting group of which the corporation is a member, or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.

The Agreement is with Home Depot U.S.A., INC., a Delaware corporation ("Home Depot"). Home Depot is the sole beneficiary of the economic development subsidy.

Home Depot U.S.A., INC.
2455 Paces Ferry Road, N.W.
Atlanta, Georgia 30339
(770) 384-2864

2. The name and address of all warehouse distribution centers that are the beneficiary of the economic development subsidy.

Home Depot is currently in a site selection process to determine where to locate Facility in the City of Ontario. Home Depot currently has three distribution center facilities in the City of Ontario located at the following addresses, and depending on the site selection

process will either lease a new build-to-suit facility in the City, or locate a new point of sale in an existing facility, from the list below:

Street	City	Building Size
5450 E FRANCIS STREET	ONTARIO	480,000
5101 E. PHILADELPHIA STREET	ONTARIO	452,952
5655 E ONTARIO MILLS PARKWAY	ONTARIO	657,600

3. The start and end dates and schedule, if applicable, for the economic development subsidy.

The Effective Date of the Agreement, and the obligations of the parties therein, begins once Home Depot has entered into a lease for the Facility, and the Facility has begun generating sales tax revenues for the City.

The term will begin on the Effective Date of the Agreement and continue for 15 years. The first Covenant Payment will be paid following the first Covenant Quarter in which Home Depot has performed its covenants and other obligations pursuant to the Agreement, including that the Facility has begun generating sales tax revenues for the City.

4. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The economic development subsidy shall be the sum of fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales received by the City, quarterly, following the Effective Date.

The City estimates that the annual payment to Home Depot will be approximately one million five hundred thousand dollars ($1,500,000), and that the total amount of the expenditure or loss of revenue of public funds as a result of the economic development subsidy will be up to twenty two million five hundred thousand dollars ($22,500,000). However, Home Depot covenants to City will cause Home Depot Taxable Sales to be paid to the City which is estimated to be forty-five million dollars ($45,000,000) over the 15-year term of the agreement.

5. A statement of the public purposes for the economic development subsidy.

Home Depot is the largest home improvement retailer in the United States, supplying tools, construction products, and services to the building industry and consumer alike. Through this agreement, Home Depot is considering an expansion of its E-Commerce business

practices in its current Ontario facility in addition to leasing a new build-to-suit facility to be occupied as the E-Commerce Distribution Facility within the City subject to the economic subsidy and the Agreement. Without an agreement, Home Depot would not consider locating its distribution center in the City and possibly not in the State of California. The economic development subsidy in this Agreement is intended to ensure Home Depot leases the Facility of between 600,000 and 900,000 square feet and expands its operations as appropriate and remains in Ontario for no less than 15 years.

The City has determined that the expansion of Home Depot, as described in the preceding paragraph, will generate substantial revenue for the City, allow for the creation of new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

Further, the expansion of Home Depot serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. This Agreement furthers the policies of the City to be business friendly and support economic growth including the creation of new job opportunities and new sources of revenue that support residents and city services.

6. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the expansion of Home Depot that will occur with the operation of the Facility within the City will result in an approximate increase of annual sales tax revenue in the amount of three million dollars ($3,000,000), minus the covenant payments to be paid to Home Depot, as set forth in number 2 above.

In addition, Home Depot estimates that they will pay property taxes for the Facility and the value of those new improvements associated with the business is expected to be valued at approximately thirty million dollars ($30,000,000) and will result in additional real property taxes in the amount of three hundred nineteen thousand five hundred thirty dollars ($52,000) annually. The City will receive an estimated twenty thousand dollars ($20,000) in business license tax from Home Depot annually for the Facility. Currently Home Depot pays approximately twelve thousand one hundred dollars ($12,100) in business license fees to the City for their facilities.

7. The estimated number of jobs created by the economic development subsidy, including wage scale, broken down by full-time, part-time, and temporary positions.

The expansion of Home Depot within the City is anticipated to result in the creation of 100-250 jobs at the facility, as follows:

- 100-250 full-time jobs
- Up to 250 seasonal positions

- Up to 240 construction/temporary positions

Full-time employees are compensated approximately $17-$19 per hour with the opportunity to earn overtime hours. Managerial positions average approximately $75,000 annually.

Home Depot currently employs approximately 775 employees at their three existing locations.

8. The estimated number of workers employed through temporary agencies.

Home Depot does not anticipate using temporary agencies on site.

9. Whether any benefit package is offered, including health benefits, fringe benefits, and defined benefit pensions.

Home Depot offers a full benefits plan for eligible full-time associates. Home Depot offers medical benefits and they subsidize more than 50% of their employees' premiums. Home Depot also offers dental and vision coverage options, a 401K savings plan with Company match, paid parental leave, tuition reimbursements, employee stock purchase plan, and bonus and merit increases.

10. Both of the following regarding each warehouse distribution center that is the beneficiary of the economic development subsidy:

a. A description of the outreach, training, and hiring plans, including plans to hire disadvantaged workers.

As expressed in the Agreement, Home Depot acknowledges that a goal of the City is to foster employment opportunities for City's residents. Home Depot will use commercially reasonable efforts to recruit and hire employees and City's residents for any full and part time employment opportunities. Home Depot will partner with the City and authorize the City to post and advertise job recruitment information on the City's website or with other regional recruitment services.

Upon hire, all new associates will go through a several day training process (depending on job classification) to be acclimated with the company and their specific job functions.

While Home Depot does not specifically target disadvantaged workers, as defined under Government Code section 53083.1(j)(1), Home Depot will accommodate disadvantaged workers if they are otherwise qualified for employment at the facility (i.e. meet job requirements). Any offers of employment will be at Home Depot's sole discretion and all employment will be at-will employment.

b. A description and total value of any state or federal subsidies in the process of being applied for, or received by, the warehouse distribution center.

None

11. A description of any accountability measures, including, but not limited to, clawbacks of subsidies, provided in the contract if the warehouse distribution center does not meet the goal outlined in the contract for subsidies.

If Home Depot does not meet any of the covenants required by Agreement, City may automatically terminate its obligations with respect to Covenant Payments without cost, expense or liability, after providing Home Depot an opportunity to cure. Home Depot's contractual covenants include an operating and use covenant for the new e-commerce Facility, a required designation of City as point of sale for the Facility, and obligations against solicitation or acceptance of financial assistance, as defined. Home Depot also covenants that the Facility shall not be used for any purpose outside of that set forth in the Agreement, as an E-commerce distribution facility.

EXHIBIT B

OPERATING COVENANT AGREEMENT

between

THE CITY OF ONTARIO
a California municipal corporation,

and

HOME DEPOT U.S.A., INC., a Delaware corporation

[Dated as of _____, for reference purposes only]

RECITALS

WHEREAS, Home Depot U.S.A., Inc., a Delaware corporation ("Owner"), is considering leasing a new build-to-suit facility of between 600,000 and 900,000 square foot or locating a new point of sale in an existing facility, to be occupied as an E-Commerce Distribution Facility (as defined herein), within the City of Ontario ("City"); and

WHEREAS, the incentives provided in this Operating Covenant Agreement ("Covenant Agreement") are intended to encourage and incentivize Owner to (1) lease a new build-to-suit facility of between 600,000 and 900,000 square feet or locate a new point of sale in an existing facility, for purposes of operating an E-Commerce Distribution Facility within the City, (2) expand its operations within the City as appropriate, and (3) serve as a community partner and remain in the City for 15 years; and

WHEREAS, the City has determined that the establishment by Owner of an E-Commerce Distribution Facility that participates in the sales process within the City will generate substantial revenue for the City, create approximately 100-250 permanent jobs that will revitalize an underserved area of the City, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, Owner wishes to locate in the City because of the operational advantages including, but not limited to, a qualified workforce, cost advantages, access to customers, and capacity to staff a certain number of jobs in said City; and

WHEREAS, the incentives herein are intended exclusively to reward and encourage the Owner for job creation within the City of Ontario. The incentives are available to Owner for job creation regardless of where within the City the jobs are located (excluding jobs created at retail storefronts).

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Ontario and Owner agree as follows:

ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This Covenant Agreement is dated [_____], for reference purposes only. This Covenant Agreement will not become effective until the date ("Effective Date") on which all of the following are true:

1.1.1 This Covenant Agreement has been approved and executed by an authorized signatory of Owner and delivered to the City;

1.1.2 Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council;

1.1.3 This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Owner;

1.1.4 Owner has entered into an agreement to lease an E-Commerce Distribution Facility within the City; and

1.1.5 The E-Commerce Distribution Facility is generating Sales Tax Revenues for the City, with sales directly to the consumer.

If all of the foregoing conditions precedent have not been satisfied within five (5) years of the Effective Date then this Covenant Agreement shall not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect. The City Manager shall be able to administratively extend this Section 1.1.5 beyond that initial five (5) year term, annually. Owner will provide quarterly updates on the status of site selection to City until that time the site selection for Facility has been completed.

1.2 Parties to Covenant Agreement.

1.2.1 The City. The address of the City is 303 East B Street, Ontario, California 91764, Attention: Scott Ochoa, City Manager; with copies to Ruben Duran, City Attorney, 2855 E. Guasti Rd., Suite 400, Ontario, CA 91761, Telephone: (213) 787-2569.

The City represents and warrants to Owner that, to the best of City's actual current knowledge:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

The representations and warranties set forth above are material considerations to Owner and the City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Covenant Agreement.

As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns.

1.2.2 Owner. The address of Owner for purposes of this Covenant Agreement is 2455 Paces Ferry Road, Atlanta, Georgia, 30339; Attn: Property Management; with a copy to Home Depot U.S.A., Inc., 2455 Paces Ferry Road, Atlanta, Georgia, 30339; Attn: John Chescavage, Esq.; telephone (770) 384-2864.

Owner represents and warrants to the City that, to the best of its actual current knowledge:

(a) Owner is a duly formed Delaware corporation, qualified and in good standing to do business under the laws of the State of California;

(b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Owner;

(c) Owner has taken all actions required by law to approve the execution of this Covenant Agreement;

(d) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Owner;

(e) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;

(f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Covenant Agreement; and

(g) Owner has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly

authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein;

(h) Owner's managerial personnel located, or to be located, at the E-Commerce Distribution Facility possess, or will possess, sufficient experience and qualifications necessary, as determined by Owner in its sole discretion, to conduct Owner's Sales Activities (hereinafter defined) as required by this Covenant Agreement; and

(i) Owner covenants that nothing in this Agreement or the implementation thereof shall violate the provisions or intent of Government Code Section 53084.5.

The representations and warranties set forth herein are material considerations to the City and Owner acknowledges that the City is relying upon the representations set forth above in undertaking the City's obligations set forth above.

As used in this Covenant Agreement, the term "actual current knowledge of Owner" shall mean, and shall be limited to, the actual current knowledge of John Chescavage, the individual executing this Covenant Agreement on behalf of Owner, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Owner and its permitted nominees, successors and assigns. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein.

1.2.3 The City and Owner are sometimes individually referred to as a "Party" and together as the "Parties."

1.3 Definitions.

1.3.1 "**CDTFA**" means the California Department of Tax and Fee Administration.

1.3.2 "City" means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

1.3.3 "Computation Quarter" means each three-month period within the Covenant Term beginning on the first day of each Fiscal Quarter, and ending on the last day of such Fiscal Quarter. The first Computation Quarter within the Eligibility Period is referred to herein as "Computation Quarter 1," with each succeeding Computation Quarter within the

Eligibility Period being consecutively numbered, concluding with Computation Quarter 60. The first Computation Quarter within the Eligibility Period shall commence at the time that all the conditions are met under Section 1.1, including that the E-Commerce Facility is generating Sales Tax Revenue for the City, with sales directly to the consumer. After the Effective Date, Computation Quarter 1 shall start at the next subsequent Fiscal Quarter.

1.3.4 "Covenant Payment(s)" means those contingent payments to be made by the City to the Owner pursuant to Section 3.2 of this Covenant Agreement in consideration of the Covenants and Owner's timely and faithful performance thereunder.

1.3.5 "Covenant Term" means, a period of fifteen (15) years following the Effective Date (unless terminated sooner pursuant to specific provisions of this Covenant Agreement.

1.3.6 "Covenants" means those five (5) covenants described in Section 3.1 herein.

1.3.7 "Eligibility Period" means the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of the final Computation Quarter contemplated by the lease of the E-Commerce Distribution Facility, but not less that Computation Quarter 60.

1.3.8 "**E-Commerce Distribution Facility**" means a 600,000 to 900,000 square foot new build-to-suit facility, or new point of sale in an existing facility, within the City of Ontario that Owner will lease for 15 years

1.3.9 "**Fiscal Quarter**" means one three-month period, or portion thereof, within the Covenant Term and commencing on February 1, May 1, August 1, or November 1, and ending on, as applicable, the immediately following April 30, July 31, October 31, or January 31..

1.3.10 "**Fiscal Year**" means Owner's fiscal year for financial accounting purposes beginning on the Monday following the Sunday nearest January 31 of each year and ending on the Sunday nearest January 31 of the following year.

1.3.11 "Material" means any and all tangible personal property offered for to Owner's customers/clients distributed through the E-Commerce Distribution Facility which is subject to the Sales Tax Law.

1.3.12 "Owner" means and refers to Home Depot U.S.A., Inc., a Delaware corporation, and its successors and assigns, cumulatively.

1.3.13 "Owner's Sales Activities" means all sales of Material conducted electronically on the internet to any person or entity distributed through the E-Commerce Distribution Facility. "Owner's Sales Activities" also include any of the above-described activities which are conducted by a parent, subsidiary or wholly or partially owned affiliate of Owner, provided that such parent, subsidiary or affiliate did not previously conduct such activities in the City, which is subject to the Sales Tax Law and which generates Sales Tax Revenues subject to this Agreement.

1.3.14 "Penalty Assessments" means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

1.3.15 "**Property**" means that real property within the City of Ontario on which the E-Commerce Distribution Facility is located.

1.3.16 "Sales Tax" means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the E-Commerce Distribution Facility in City and Owner's Sales Activities excluding that which is to be refunded to Owner because of an overpayment of such tax.

1.3.17 "Sales Tax Law" means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of CDTFA and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.17 by relevant California State authorities.

1.3.18 "Sales Tax Revenues" means the net Sales Tax actually received by the City from the CDTFA pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the E-Commerce Distribution Facility in City in a particular Computation Quarter. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool); (iii) any administrative fee charged by the CDTFA; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

ARTICLE 2. ADDITIONAL RECITALS

2.1 The previously stated Recitals are incorporated herein and made a part hereof as though fully set forth.

2.2 The City has determined that the long-term operation of the E-Commerce Distribution Facility will result in substantial benefits to the City, and its citizens including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement and the performance of the Covenants by Owner serve a significant public purpose, while providing only incidental benefits to a private party.

ARTICLE 3. COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.

3.1 Covenants Running with the Land.

3.1.1 Operating and Use Covenant. Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the E-Commerce Distribution Facility in City, consistent with all applicable provisions of federal, state and local laws and regulations. Owner will operate its business at the E-Commerce Distribution Facility in a commercially reasonable manner. Owner's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain all federal, state and local licenses and permits required for the operation of the business at the E-Commerce Distribution Facility. For the term of this Operating Covenant, the Owner may use the Property for the purposes of the operation of the E-Commerce Distribution Facility or comparable function, with the intent, but subject to Owner's exercise of its business judgement to modify operations from time to time, of generating the greatest feasible amount of Sales Tax Revenues over the Covenant Term, and otherwise conducting Owner's Sales Activities in accordance with this Covenant Agreement.

3.1.2 Covenant to Designate City as Point of Sale. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the E-Commerce Distribution Facility and shall consummate at the E-Commerce Distribution Facility all taxable sales transactions resulting from Owner's Sales Activities and identify the City as such in all reports to the CDTFA in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. Owner shall designate City as a point of sale for Owner's products sold, including but limited to, through an internet website or phone sales which are designated within California at the E-Commerce Distribution Facility in the City. Owner shall maintain the appropriate master sales permits applicable to and required for the operation of the E-Commerce Distribution Facility. The Owner shall consummate all taxable sales transactions for Owner's Sales Activities at the E-Commerce Distribution Facility, consistent with all applicable statutory and CDTFA regulatory requirements applicable to Owner's Sales Activities and the designation of the City as the "point of sale" for all Owner's taxable sales occurring as a result of Owner's Sales Activities.

3.1.3 Economic Subsidy Reporting Obligations. Owner covenants and agrees that for the term of the Operating Use Covenant, Owner shall assist City by providing the requisite information relevant to Owner's operation of the E-Commerce Distribution Facility, required by California Government Code section 53083.1, upon written request of City, and in advance of the requisite reporting obligations described therein.

3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Owner covenants and agrees that, during the Covenant Term, Owner will not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in an Owner Default (as defined herein). For purposes of this Section 3.1.4 the term "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for

public improvements to or for the benefit of Owner.

3.1.5 Covenant With Respect to Other Owner Agreements. City understands, acknowledges and agrees that Owner has established and may establish other distribution centers outside the City ("Additional Offices"). Subject to Section 3.1.4, nothing in this Covenant Agreement limits Owner's right to conduct sales and other business and operations at or from the Additional Offices, but City makes no representations or warranties with respect to Owner's operations with respect to Additional Offices. Owner covenants and agrees that under no circumstances will Owner's agreements with respect to Additional Offices impact Owner's obligations under Section 3.1.2 with respect to City's designation as point of sale for Owner's Sales Activities consummated at or through the E-Commerce Distribution Facility in the City, and, subject to this Section 3.1.5, any other representations, warranties and covenants of Owner contained in this Agreement.

3.2 Covenant Payments.

3.2.1 Statement of Intent. The consideration to be paid to the Owner in exchange for the Covenants and Owner's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment to the Owner for each Computation Quarter during the Eligibility Period that the City receives Sales Tax Revenue, an amount equal to the sum of fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales at the E-Commerce Distribution Facility received by the City ("Covenant Payment"). The City's obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter, City's obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

3.2.2 Computation Quarter Covenant Payments. Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City copies of its quarterly reports to the CDTFA for the applicable Computation Quarter arising from Owner's Sales Activities conducted at the E-Commerce Distribution Facility. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter.

3.2.3 No Carry Forward or Back. The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.4, no Sales Tax Revenue which is generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

3.2.4 CDTFA Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the CDTFA determines that all or any portion of the Sales Tax Revenues received by the City were

improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.4 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement.

3.2.5 Not a Pledge of Sales Tax. Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount of the payment due hereunder and as means of computing the City's payment in consideration for the Covenants. It is acknowledged by Owner that, as to each Computation Quarter, the City's obligation to make payments is specifically contingent upon receipt by the City of the Sales Tax Revenues derived from the operation of the E-Commerce Distribution Facility for such Computation Quarter.

3.3 Default.

3.3.1 Owner Default. City shall provide Owner with written notice of Owner's failure ("Owner Default") to comply with any material provision of this Covenant Agreement, including, without limitation, the Covenants. Owner shall have thirty (30) days from the date of such notice to either cure such Owner Default, or, if such Owner Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.3.2 City Default. Owner shall provide City with written notice of City's failure ("City Default") to strictly abide by any material provision of this Covenant Agreement. City shall have thirty (30) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter. If Owner intends to terminate this Agreement resulted from an uncured City Default, it shall provide City 6 months' notice.

3.4 General Remedies for Default. Upon either a City or an uncured Owner Default, after expiration of all applicable notice and cure periods, Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, unless otherwise expressly provided to the contrary herein. Notwithstanding anything in this Covenant Agreement to the contrary, (a) neither Party shall be liable to the other Party for consequential damages and (b) in no event shall the City have the right of specific performance or other mandatory injunctive relief to compel the Owner to operate the E-Commerce Distribution Facility. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement, the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be

exercised individually or cumulatively, and either Party may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the default of the other Party, after expiration of all applicable notice and cure periods, and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

3.5 The City's Rights to Terminate its Obligations under Section 3.2. The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (i) Owner Default, as to which any applicable notice and cure period provided for herein has expired; (ii) the end of the Eligibility Period; or (iii) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity. Termination of the City's obligations under Section 3.2 in accordance with this Section 3.5 shall not operate to forgive, modify, discharge or excuse Owner's obligations arising under this Covenant Agreement.

3.6 Owner Termination. Notwithstanding any other provisions of this Agreement, Owner may, at its option, upon written notice to City, terminate this Agreement and/ or relocate the E-Commerce Distribution Facility to any other city or county in California or elsewhere and reallocate Owner's Sales Activities accordingly and in conformance with applicable Sales Tax Law. Owner shall provide at least three (3) months of written notice to the City prior to termination.

ARTICLE 4. GENERAL TERMS

4.1 Tax Consequences. Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

4.2 Rights Not Granted Under Covenant Agreement. This Covenant Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 et seq., or a disposition and development agreement under Health and Safety Code Section 33000 et seq. This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City concerning the E-Commerce Distribution Facility, Owner's Sales Activities or any other project, development, or construction by the Owner in the City. This Covenant Agreement does not, and shall not be construed to, exempt Owner from the application and/or exercise of the City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

4.3 Consent Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

4.4 Notices and Demands. All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i)

personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Article 1, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

4.5 Nonliability of the City or City Officials and Employees. No board member, official, contractor, consultant, attorney or employee of the City or City shall be personally liable to Owner, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

4.6 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

4.7 Pledge or Hypothecation of Covenant Payments. Owner may assign any Covenant Payment(s) due in accordance with the terms of this Covenant Agreement (but not any other right or obligation of this Covenant Agreement) upon thirty (30) days' prior written notice to City as collateral for any loan or financing obtained by the Owner in connection with the E-Commerce Distribution Facility; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

4.8 Entire Agreement; Disclosure. This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement. The terms and existence of this Agreement will not be publicized or made public beyond what is required by applicable Federal and State law, including but not limited to City approval of this Agreement and the California Public Records Act (Gov. Code § 6250, *et seq.*).

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement. In any action or proceeding to interpret and/or

enforce this Covenant Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Covenant Agreement to ascertain and give effect to the intent of the Parties hereto.

4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; initiative or referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the E-Commerce Distribution Facility.

ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.

OWNER'S INITIALS _____

4.10 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, each party shall be responsible for its own costs at the outset of any arbitration, action or suit between the Parties. Any judgment, order or award entered in any final judgment or award in favor of one Party shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim,

including actual attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 4.10, "Costs" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

4.11 Amendments to This Covenant Agreement. Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Owner. The City Manager is authorized on behalf of the City to approve and execute minor amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Owner, not to exceed ninety (90) days in the aggregate.

4.12 Jurisdiction and Venue. Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 4.12 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

4.13 Interpretation. The City and Owner acknowledge that this Covenant Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Covenant Agreement. In any action or proceeding to interpret or enforce this Covenant Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Covenant Agreement to determine and give effect to the intention of the Parties.

4.14 Counterpart Originals; Integration. This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

4.15 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one

time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4.16 Successors and Assigns. The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Owner may not assign, transfer, encumber or hypothecate its rights or obligations under this Covenant Agreement to any person or entity, without the written consent of City, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Owner shall have the right to assign this Covenant Agreement or any right or obligation hereunder to its immediate or ultimate parent, or to an affiliate, by providing advance written notice to City. An "affiliate" shall mean any legal entity that, at the applicable time, directly or indirectly controls, is controlled with or by, or is under common control with, Owner. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of Owner under this Covenant Agreement.

4.17 No Third Party Beneficiaries. The performance of the respective obligations of the City and Owner under this Covenant Agreement are not intended to benefit any party other than the City or Owner, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

4.18 No Effect on Eminent Domain Authority. Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's or City's eminent domain powers with respect to the E-Commerce Distribution Facility, or any other property owned by the E-Commerce Distribution Facility.

4.19 Warranty Against Payment of Consideration for Covenant Agreement. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Covenant Agreement. Third parties, for the purposes of this Section 4.19, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

4.20 Severability. The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

4.21 Further Acts and Releases. The City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

4.22 Estoppels. At the request of Owner or any holder of a mortgage or deed of trust secured by all or any portion of the Property, the City shall promptly execute and deliver to Owner or such holder a written statement of the City as to any of the following matters as to which Owner or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Owner pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Owner pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Owner pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Computation Quarter; (v) if the City has determined that Owner is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Owner to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Owner hereunder as to which Owner or such holder may reasonably inquire. The form of any estoppel letter shall be prepared by Owner or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Owner. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

4.23 Indemnity. Owner shall defend (using counsel of City's choosing), indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Agreement or the functions or operations of the E-Commerce Distribution Facility (other than to the extent arising as a result of the City's active negligence or willful misconduct). The City shall fully cooperate in the defense of any such actions and upon written request of Owner shall provide to Owner such documents and records in possession of the City that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Covenant Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Agreement shall cease except for Owner's obligation of indemnity owned to the City as provided in this Section 4.23.

4.24 Public Benefits.

4.24.1 Community Participation. As additional consideration for the benefits conferred under this Agreement, Owner further agrees to participate in supporting community benefit events and activities consistent with Owner's practices and policies.

4.24.2 Employment Outreach for Local Residents. A goal of the City in entering into this Agreement is to foster employment opportunities for City's residents. To that end, Owner will use commercially reasonable efforts to recruit and hire City's residents for any full and part time employment opportunities as determined Owner in its sole discretion. The City shall be authorized to post and advertise any job recruitment information provided to the City on the City's website and other jobs available and job recruitment sites within the region. Any offers of employment will be at Owner's sole discretion and all employment will be at-will employment. Nothing in this paragraph will require Owner to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section are not intended, and will not be construed, to benefit or be enforceable

by any person whatsoever other than City.

4.25 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the California Legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise payable to the City. Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Owner agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement.

[Signatures on the following pages]

SIGNATURE PAGE TO THE
HOME DEPOT U.S.A., INC.
OPERATING COVENANT AGREEMENT

CITY OF ONTARIO
a California municipal corporation

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
Ruben Duran
City Attorney

SIGNATURE PAGE TO THE
HOME DEPOT U.S.A., INC.
OPERATING COVENANT AGREEMENT

HOME DEPOT U.S.A., INC.
a Delaware corporation

Dated:_____ By:_____

Name:

Title:_____

CITY OF ONTARIO *Agenda Report* **April 20, 2021**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Investments & Revenue Resources Prepared By: Jason M Jacobsen Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 14

SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 46 (AVENUE 176 FACILITIES) SPECIAL TAX BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $9,000,000 AND RELATED MATTERS

RECOMMENDATION: That the City Council consider and adopt a resolution authorizing the issuance of City of Ontario Community Facilities District No. 46 (Avenue 176 Facilities) Special Tax Bonds, Series 2021.

A. Authorizes the issuance of special tax bonds for public improvements required to facilitate the development of the Avenue 176 project and the Ontario Ranch development;
B. Approves the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement;
C. Authorizes a negotiated sale of the special tax bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") in accordance with the terms of the Bond Purchase Agreement; and
D. Authorizes the execution of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification in connection with the Preliminary Official Statement, a final Official Statement and other documents in connection with the issuance of the bonds by the City Manager or the other specified authorized officers.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The use of Mello-Roos financing for public facilities in the residential development of the Avenue 176 project in the Ontario Ranch development is estimated to generate approximately $9 million, based on current market interest rates, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. The resolution authorizing the issuance of City of Ontario Community Facilities District No. 46 (Avenue 176 Facilities) Special Tax Bonds, Series 2021, and related matters, limits the principal amount of the bonds to $9 million. The City currently expects the bonds to be sold no later than May 2021; however, such schedule could change based on market volatility and market conditions. Since Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the applicable community facilities district, there is no General Fund impact from the issuance of Mello-Roos bonds.

Annual approval by the City Council will be required to process the special tax levies necessary to fund the ongoing debt service obligations of Ontario Community Facilities District No. 46 (Avenue 176 Facilities).

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 provides local government, with the requisite consent and approval from the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public infrastructure facilities. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting a resolution declaring the City's intention to establish a community facilities district and levy special taxes, and a resolution to issue bonds. On October 1, 2019 the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of the District with the adoption of Resolution No. 2019-139, declaring the City's intention to establish the District and to authorize the levy of special taxes. On November 19, 2019, the City Council adopted Resolution No. 2019-159 forming the District, and Resolution No. 2019-160 deeming it necessary for the District to incur bonded indebtedness. Based on a successful property owner election held on November 19, 2019, the City Council adopted Ordinance No. 3149 on December 3, 2019, authorizing the levy of special taxes within the District to finance public improvements related to the Avenue 176 project. The public improvements to be financed by the District are as follows:

- Fiber Optic System Distribution Network;
- Traffic Control System;
- Ontario Ranch Road & Parkway Improvements; and
- Other Regional Backbone Infrastructure.

The Avenue 176 project addresses the residential development of approximately 38 gross acres located generally east of Archibald Avenue, generally west of Turner Avenue, south of La Avenida Drive and north of Ontario Ranch Road. At build out, the development is projected to include 176 detached residential units.

The proposed resolution references several bond documents and other matters related to the proposed issuance of bonds by City of Ontario Community Facilities District No. 46 (Avenue 176 Facilities). These documents are listed below and are on file with the Records Management Department:

- Indenture;
- Bond Purchase Agreement;
- Continuing Disclosure Agreement; and
- Preliminary Official Statement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 46 (AVENUE 176 FACILITIES) SPECIAL TAX BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $9,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has formed the City of Ontario Community Facilities District No. 46 (Avenue 176 Facilities) (the "Community Facilities District") under the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, the Community Facilities District is authorized under the Act to levy special taxes (the "Special Taxes") to pay for the costs of certain public facilities (the "Facilities") and to issue bonds payable from the Special Taxes; and

WHEREAS, in order to provide funds to finance certain of the Facilities, the Community Facilities District proposes to issue its City of Ontario Community Facilities District No. 46 (Avenue 176 Facilities) Special Tax Bonds, Series 2021 (the "Series 2021 Bonds"), in the aggregate principal amount of not to exceed $9,000,000; and

WHEREAS, in order to provide for the authentication and delivery of the Series 2021 Bonds, to establish and declare the terms and conditions upon which the Series 2021 Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Community Facilities District proposes to enter into an Indenture with Zions Bancorporation, National Association, as trustee (the "Trustee") (such Indenture, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Indenture"); and

WHEREAS, Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), has presented the Community Facilities District with a proposal, in the form of a Bond Purchase Agreement, to purchase the Series 2021 Bonds from the Community Facilities District (such Bond Purchase Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Purchase Agreement"); and

WHEREAS, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") requires that, in order to be able to purchase or sell the Series 2021 Bonds, the underwriter thereof must have reasonably determined that the Community

Facilities District has, or one or more appropriate obligated persons have, undertaken in a written agreement or contract for the benefit of the holders of the Series 2021 Bonds to provide disclosure of certain financial information and certain listed events on an ongoing basis; and

WHEREAS, in order to cause such requirement to be satisfied, the Community Facilities District desires to enter into a Continuing Disclosure Agreement with the Trustee (such Continuing Disclosure Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Continuing Disclosure Agreement"); and

WHEREAS, a form of the Preliminary Official Statement to be distributed in connection with the public offering of the Series 2021 Bonds has been prepared (such Preliminary Official Statement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Preliminary Official Statement"); and

WHEREAS, there have been prepared and submitted to this meeting forms of:

(a) the Indenture;

(b) the Purchase Agreement;

(c) the Continuing Disclosure Agreement; and

(d) the Preliminary Official Statement;

WHEREAS, Harris Realty Appraisal has prepared and provided to the Community Facilities District an appraisal report, dated February 19, 2021 (the "Appraisal"), providing an opinion of value of the property in the Community Facilities District, which has been submitted to this meeting; and

WHEREAS, Section 5852.1 of the California Government Code requires that the City Council obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the Series 2021 Bonds, good faith estimates of (a) the true interest cost of the Series 2021 Bonds, (b) the sum of all fees and charges paid to third parties with respect to the Series 2021 Bonds, (c) the amount of proceeds of the Series 2021 Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Series 2021 Bonds, and (d) the sum total of all debt service payments on the Series 2021 Bonds calculated to the final maturity of the Series 2021 Bonds plus the fees and charges paid to third parties not paid with the proceeds of the Series 2021 Bonds; and

WHEREAS, in compliance with Section 5852.1 of the California Government Code, the City Council has obtained from CSG Advisors Incorporated, as the Community Facilities District's Municipal Advisor, the required good faith estimates, which the Municipal Advisor has prepared in consultation with the Underwriter, and such estimates are disclosed and set forth in Exhibit A attached hereto; and

WHEREAS, the Community Facilities District desires to proceed to issue and sell the Series 2021 Bonds and to authorize the execution of such documents and the performance of such acts as may be necessary or desirable to effect the offering, sale and issuance of the Series 2021 Bonds; and

WHEREAS, the City Council is the legislative body of the Community Facilities District.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. Subject to the provisions of Section 3 hereof, the issuance of the Series 2021 Bonds, in an aggregate principal amount of not to exceed $9,000,000, on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture, be and the same is hereby authorized and approved. The Series 2021 Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be subject to call and redemption, shall be issued in the form and shall be as otherwise provided in the Indenture, as the same shall be completed as provided in this Resolution.

SECTION 3. The Indenture, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City, the Assistant City Manager of the City, the Executive Director of Finance of the City, the Deputy City Treasurer of the City, and such other officer or employee of the City as the City Manager may designate (the "Authorized Officers") is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Indenture in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Indenture by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not authorize an aggregate principal amount of Series 2021 Bonds in excess of $9,000,000, shall not result in a final maturity date of the Series 2021 Bonds later than September 1, 2052, and shall not result in a true interest cost for the Series 2021 Bonds in excess of 6.50%.

SECTION 4. The Purchase Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Purchase Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Purchase Agreement by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not result in an aggregate underwriter's discount (not including any original issue discount) from the principal amount of the Series 2021 Bonds in excess of 1.50% of the aggregate principal

amount of the Series 2021 Bonds. The City Council hereby finds and determines that the sale of the Series 2021 Bonds at negotiated sale as contemplated by the Purchase Agreement will result in a lower overall cost.

SECTION 5. The Continuing Disclosure Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Continuing Disclosure Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Continuing Disclosure Agreement by such Authorized Officer.

SECTION 6. The Preliminary Official Statement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, with such changes, insertions and omissions therein as may be approved by an Authorized Officer, be and the same is hereby approved, and the use of the Preliminary Official Statement in connection with the offering and sale of the Series 2021 Bonds is hereby authorized and approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, to certify on behalf of the Community Facilities District that the Preliminary Official Statement is deemed final as of its date, within the meaning of Rule 15c2-12 (except for the omission of certain final pricing, rating and related information as permitted by Rule 15c2-12).

SECTION 7. The preparation and delivery of a final Official Statement (the "Official Statement"), and its use in connection with the offering and sale of the Series 2021 Bonds, be and the same is hereby authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement, with such changes, insertions and omissions as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution and delivery thereof. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute the final Official Statement and any amendment or supplement thereto.

SECTION 8. Based upon the property values within the Community Facilities District reported in the Appraisal and the value-to-lien information set forth in the Preliminary Official Statement, the City Council, for purposes of Section 53345.8 of the Act, hereby finds and determines that the value of the real property that would be subject to the Special Tax to pay debt service on the Series 2021 Bonds will be at least three times the principal amount of the Series 2021 Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within the Community Facilities District or a special assessment levied on property within the Community Facilities District.

SECTION 9. If and to the extent that any feature or aspect of the Series 2021 Bond structure, the rate and method of apportionment of the Special Taxes, the method of financing the Facilities, the appraisal, the absorption study or other components of the Series 2021 Bond issue approved and authorized hereby is inconsistent or in conflict with

any requirement, standard, measure or procedure set forth in the City's Mello-Roos Community Facilities Act of 1982 Local Goals and Policies, such requirement, standard, measure or procedure is, to the extent necessary to eliminate such inconsistency or conflict, hereby waived, and the City Council hereby finds and determines that benefit inures to the ultimate property owners, the Community Facilities District and the City as a result of such waiver.

SECTION 10. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof. All actions heretofore taken by the officers, employees and agents of the City with respect to the issuance and sale of the Series 2021 Bonds, or in connection with or related to any of the agreements or documents referred to herein, are hereby approved, confirmed and ratified.

SECTION 11. This Resolution shall take effect immediately 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 20th day of April 2021.

_____
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. 2021- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 20, 2021 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. 2021- duly passed and adopted by the Ontario City Council at their regular meeting held April 20, 2021.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Series 2021 Bonds in accordance with Section 5852.1 of the California Government Code. Such good faith estimates have been provided to the Community Facilities District by CSG Advisors Incorporated, the Community Facilities District's municipal advisor (the "Municipal Advisor"), which the Municipal Advisor has prepared in consultation with Stifel, Nicolaus & Company, Incorporated, the Underwriter.

Principal Amount. The Municipal Advisor has informed the Community Facilities District that, based on the Community Facilities District's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Series 2021 Bonds to be issued and sold is $7,125,000 (the "Estimated Principal Amount"), which does not include approximately $569,000 of net premium estimated to be generated based on current market conditions. Net premium is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for such bonds is higher than the face value of such bonds. Such Estimated Principal Amount and such estimated net premium amount would produce approximately $7,694,000 of gross proceeds.

True Interest Cost of the Series 2021 Bonds. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2021 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Series 2021 Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2021 Bonds, is 3.49%.

Finance Charge of the Series 2021 Bonds. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2021 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Series 2021 Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Series 2021 Bonds), is $345,000.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2021 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the Community Facilities District for sale of the Series 2021 Bonds, less the finance charge of the Series 2021 Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Series 2021 Bonds, is $6,935,000.

Total Payment Amount. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2021 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the Community Facilities District will make to pay debt service on the Series 2021 Bonds, plus the finance charge for the Series 2021 Bonds, as described above, not paid with the proceeds of the Series 2021 Bonds, calculated to the final maturity of the Series 2021 Bonds, is $12,443,000, which excludes any reserves or capitalized interest funded or paid with proceeds of the Series 2021 Bonds (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only and are based on market conditions prevailing at the time of preparation of such estimates. The actual principal amount of the Series 2021 Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series 2021 Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series 2021 Bonds issued and sold being different from the Estimated Principal Amount, (c) the actual amortization of the Series 2021 Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series 2021 Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Community Facilities District's financing plan, or a combination of such factors. The actual date of sale of the Series 2021 Bonds and the actual principal amount of Series 2021 Bonds issued and sold will be determined by the Community Facilities District based on the timing of the need for proceeds of the Series 2021 Bonds and other factors. The actual interest rates borne by the Series 2021 Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series 2021 Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the Community Facilities District.