

## ORDINANCE NO. XX (2012)

**AN ORDINANCE OF THE CITY OF DIAMOND BAR APPROVING DEVELOPMENT AGREEMENT NO. 2012-01, FOR PROPERTY COMPRISED OF APPROXIMATELY 30.36 ACRES LOCATED AT THE SOUTHEAST CORNER OF BREA CANYON ROAD AND DIAMOND BAR BOULEVARD, DIAMOND BAR, CALIFORNIA (ASSESSOR'S PARCEL NUMBERS 8714-002-900, 8714-002-901, 8714-002-902, 8714-002-903, and 8714-015-001).**

**A. RECITALS**

1. On July 1, 2007, the property owner/co-applicant, Walnut Valley School District, and property owner/lead agency/co-applicant, City of Diamond Bar (City), executed a Memorandum of Understanding whereby the parties agreed to collaborate in a specific plan process in order to consider the possible rezoning of the site consisting of approximately 30.36 acres, and comprised of multiple parcels located at the southeast corner of Brea Canyon Road and Diamond Bar Boulevard, City of Diamond Bar, County of Los Angeles, California, collectively identified as Site D, so that both parties may each advance their respective objectives for the disposition and/or use of their respective property interests.
2. Pursuant to Government Code Section 65864, et seq., the City is authorized to enter into development agreements with persons having legal or equitable development interests in real property located within the City.
3. Pursuant to Development Code Section 22.62 and Government Code Section 65865, the City has adopted rules and regulations for consideration of development agreements.
4. The City of Diamond Bar is entering into a Development Agreement with the Walnut Valley Unified School District for the purpose of establishing an agreement between the City and Walnut Valley Unified School District setting forth obligations and benefits to the respective parties.
5. The January 2012 Site D Specific Plan, identified as Specific Plan No. 2007-01 (Site D Specific Plan), that is being reviewed concurrently with this application, includes a land use plan that establishes planning areas (Residential and Public Park/Open Space) and includes standards and guidelines for future development of the specific plan site.
6. As specified in the EIR, Alternative 6, identified as the January 2012 Site D Specific Plan, was determined to be the environmentally-superior feasible alternative since its implementation would allow for the attainment

of the project's stated objectives and would avoid or substantially lessen the significant environmental impacts attributable to the proposed project.

7. CEQA contains a "substantive mandate" requiring public agencies to refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures" that can substantially lessen or avoid those effects. CEQA Guidelines define the term "feasible" as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. In accordance therewith, the City Council determined that, since the January 2012 Site D Specific Plan would result in the avoidance or substantial reduction of those significant environmental impacts attributable to the March 2010 Site D Specific Plan, is environmentally superior thereto, and is feasible, the City Council identified Alternative 6 as the preferred project.
8. The City Council certified that the EIR was completed in compliance with CEQA, that the EIR was presented to and reviewed by the Council, that the Council considered the information contained therein, and that the EIR reflected the Council's independent judgment and analysis. In accordance with CEQA and the CEQA Guidelines, a resolution recommending certification of the EIR, adoption of a mitigation reporting and monitoring program, and adoption of findings of fact was approved by the City Council prior to considering this resolution.
9. Notification of the public hearing for this project was published in the San Gabriel Valley Tribune and the Inland Valley Daily Bulletin newspapers on February 10, 2012. Public hearing notices were mailed to property owners within a 1,000-foot radius of the project site and public notices were posted at the City's designated community posting sites. In addition to the published and mailed notices, the project site was posted with a display board and the notice was posted at three other locations within the project vicinity.
10. The documents and materials constituting the administrative record of the proceedings upon which the City's decision is based are located at the City of Diamond Bar, Community Development Department, Planning Division, 21810 Copley Drive, Diamond Bar, CA 91765.

**B. NOW, THEREFORE**, the City Council does hereby ordain as follows:

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Ordinance are true and correct.
2. The City Council finds that the initial study prepared for the project identified above in this Resolution concluded that an Environmental Impact Report (EIR) No. 2007-02 (SCH No. 2008021014) be prepared.

An EIR has been prepared according to the requirements of the California Environmental Quality Act (CEQA) and CEQA Guidelines promulgated thereunder. On February 21, 2012, the City Council reviewed the EIR and adopted Resolution No. 2012-XX certifying the EIR as complete and adequate after conducting and concluding a duly noticed public hearing.

- 3. In accordance with Development Code Section 22.62.030(e) (Findings), the City Council makes the following findings of fact regarding the Development Agreement 2012-01:
  - a. The Development Agreement, attached hereto as Exhibit 1, would be in the best interests of the city; is consistent with the General Plan, proposed Specific Plan and the Development Code; and would promote the public interest and welfare of the city.
  - b. The Development Agreement is in compliance with the conditions, requirements, restrictions, and terms of Development Code Sections 22.62.030(d) (Terms and Conditions) and 22.62.040 (Content of Development Agreement), because the agreement contains all the mandatory provisions and permissive content required by Government Code Section 65865.2.

The City Council shall:

- (a) Certify to the adoption of this Ordinance; and
- (b) Forthwith transmit a certified copy of this Ordinance, by certified mail, to: Walnut Valley Unified School District, 880 South Lemon Avenue, Walnut, CA 91789.

APPROVED AND ADOPTED THIS 21<sup>st</sup> DAY OF FEBRUARY 2012, BY THE CITY COUNCIL OF THE CITY OF DIAMOND BAR.

By: \_\_\_\_\_  
Ling-Ling Chang, Mayor

I, Tommye Cribbins, City Clerk of the City of Diamond Bar, do hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Diamond Bar on the 21<sup>st</sup> day of February, 2012, by the following vote:

AYES:            Councilmembers:  
 NOES:           Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

ATTEST: \_\_\_\_\_  
Tommye Cribbins, City Clerk

**EXHIBIT 1**

**DEVELOPMENT AGREEMENT**

**(Site D)**

**BY AND BETWEEN**

**CITY OF DIAMOND BAR**

**and**

**WALNUT VALLEY UNIFIED SCHOOL DISTRICT**

**DATED \_\_\_\_\_, 2012**

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## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF DIAMOND BAR, a California municipal corporation (“City”), and the WALNUT VALLEY UNIFIED SCHOOL DISTRICT, a school district organized under the California Education Code (“Owner”).

### **RECITALS**

- A. Owner is the owner of that certain real property in the City of Diamond Bar, County of Los Angeles, State of California, commonly known as Site D, more fully described in Exhibit “A” hereto (the “Property”).
  
- B. The City is authorized to enter into development agreements with persons having legal or equitable development interests in real property located within the City pursuant to Government Code Section 65864, *et seq.*
  
- C. The City has adopted rules and regulations for consideration of development agreements, pursuant to Government Code Section 65865, in Chapter 22.62 of the Diamond Bar Municipal Code.
  
- D. Owner has requested the City to enter into a development agreement with the Owner, and proceedings have been undertaken in accordance with Chapter 22.62 of the Diamond Bar Municipal Code.
  
- E. The terms and conditions of this Agreement have been found by the City to be fair, just and reasonable, and prompted by the unique planning considerations presented by the Property and the public benefits to adhere in the City.

F. The public health, safety and welfare of the residents of the City will be served by entering into this Agreement due to the fact that the project, as described in Exhibit “B”, will provide for the development of the site with open space (park) and residential units (the “Project”).

G. This Agreement will bind future City Councils to the terms and obligations specified in this Agreement and limit, to the degree specified in this Agreement, the future exercise of the City's ability to regulate development on the Property.

H. This Agreement and the Project will serve to implement the policies, objectives, and standards of the elements of the City of Diamond Bar General Plan and the Site D Specific Plan and is consistent with the General Plan and the Site D Specific Plan. For example:

- The Project contributes to the diversity of the City's housing stock in order to provide attractive housing which accommodates people of all ages, cultures, occupations and levels of financial status;
- The Project will provide vesting to develop 200 new housing units within the City, thus helping the City to respond to the identified housing demand outlined in the current Regional Housing Needs Assessment (RHNA) and the City's certified and adopted 2008-2014 Housing Element Update. These vested housing units represent about 18.5 percent of the projected housing needs the current Housing Element cycle;
- The Project creates a community environment which nurtures social and recreational opportunities for its residents. A neighborhood public park space of 2.0 net usable acres is to be incorporated into the residential development;

- The Project offers an aesthetically pleasing development incorporating community identity through an entry feature at the corner of Brea Canyon Road and Diamond Bar Boulevard to mark the entrance into the City;
- The Project incorporates land use principles such as green building strategies and facilitates energy conservation.

K. This Agreement and the consent of Owner and City to each of its terms and conditions will eliminate uncertainty in planning and provide for the orderly, development of the Property, eliminate uncertainty about the validity of exactions imposed by the City, ensure timely installation of necessary improvements, and generally serve the public interest

## **AGREEMENT**

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **1. DEFINITIONS**

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“**Agreement**” means this Development Agreement by and between the City and Owner.

“**Approval Date**” means the date on which the Approval Ordinance is adopted by the City Council.

“**Approval Ordinance**” means Ordinance No. \_\_\_\_\_, adopted by the City Council of the City on \_\_\_\_\_, 2012, approving this Agreement.

**"Approved Uses"** means those uses permitted for the Project by the Project Approvals.

**"City"** means the City of Diamond Bar, California.

**"City Council"** means the City Council of the City of Diamond Bar.

**"CEQA"** means the California Environmental Quality Act, Section 21000, *et seq.*, of the California Public Resources Code.

**"Code"** means the Municipal Code of the City of Diamond Bar.

**"Commencement Date"** means that date which is 30 days following the Approval Date, provided, however, (i) if the Approval Ordinance is made the subject of a referendum or other judicial or administrative challenge to its effectiveness, the Commencement Date shall be the date when such proceedings have been concluded by any process which results in the Approval Ordinance becoming effective, and (ii) if litigation challenging any of the Project Approvals, EIR or this Agreement should be brought after the Approval Date, the Commencement Date shall be the date such litigation is concluded in a manner that permits the commencement of the parties' obligations under this Agreement.

**"Current Land Use Regulations"** means the ordinances, resolutions, rules, regulations, requirements and official policies of the City in force as of the Approval Date governing development agreements, permitted uses of the Property, parking, development standards, density and building intensity, subdivision, zoning, grading, landscaping, signage and design and improvement standards (not including building codes as provided by 3.4.1(c)) and shall also include the Project Approvals/Approved Uses and the Permitted Uses.

**"Deemed Complete Date"** means the date the City deemed complete the Owner's applications for the Project Approvals, that date being February 26, 2008.

**“Development Agreement Act”** means Section 65864 *et seq.*, of the California Government Code.

**“EIR”** means that certain Environmental Impact Report for Site D, dated January 2012 prepared pursuant to the provisions of the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*), and certified by the City on February 7, 2012.

**“Exactions”** means any requirement imposed by the City in connection with or pursuant to any land use regulation or land use approval process for the dedication of land, construction of improvement of public improvements or amenities, payment of development fees, or other mitigation measures required to mitigate the impacts of the development including, without limitation, all development impact fees or linkage fees, utility capacity fees, service or connection fees, major facilities fees, park fees, flood control fees, environmental impact mitigation fees, transportation fees, and any similar governmental fees, charges and exactions required for the development of projects or property.

**“General Plan”** means the General Plan of the City.

**“Mortgagee”** means any mortgagee of a mortgage and beneficiary under a deed of trust.

**“Owner”** means WALNUT VALLEY UNIFIED SCHOOL DISTRICT and each of its respective successors and assigns to all or any portion of the Property during such time as such portion is subject to this Agreement. Owner represents that it is the legal owner of the entire Property as of the date of adoption of the Approval Ordinance.

**“Permitted Uses”** means those uses set forth in the Site D Specific Plan.

**“Prevent or adversely affect development or construction of the Project”** as used in this Agreement shall include, without limitation, any changes which fundamentally affect the ability of a Permitted Use to operate within the Project (e.g., prohibit a Permitted Use, change parking standards or height, bulk, density or any other substantive change for a Permitted Use, etc.). Changes of City-wide, non-discriminatory applicability which affect internal operational requirements for the Permitted Uses or Approved Uses (e.g., safety requirements, security requirements, etc.) and that do not conflict with express provisions of the Project Approvals shall not be considered to be changes which “prevent or adversely affect the operation of the Project.”

**“Processing Fees”** means all routine and generally applicable City-wide fees required by the City for processing applications and permits including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, maps and certificates of occupancy. Expressly exempted from Processing Fees are all Exactions.

**“Project”** means the Property and the proposed development of the Property and the off-site conditions described in the Project Description contained in Exhibit B.

**“Project Approvals”** means those certain discretionary actions and approvals granted by the City on \_\_\_\_\_ as set forth in Section 2.6.

**“Public Benefits”** means those improvements to be constructed, services provided and/or amounts to be paid by Owner to the City as consideration for this Agreement pursuant to Section 3.7, Section 3.8 and Exhibit C.

**“Specific Plan” means the Site D Specific Plan.**

**“Term”** means the term of this Agreement as provided in Section 6.1 of this Agreement.

“**Zoning Map**” means the Zoning Map of the City of Diamond Bar as incorporated in the Zoning Ordinance pursuant to Section 22.06.030 of the Zoning Ordinance.

“**Zoning Ordinance**” means the comprehensive Zoning Ordinance of the City, found in Article 22 of the Code of the City of Diamond Bar.

## **2. THE DEVELOPMENT AGREEMENT PROCESS**

2.1 Statement of Benefits and Consideration. The parties hereto have determined that the Project is a development for which a development agreement is appropriate. Development of the Project in accordance with a development agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Project, ensure attainment of the maximum efficient utilization of resources within the City at the least economic cost to its citizens, and achieve the provision of public services, public uses, urban infrastructure and other goals and purposes for which the Development Agreement Act was enacted, all in the promotion of the health, safety and general welfare of the City of Diamond Bar and its residents. In exchange for these and other benefits to the City, Owner will receive the assurance that Owner may develop the Project during the Term of this Agreement, subject to the terms and conditions herein contained. City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan and has adopted Ordinance No. \_\_\_\_\_ approving this Agreement.

This Agreement does not (1) grant density or intensity in excess of that otherwise established in the Project Approvals, (2) supersede, nullify or amend any condition imposed in the Project Approvals, (3) guarantee to Owner any profits from the Project, (4) prohibit or, if legally required, indicate Owner’s consent to, the Property’s inclusion in any public financing

district or assessment district, or (5) amend the General Plan (unless otherwise provided for by the Project Approvals).

The City, as a result of the development of the Property in accordance with this Agreement, will receive substantial benefits, as set forth in Section 3.7 and Exhibit C, including the extraordinary public benefits, as set forth therein, in recognition of and in exchange for this Agreement and the benefits provided to Owner pursuant to this Agreement. The City acknowledges the adequacy of the consideration, including the Public Benefits, provided by Owner to the City pursuant to this Agreement.

In consideration of the substantial benefits, commitments and consideration to be provided by Owner pursuant to this Agreement and in order to strengthen the public planning process and reduce the economic costs of development, the City hereby provides Owner assurance that it can proceed with the development of the Property for the Term of this Agreement pursuant to the land use, density and intensity specified in the Current Land Use Regulations, the Project Approvals and this Agreement. Owner would not enter into this Agreement or agree to provide the public benefits, commitments and consideration described in this Agreement if it were not for the certainty provided by the agreement of the City that the Property may be developed during the Term of this Agreement in accordance with the Current Land Use Regulations and the Project Approvals including the land use, density and intensity set forth in the Project Approvals.

2.2 Public Hearings. On \_\_\_\_\_ the Planning Commission of the City, after giving notice pursuant to Sections 65090 and 65867 of the California Government Code, held public hearings on Owner's application for this Agreement. The City Council of the City, after providing public notice as required by law, similarly held public hearings on \_\_\_\_\_.

2.3 City Council Findings. The City Council finds that review of the environmental impacts of this Agreement and the Project Approvals has been conducted in accordance with the provisions of the California Environmental Quality Act (“CEQA”; Public Resources Code §§ 21000 *et seq.*) and the State and local guidelines adopted thereunder, and the City Council has given consideration to such environmental review prior to its approval of this Agreement and the Project Approvals and has undertaken all actions necessary to comply with CEQA, including adoption of findings, certification of the EIR, adoption of a Statement of Overriding Considerations, and adoption of a Mitigation Monitoring Program. The City Council further finds that this Agreement is consistent with the General Plan, the Site D Specific Plan and all other applicable City plans, policies and regulations.

2.4 Property. The Property includes all real property that is subject to this Agreement as of the Approval Date, commonly known as Site D in the City of Diamond Bar, Los Angeles County, as more fully described in Exhibit A, and incorporated herein by reference.

2.5 The Project. The Project consists of specified development, construction and operations on the Property as and to the extent permitted under this Agreement and the Project Approvals, which include, without limitation, the development of 200 residential units and a public park of not less than two (2) net usable acres. The Project is more fully described in the Project Description set forth in Exhibit B, and incorporated herein by reference.

2.6 Current Project Approvals. The Project includes, without limitation, all items described in the Project Description contained in Exhibit B and the following Project Approvals that have been approved by the City as of the Approval Date:

- ENVIRONMENTAL IMPACT REPORT for Site D , dated January 2012 prepared pursuant to CEQA and certified by the City Council on January 17, 2012;

- GENERAL PLAN AMENDMENT, approved by Resolution No. \_\_\_\_\_ on \_\_\_\_\_;
- ZONE MAP AMENDMENT, as amended by City Council Ordinance No. \_\_\_\_\_ on \_\_\_\_\_;
- \_\_\_\_\_;
- SPECIFIC PLAN as approved by City Council Ordinance No. \_\_\_\_\_ on \_\_\_\_\_;
- \_\_\_\_\_; and
- DEVELOPMENT AGREEMENT, approved by City Council Ordinance No. \_\_\_\_\_ on \_\_\_\_\_.

**3. VESTED DEVELOPMENT RIGHTS**

3.1 Vested Rights to Develop. Subject to the terms, conditions, and covenants of this Agreement, including the Reservations of Power in Section 3.4, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the Project Approvals and the Current Land Use Regulations. The approved use of the Property, the density and intensity of use, the maximum height and square footage of proposed buildings, and provisions for reservation and dedication of land or public purposes shall be those set forth in the Project Approvals and on Exhibit B. Nothing in this Agreement shall be deemed to obligate Owner to initiate or complete development of the Project or any portion thereof within any period of time or at all.

3.1.1 Certain Changes Prohibited Without Consent of Owner. Except as otherwise provided in this Agreement, during the Term, the City shall not, as to the Property and the Project, without the prior written consent of Owner: (a) change the Current Land Use Regulations, Permitted Uses or Project Approvals as they apply to the Property or Project so as to prevent or adversely affect development or construction of the Project in accordance with the Current Land Use Regulations, Permitted Uses or Project Approvals; or (b) apply to the Property or the Project any new or amended ordinance, resolution, rule, regulation, requirement or official policy that is inconsistent with the Current Land Use Regulations, Permitted Uses or the Project Approvals, so as to prevent or adversely affect development or

construction of the Project in accordance with the Current Land Use Regulations, Permitted Uses or the Project Approvals; or (c) apply to the Property or the Project any new or amended ordinance, resolution, rule, regulation, requirement or official policy that requires additional discretionary review or approval not otherwise required for the Project by the Current Land Use Regulations; or (d) apply to the Property or the Project any new or amended ordinance, resolution, rule, regulation, requirement or official policy that materially, adversely affects the timing or phasing of construction or development, or which limits the availability of utilities or other infrastructure for the Project.

3.1.2 Rights are Vested. Unless amended or terminated in the manner specified in this Agreement (and subject to the provisions of this Agreement), Owner shall have the rights and benefits afforded by this Agreement and this Agreement shall be enforceable by Owner and the City notwithstanding any growth control measure or any development moratorium adopted after the Approval Date, or any change in the applicable general or specific plans, zoning, or subdivision regulations adopted by the City which alter or amend the Current Land Use Regulations, Permitted Uses or the Project Approvals, or the adoption of any new or amended ordinance, resolution, rule, regulation, requirement or official policy that is inconsistent with the Current Land Use Regulations, Permitted Uses or the Project Approvals, so as to prevent or materially adversely affect development or construction of the Project in accordance with the Current Land Use Regulations, Permitted Uses or the Project Approvals. This Section 3.1.2 shall be construed to prohibit the City from applying to the Property or the Project any development moratorium or growth control measure that is adopted specifically to prohibit the construction of the Project, or as an interim measure pending contemplated general plan, specific plan or zoning changes, or as a general growth control management measure except as provided for pursuant to Section 3.4.

3.1.3 Future Changes to Current Land Use Regulations. Following the Approval Date, if the City modifies the Current Land Use Regulations in a manner that Owner, in its sole discretion, determines is more beneficial than the Current Land Use Regulations, then the Owner may choose in its sole discretion to be governed by the modified land use regulations rather than the Current Land Use Regulations, without Owner being deemed to have waived or limited any rights, remedies or privileges under this Agreement, as subject to the limitation set forth in Section 3.5 of this Agreement.

### 3.2 Timing of Development

3.2.1 Phasing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which the Project would be developed. Such decisions depend upon numerous factors which are not all within the control of Owner, such as market orientation and demand, availability of financing and competition. Because 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 permitted a later adopted initiative restricting the timing of development and controlling the parties' agreement, it is the intent of Owner and the City to hereby acknowledge and provide for the right of Owner to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Agreement. Without in any way limiting Owner's right under Section 5.2.2 not to proceed with development of the Project and, in such an event, to terminate this Agreement in its sole and subjective business judgment, if Owner proceeds with the Project, Owner will use its reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decision, to commence

or to continue development, and to develop the Project in accordance with the provisions and conditions of this Agreement, the Current Land Use Regulations, and the Project Approvals.

### 3.3 Other Rights.

3.3.1 Future Discretionary Land Use Permits. Owner may apply for and the City may consider, after the Approval Date, certain future applications for discretionary land use permits, in implementing the Project Approvals and constructing and operating the Project. The City agrees that it will process and timely consider under the Current Land Use Regulations, any application for discretionary land use permits, provided Owner reasonably and satisfactorily complies with all preliminary procedures, actions, payment of Processing Fees, and criteria generally required by this Agreement and the Current Land Use Regulations. Owner acknowledges and agrees that City may condition its approval of such Future Project Applications as is reasonably necessary, in the City's sole discretion, to make the Future Project Application conform to this Agreement and the Current Land Use Regulations. City will not impose as a condition of approval for future discretionary land use permits any Exaction, except as authorized by this Agreement.

3.3.2 Future Ministerial Permits. The Owner will seek additional ministerial permits as required by the City, including, without limitation, excavation only permits, foundation only permits, grading permits, demolition permits, building permits, including phased building permits, public works permits and final tract map approvals, as needed to implement the Project Approvals and to construct and operate the Project. Collectively, these ministerial permit applications are called the "Future Ministerial Permits". The City agrees that it will not unreasonably withhold or unreasonably condition any Ministerial Permits which must be issued by the City in order for the Project to proceed, provided that Owner reasonably and satisfactorily complies with all preliminary procedures, actions, payment of Processing Fees

and criteria generally required for processing such Ministerial Permits, and provided further that such Ministerial Permits comply with this Agreement, the Current Land Use Regulations, and the Project Approvals.

### 3.4 Reservations of Power.

3.4.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following subsequent land use regulations shall apply to the development of the Property:

(a) Processing Fees (but not Exactions) imposed by the City to cover the estimated actual costs to the City of processing applications for Project Approvals, fees for monitoring compliance with any Project Approvals, or fees for monitoring compliance with environmental mitigation measures.

(b) Procedural regulations applied on a City-wide, nondiscriminatory basis relating to City entities required to review petitions or applications, forms of petitions and applications, notice requirements, information requested with petitions or applications, conduct of hearings, form of staff reports, nature and type of recommendations by City entities, appeal procedures and any other similar matters of procedure.

(c) Regulations governing building codes and similar construction standards and specifications including, but not limited to, the California and International Codes, as they may be changed from time to time.

(d) Regulations that are necessary to protect the public health and safety, including without limitation, development moratorium or limitation on the delivery of City-provided utility services, which are: (a) based on genuine health, safety and general welfare concerns (other than general growth management issues); (b) which arise out of a documented

emergency situation, as declared by the President of the United States, Governor of California, or the Mayor or City Council of the City of Diamond Bar; and (c) based upon its terms or its effect as applied, does not apply exclusively or primarily to the Property or the Project. To the extent possible, any such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided under this Agreement.

(e) Regulations that are not in conflict with the Project Approvals, Current Land Use Regulations or this Agreement. Any regulation, whether adopted by initiative or otherwise, limiting the rate, timing, phasing or sequencing of development of the Property shall be deemed to conflict with the Project and shall therefore not be applicable to the development of the Property. Any regulation limiting the Permitted Uses or Approved Uses of the Property, the density or intensity of use of the Property, or limiting the size, height or location of improvements on the Property shall be deemed to conflict with the Project Approvals and shall therefore not be applicable to the development of the Property.

(f) Regulations that are in conflict with the Project, but as to which the Owner has given its prior written consent for of such regulations to be applied to the Property or to the development of the Property.

(g) Regulations applied on a City-wide, non-discriminatory basis that do not “prevent or adversely affect development or construction of the Project” as defined in Section 1.

3.4.2 Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, or those of any regional authority having jurisdiction over the Project or Property, enacted after the Approval 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,

federal, or regional authority laws or regulations and to effectuate to the extent possible the terms of this Agreement.

3.4.3 Police Power. The parties acknowledge and agree that City is restricted in its authority to limit its police power by development agreement 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 to reserve to City all such power and authority which cannot be restricted by development agreement.

3.4.4 Taxes, Assessments and Fees. Anything herein to the contrary notwithstanding, City may impose on the Project any new non-discriminatory, City-wide taxes, assessments and fees, including but not limited to business license taxes or franchise fees, but not including any Exaction or other fee designated to mitigate the impact of development of the Project.

3.4.5 Prevailing Wages. Owner has been alerted to the requirements of California Labor Code section 1770 *et seq.*, including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that any portion of the Project approved by this Agreement constitutes a public works contract. It shall be the sole responsibility of Owner to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Owner agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

3.5 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of the City may 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.

### 3.6 Agreement and Assurances on the Part of Owner.

3.6.1 Project Development. Without in any way limiting Owner's right under Section 5.2.2 not to proceed with development of the Project and, in such an event, to terminate this Agreement in its sole and subjective business judgment, if Owner proceeds with the Project, Owner agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into account market conditions and economic considerations, to develop the Project in accordance with the terms and conditions of this Agreement, the Current Land Use Regulations, and the Project Approvals.

### 3.7 Public Benefits.

3.7.1 Public Benefits. The parties acknowledge and agree that development of the Project will result in substantial public needs and further acknowledge and agree that this Agreement confers unique benefits on Owner. The parties intend by this Agreement to provide additional consideration to the public to balance the private benefits conferred on Owner by providing for the satisfaction of all direct, indirect and other public needs resulting from or relating to the Project, and to provide public assurance that this Agreement is fair, just and reasonable, and prompted by the necessities of the situation so as to provide extraordinary benefits to City as provided in this Section 3.7.1.

In addition to the benefits, covenants and consideration otherwise provided by Owner pursuant to this Agreement, the parties acknowledge and agree that development of the Project will result in substantial public benefits as set forth in Exhibit "C". Owner shall provide to City those Public Benefits set forth in Exhibit C at the time or times so indicated in therein. Such Public Benefits shall be "additional consideration" as provided for by the Development Agreement Act. The City acknowledges the adequacy of the consideration, including the Public Benefits, provided by Owner to the City pursuant to this Agreement.

### 3.7.2 Exactions and Processing Fees.

3.7.2.1 Exactions. Owner shall complete and pay to the City the Exactions imposed under the terms and conditions of the Project Approvals, including payment of those development fees set forth in Exhibit “D” at the time or times set forth in Exhibit D, subject to any permitted in lieu of credits or other credit or offset provisions provided for under the Current Land Use Regulations or Project Approvals and as otherwise permitted under law. The amount of any Exactions shall not exceed the amount in place as of the Approval Date. No new Exaction may be imposed on all or part of the Project.

3.7.2.2 Exactions and Other Public Benefits. Owner acknowledges that a reasonable relationship exists between the Exactions levied by the City pursuant to the Project Approvals and the impacts of the Project on the City, and community. Owner agrees not to challenge the legality of the Exactions levied by the City or the City's decision regarding in-lieu fee credits pursuant to the Project Approvals.

### 3.8 Public Improvements and Utilities.

3.8.1 Installation Obligations. The parties hereby agree that the obligations to install public improvements and utilities necessary for the development of the Property shall be as provided for in the Project Approvals.

3.8.2 City-Provided Utilities: Reservation of Sufficient Capacity. To the extent that it is within the control of the City, the City shall use its best efforts to ensure that there shall be sufficient capacity, facilities and services with respect to City-provided utilities to complete construction of the Project and open the uses thereon to the public. The City agrees that if limitations in the provision of utilities become necessary due to the existence of an emergency

situation, they shall be applied only to the extent necessary to respond to such emergency, and shall not be applied against the Property or the Project in a discriminatory manner.

3.8.3 City-Provided Utilities: Nondiscriminatory Rates and Provision of Service.

The City agrees that rates and charges for City-provided utilities for the Property and Project shall not be set or imposed in a discriminatory manner, but shall be those rates and charges that are or would be generally applicable to any user of a comparable quantity and quality of the utility use in the City (i.e., any other entity whose use or consumption of the utility is comparable to that of Owner), and that the City shall not discriminate against the Property or the Project in the provision of any City-provided utilities (such as potable and reclaimed water, sewer and drainage).

3.8.4 Dedications, Reservations and Conditions of Development. The portions of Property to be reserved or dedicated for public purposes pursuant to this Agreement, if any, shall be that property described in the Project Approvals. Unless otherwise indicated herein, the property described in the Project Approvals to be reserved or dedicated for public use shall be dedicated by Owner not later than the issuance of a building permit for that parcel upon which the dedicated land is located. The City shall take such actions as may be necessary to vacate any prior dedications, offers to dedicate and grants of easements that are no longer necessary for the development of the Project in accordance with this Agreement.

3.8.5 Improvement Security/Insurance. As a condition of approving a final subdivision map or any future subdivision for all or a portion of the Property, the City may require the furnishing of appropriate and reasonable improvement agreements and security pursuant to California Government Code Sections 66462 and 66499 *et seq.* Nothing in this Agreement shall be construed as altering or relieving Owner of any obligation imposed pursuant to Government Code Section 66462.

3.8.6 Mitigation Measures and Conditions of Approval. Owner shall at its own expense timely perform all mitigation measures identified in the EIR's Mitigation Monitoring Program, and conditions of approval identified in the Project Approvals. However, in no event shall the City have the right to compel Owner to commence or complete any mitigation measure or condition of approval prior to: (i) the time set forth in the Project's Mitigation Monitoring and Reporting Program or elsewhere in the Project Approvals; or (ii) for measures or conditions for which no such timing is set forth in the Project's Mitigation Monitoring and Reporting Program or elsewhere in the Project Approvals, the date on which the Project obtains a certificate of occupancy for its first occupants. Owner shall have no liability with respect to the completion of mitigation measures or conditions of approval, except as otherwise set forth in this Agreement, if the contemplated development fails to occur.

#### **4. ASSIGNMENT, AMENDMENT AND REVIEW**

##### 4.1 Assignment

4.1.1 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 be permitted to cause a violation of the Subdivision Map Act, Government Code Section 66410, *et seq.*) to any person, partnership, joint venture, firm or corporation at any time during the Term; provided, however, that any such sale, transfer or assignment will include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred and shall be made in strict compliance with the following requirements:

(a) 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 and then, only in accordance herewith.

(b) Concurrently with the closing of such approved sale, transfer or assignment, Owner shall provide the City with an executed agreement by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes the duties and obligations of Owner under this Agreement to the extent of such transfer or assignment.

(c) The purchaser, transferee or assignee shall provide the City with security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder, if any, or under any of the Project Approvals.

(d) Any Event of Default by Owner as defined in Section 5.1.1 that has occurred and is continuing has been cured.

(e) Upon any such assignment, Owner shall have no further responsibility for any of the assigned obligations.

Any sale, transfer or assignment under Section 4.1 of this Agreement not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement and any such assignment shall be void and of no effect. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by paragraph (b) of this Subsection 4.1.1, 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.

4.1.2 Assignments Where No City Consent is Needed. Owner may, without seeking or receiving any City consent, freely sell, transfer or assign the Property in whole or in part and this Agreement to any person, general partnership, limited partnership, limited liability company, corporation, firm, joint venture, trust, business trust, joint-stock company,

cooperative, association or other lawful entity which: (i) has a tangible net worth of at least fifty million dollars (\$50,000,000); and (ii) is nationally or regionally recognized, or regionally known in Southern California, as an owner or developer of high-quality real estate projects (altogether, “Permitted Transfers”).

4.1.3 Assignments Where City’s Reasonable Consent is Needed. With the exception of Permitted Transfers as described above, Owner may sell, transfer or assign the Property in whole or in part and this Agreement to any other person, partnership, joint venture, firm, corporation, trust or other lawful entity with the City’s consent, which consent shall not be unreasonably withheld or conditioned (“Transfer”). In the event Owner desires to make such Transfer, Owner shall submit to the City a request for approval at least forty-five (45) days prior to such Transfer, and City shall cooperate with any reasonable pre-approval process established by Owner that enables Owner to effectuate the Transfer within applicable statutory time limits. City’s approval of a Transfer shall not be unreasonably withheld. The City may withhold its approval upon finding of any of the following:

(a) The proposed transferee or assignee lacks the financial ability to perform the obligations of this Agreement;

(b) The proposed transferee or assignee lacks the necessary qualifications, competence, experience or capability to implement the development plan contemplated by the Project Approvals; provided, however, if the proposed transferee or assignee is a nationally or regionally recognized, or regionally known in Southern California, as an owner or developer of high quality real estate projects such proposed transferee or assignee shall be deemed to have met this requirement;

(c) An Event of Default by Owner as defined in Section 5.1.1 has occurred and is continuing under this Agreement; or

(d) Owner no longer has a legal or equitable interest in all or any part of the Property.

Owner shall provide to the City such information that the City reasonably requests in order for the City to make any determinations provided for by Subsection 4.1.3 above. Owner agrees to provide such information on a timely basis sufficient to permit the City to make its determinations within the forty-five (45) day time period. Owner agrees to reimburse the City for reasonable costs incurred by the City in reviewing requests for assignment from Owner.

4.1.4 Applicability. The provisions of Subsection 4.1.1 and 4.1.3 shall not be applicable to (i) a transfer or assignment by a mortgage or deed of trust or (ii) a transfer made in connection with the enforcement of the security interest of a mortgage or deed of trust or by deed in lieu thereof. Subject to the provisions of Section 4.1 hereof, said provisions shall be applicable to any subsequent transfer by a mortgage after it has successfully enforced its security interest.

4.1.5 Partial Release of Purchaser, Transferee or Assignee of Lot. A purchaser, transferee or assignee of a lot that has been finally subdivided as provided for in the Development Plan and for which a site plan for development of the lot has been finally approved pursuant to the Development Plan, may submit a request, in writing, to CITY to release said lot from the obligations under this Agreement relating to all other portions of the Property. Within thirty (30) days of such request, CITY shall review, and if the above site plan condition is satisfied shall approve the request for release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 4.1.5 shall cause, or otherwise effect, a release of Owner from its duties and obligations under this Agreement as to the remainder of the Property (exclusive of such Lot).

4.1.6 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The restrictions and requirements of Section 4.1 shall not apply to the sale or lease (for a period longer than one year) of any (i) lot that has been finally subdivided and/or any (ii) condominium unit that is described on a condominium plan approved by the City as defined in Civil Code Section 1351(e) (the "Condominium Plan") individually (and not in "bulk") to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot or condominium unit and such lot or condominium unit 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:

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

4.1.6.2 The condominium unit is described on a Condominium Plan approved by the City and individually (and not in bulk) sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

4.1.6.3 A final certificate of occupancy or similar certificate has been issued for a building on the lot or for the condominium unit, and the fees set forth in Exhibit C of this Agreement have been paid.

4.2 Changes and Amendments to the Project.

In the event Owner reasonably finds that a change or amendment in the Project Approvals is reasonably necessary or appropriate, Owner shall apply for any required changes to the Project Approvals. Any such application that does not require an amendment to the Permitted Uses, Approved Uses, Zoning Ordinance, or General Plan or any applicable Specific

Plan shall be processed in the normal manner for processing such matters in accordance with the Current Land Use Regulations, except as otherwise provided by this Agreement, including the Reservations of Power. Any application that requires an amendment to the Permitted Uses, Approved Uses, Zoning Ordinance, General Plan or any applicable Specific Plan shall be processed in the normal manner for processing such matters in accordance with the land use regulations in effect at the time the application is filed.

4.2.1 Minor Changes to Project – No Amendment of Agreement. The parties acknowledge that refinements or modifications of the Project may be required during the Term. The parties agree that refinements and modifications which constitute a “minor” change in the Project or Project Approvals shall not require an amendment to this Agreement or public notice and a hearing. For any such minor change, the City shall not impose as a condition to approval any Exaction, except as authorized in this Agreement. The City Manager, in consultation with the City Attorney, shall be authorized to make the determination on behalf of the City whether a requested refinement or modification may be effectuated pursuant to this Section 4.2.1 or whether the requested refinement or modification is of such a character to require an amendment to this Agreement pursuant to Section 4.2.2. The City Manager shall be authorized to approve any minor changes hereunder on behalf of the City. The City Manager shall not unreasonably withhold or delay its determination that a requested refinement or modification is a “minor” change as that term is used herein. A change to the Project Approvals shall not be deemed “minor” if such change:

- (a) Alters the Approved Uses of the Property as a whole
- (b) Requires an amendment to the Permitted Uses, Approved Uses, Zoning Ordinance, General Plan or any applicable Specific Plan;

- (c) Increases the density or intensity of use of the Property as a whole;
- (d) Deletes a requirement for the reservation or dedication of land for public purposes within the Property as a whole;
- (e) Constitutes a project requiring a subsequent or supplemental environmental impact report pursuant to Public Resources Code Section 21166;
- (f) Creates a situation adverse to public health or safety;
- (g) Materially changes the architecture, design or materials of the Project as provided for in the Project Approvals; or
- (h) Reduces the extraordinary Public Benefits, as described in Section II of Exhibit C, or Exactions provided for in the Project Approvals or in Section 3.7.2 of this Agreement.

4.2.2 Other Changes. Any change in the Project which does not qualify as a “minor change” as defined herein shall require an amendment to this Agreement as provided in Section 6.9.

#### 4.3 Annual/Special Review.

4.3.1 Annual Review. The City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith substantial compliance by Owner with the terms of this Agreement. Subject to the notice and cure procedure set forth in Section 5.1.2, such a periodic review may result in amendment or termination of this Agreement, provided a default has been established under the terms of this Agreement. Pursuant to Government Code Section 65865.1, Owner shall have the duty to file an annual review request

with the City, pay any applicable Processing Fees for such annual review and demonstrate its good faith compliance with the terms of this Agreement at such periodic review. The parties recognize that this Agreement and the documents incorporated herein could be deemed to contain many requirements (i.e., construction standards, landscape standards, etc.) and that evidence of each and every requirement would be a wasteful exercise of the parties' resources. Accordingly, Owner shall be deemed to have satisfied its duty of demonstration if it presents evidence satisfactory to the City of its good faith and substantial compliance with the major provisions of this Agreement.

4.3.1.1 Any party may address any requirement of this Agreement during the review. However, ten (10) days' written notice of any requirement to be addressed shall be made by the requesting party. If at the time of review an issue not previously identified in writing is required to be addressed, the review at the request of either party shall be continued to afford sufficient time for analysis and preparation.

4.3.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Director of Community Development or City Council, as determined from time to time by the City Council, shall conduct such special reviews. Any special review shall comply with the procedural provisions of an annual review as provided by Section 4.3.1.

4.3.3 Opportunity to be Heard. Upon written request to the City by Owner, Owner shall be permitted an opportunity to be heard orally and/or in writing at a hearing before the City Council regarding its performance under this Agreement. Owner shall also be heard before the City Council at any required public hearing concerning a review of action on this Agreement.

4.3.4 Information to be Provided Owner. The City shall, to such an extent as is practical, deposit in the mail to Owner a copy of staff reports and related exhibits concerning contract performance a minimum of seven (7) days prior to any such review or action upon this Agreement by the Planning Commission or the City Council.

## **5. DEFAULT, REMEDIES AND TERMINATION**

### **5.1 Enforceability.**

5.1.1 Default. Subject to Section 5.1.3, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default (“Event of Default”). Notwithstanding anything to the contrary in this Agreement, if Owner makes a general assignment for the benefit of creditors, or any proceeding is instituted by or against Owner seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up or reorganization of it or its debts under any law relating to bankruptcy, insolvency or reorganization, such an event shall not constitute an Event of Default absent failure of the Owner to perform any term or provision of this Agreement, and all provisions of this Agreement shall remain in full force and effect. For the purposes of this Agreement, a party claiming another party is in default shall be referred to as the “Complaining Party”, and the party alleged to be in default shall be referred to as the “Party in Default”.

### **5.1.2 Procedure Regarding Defaults.**

5.1.2.1 Notice of Default. The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as

may be deemed by the Complaining Party to be reasonably necessary to correct the matter). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. If an Event of Default occurs, prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. Without limitation, evidence of default may arise in the course of the regularly scheduled annual review or a special review described in Section 4.3.

5.1.2.2 Cure Periods. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if (i) the cure is commenced at the earliest practicable date following receipt of the notice; (ii) the cure is diligently prosecuted to completion at all times thereafter; (iii) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such thirty (30) day period; and (iv) the cure is completed at the earliest practicable date. In no event shall the Complaining Party be precluded from exercising remedies if a default is not cured within sixty (60) days after the first notice of default is given. Subject to the foregoing, if a party fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may terminate this Agreement pursuant to California Government Code Section 65868, and Section 5.1.2.3 and 5.21 of this Agreement, and/or institute legal proceedings pursuant to this Agreement.

5.1.2.3 Procedures Regarding City Termination. Notice of intent to terminate shall be by certified mail, return receipt requested. Upon delivery by the City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) days in accordance with Government Code Sections 65867 and 65868. Upon consideration of the evidence presented in said review and a determination by the City Council based thereon, the City may give written notice of termination of this Agreement to Owner. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of annual review) made by the City against Owner, or any person who succeeds to Owner with respect to any portion of the Property, shall be based upon written findings supported by substantial evidence in the record. Any purported termination of this Agreement for alleged default shall be subject to review in the Superior Court of the County of Los Angeles pursuant to Code of Civil Procedure § 1094.5(c).

5.1.3 Institution of Legal Action. Subject to notice of default and opportunity to cure under Section 5.1.2, and subject further to the limitation on remedies set forth in Section 5.1.4, in addition to any other rights or remedies, any party to this Agreement may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. If a legal action or proceeding is brought by any party to this Agreement because of an Event of Default under this Agreement, or to enforce a provision hereof, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys' fees, incurred in prosecuting such legal action or proceeding. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

#### 5.1.4 Remedies.

5.1.4.1 Owner Remedies. It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in damages under or with respect to this Agreement or the application thereof. In addition, the parties agree that monetary damages are not an adequate remedy for Owner if the City should be determined to be in default under this Agreement. The parties further agree that specific performance or other equitable relief shall be Owner's only remedy under this Agreement and Owner may not seek monetary damages in the event of a default by the City under this Agreement. Owner covenants not to sue for or obtain monetary damages for the breach by the City of any provision of this Agreement.

5.1.4.2 City's Remedies. The parties agree that the City shall have limited remedies for monetary damages and specific performance as specifically provided for in this Section 5.1.4.2. The City shall not have any right to compel specific performance with respect to the construction of the Project, or any obligation to construct the Project, including without limitation Section 3.2. Further, the City shall have no right to monetary damages as a result of Owner's failure to construct the Project or its failure to comply with Section 3.2. The City shall have the right to sue for monetary damages for failure by the Owner to pay any amounts owing under this Agreement including without limitation any amounts owing pursuant to Sections 3.7, 6.4.1 and 6.5.1. In no event shall the City be entitled to consequential damages or punitive damages for any breach of this Agreement. City also shall have the right to seek monetary damages for reimbursement of the actual cost to the City incurred by the City to construct, complete, demolish, remove or restore any physical infrastructure improvement in the public right of way which Owner commences construction of but fails to complete.

5.1.4.3 Voter Actions. The parties understand that the Development Agreement Law authorizes this Development Agreement to bind the City even as to actions taken by voters of City. If a court of competent jurisdiction enters a final, non-appealable order to the contrary and City fails or refuses to perform its obligations under this Agreement solely to comply with a measure adopted by initiative after entry of such a final, non-appealable order subjecting this Agreement to the effects of legislation adopted by initiative after the Approval-Date, this Agreement shall be modified or suspended to the extent required by Government Code Section 65869.5 and Owner's remedies by reason thereof shall be limited to reformation or rescission of this Agreement.

5.1.4.4 Other Actions. Nothing in this Agreement shall be deemed to, waive or limit any rights and remedies that the parties would otherwise have against the other in the absence of this Agreement.

## 5.2 Termination of Agreement.

As to the Property and all of the rights of Owner hereunder, and except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement, unless earlier terminated pursuant to this Agreement.

5.2.1 Termination Upon Failure to Cure Default. Subject to the notice and cure provisions set forth in Section 5.1.2, the City shall have the right to terminate this Agreement as to the Property and the rights of Owner hereunder, in the event Owner defaults and fails to cure such default within the respective cure period. Subject to the notice and cure provisions set forth in Section 5.1.2, Owner shall have the right to terminate this Agreement and the rights of the City hereunder in the event the City defaults and fails to cure such default within the respective cure period. Upon the termination of this Agreement, neither party shall

have any further right or obligation with respect to the Property 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.

5.2.2 Termination by Owner Prior to Development. The Owner is free, in its sole and subjective business judgment, not to proceed with development of the Project and, in such an event, to terminate this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Agreement. In the event Owner decides not to proceed with development of the Project and to terminate this Agreement, the Owner shall provide written notice to the City of that decision and of the final, irrevocable termination of this Agreement. Immediately upon the giving of such written notice to the City, the parties' rights and obligations under this Agreement shall cease, except with respect to any obligations which are specifically set forth as surviving this Agreement, in which event the Project Approvals shall terminate.

## **6. GENERAL PROVISIONS**

### 6.1 Term.

6.1.1 Term. The Term of this Agreement shall be for five (5) years, unless terminated, modified or extended pursuant to the provisions of this Agreement or the mutual consent of the parties hereto. The Term shall begin on the Commencement Date provided, however, that the Term of this Agreement and all payment obligations under this Agreement shall be tolled during any period of time in which: (1) an initiative involving a challenge to any of the Project Approvals or this Agreement is pending; (2) a lawsuit involving a challenge to any

of the Project Approvals or this Agreement (or any amendment(s) thereto) is pending in a court of competent jurisdiction; or (3) any Force Majeure Delay as described in Section 6.23 below.

6.1.2 Additional Rights. Expiration or termination of this Agreement shall not affect any right vested under law independent of this Agreement. The term of any parcel map, tentative subdivision map, or vesting tentative subdivision map relating to the Property or any portion thereof shall be extended (pursuant to Government Code § 66452(a)) for the longer of (i) the Term, or (ii) the term of the particular map otherwise allowed under the Subdivision Map Act (Government Code §§ 66410 *et seq.*) and the City's Subdivision Ordinance.

6.2 Approval Procedure: Recordation. The following procedure shall govern approval of this Agreement (which shall precede the execution hereof by the City):

(a) Prior to City Council approval of this Agreement, Owner shall execute this Agreement.

(b) City Council shall undertake all necessary proceedings to consider this Agreement in accordance with the procedures established by the Development Agreement Ordinance. Approval by the City shall be by adoption of the Approval Ordinance.

(c) As provided in Section 65868.5 of the Development Agreement Act, the City shall cause a copy of this Agreement to be recorded with the County Recorder within ten (10) days following the Commencement Date. Any recording costs shall be paid by Owner.

6.3 Cooperation and Implementation. City represents that it will cooperate with Owner to the fullest extent reasonable and feasible to implement this Agreement. Upon satisfactory completion by Owner of all of its preliminary actions and payments of appropriate fees, City shall promptly commence and diligently proceed to complete all steps necessary for

the implementation of this Agreement and the development of the Property in accordance with the terms of this Agreement, including, but not limited to, the processing and checking of any and all Project Approvals, agreements, covenants and related matters required under the conditions of this Agreement, building plans and specifications, and any other plans necessary for the development of the Property, requests for inspections and certificates of occupancy, filed by or on behalf of Owner. Owner shall, in a timely manner, provide City with all documents, plans and other information necessary for the City to carry out its obligations hereunder.

#### 6.4 Legal Challenges.

6.4.1 If any legal action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of the Project Approvals, of the EIR, or of this Agreement prior to any Transfer of the Property and this Agreement, Owner and the City shall cooperate in defending any such action. The City shall notify Owner of any such legal action against City within ten (10) days after the City receives service of process, except for any petition for immediate injunctive relief, in which case the City shall notify Owner immediately upon receipt of notice thereof. City and Owner shall each bear its own respective attorney fees and costs incurred in any such legal action.

6.4.2 If any legal action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of the Project Approvals, of the EIR, or of this Agreement following any Transfer of the Property and this Agreement, the Transferee and the City shall cooperate in defending any such action. The City shall notify the Transferee of any such legal action against City within ten (10) days after the City receives service of process, except for any petition for immediate injunctive relief, in which case the City shall notify Transferee immediately upon receipt of notice thereof. The Transferee shall indemnify, hold harmless and defend the City, and any of its officers,

employees or agents for any claim or lawsuit brought to challenge the validity, or enforcement of the Project Approvals, the EIR, or this Agreement, instituted by a third party or another governmental entity or official; provided, however, that if the City fails promptly to notify the Transferee of any legal action against the City, or if the City fails to cooperate in the defense, the Transferee shall not thereafter be responsible for the City's defense. The Transferee shall reimburse all of the City's defense costs including, without limitation, court costs, attorneys fees and expert witness fees. The Transferee shall promptly pay all monetary awards, judgments, verdicts, court costs and attorneys fees that may be awarded in such action. The City shall be entitled to select counsel to conduct its defense in any such action; provided, however, that the City shall instruct such counsel to cooperate with the Transferee as provided in this Section 6.4.1.

6.4.3 Continued Processing. The filing of any lawsuit(s) by a third party (not a party to this Agreement) after the Approval Date against the City and/or Owner relating to this Agreement or to other development issues affecting the Project shall not delay or stop the processing or issuance of any permit or authorization necessary for development of the Project, unless the City in good faith determines that such delay is legally required.

## 6.5 Indemnity.

6.5.1 Owner Indemnity. To the fullest extent permitted by law, Owner hereby agrees, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the City and its elected officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, engineers, consultants or other professionals and all costs associated therewith, arising or

claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Owner or any of its officers, agents, servants, lessees, employees, contractors, subcontractors, materialmen, suppliers or their officers, agents, servants, lessees, or employees, or arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to this Agreement or Project Approvals, any construction permitted pursuant to this Agreement or Project Approvals, or any subsequent use of the Property, or any portion thereof, permitted by this Agreement or Project Approvals except for any actions resulting from the gross negligence or intentional acts of an Indemnitee.

6.5.2 Survival of Indemnity. The indemnity provisions contained in this Section 6.5 shall survive the termination of this Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under these indemnity provisions, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitee's right to recover under these indemnity provisions. Owner shall pay Indemnitees for any attorneys fees and costs incurred in enforcing these indemnification provisions.

6.6 Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service), or sent by registered or certified mail, postage prepaid, return receipt required, or by electronic facsimile transmission followed by delivery of a "hard" copy, and shall be deemed received on the date of receipt personally, by registered or certified mail or by facsimile.

Unless otherwise indicated in writing, such notice shall be sent addressed as follows:

If to the City:

City Clerk  
City of Diamond Bar

21810 Copley Drive  
Diamond Bar, CA 90069

With a copy to:

Michael Jenkins  
Jenkins & Hogin, LLP  
Manhattan Towers  
1230 Rosecrans Avenue, Suite 110  
Manhattan Beach, CA 90266  
Telephone: (310) 643-8448  
Fax: (310) 643-8441

If to Owner:  
Walnut Valley Unified School District  
880 South Lemon Avenue  
Diamond Bar, CA 91789

With a copy to:

6.7 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties to this Agreement and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

6.8 Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.

6.9 Modification, Amendment or Extension. Subject to any notice and hearing requirements imposed by law, this Agreement may be modified, amended and/or extended from time to time by mutual written consent of the City and Owner in the same manner as its adoption by ordinance as set forth in Government Code Sections 65867, 65867.5 and 65868 and Chapter 22.62 of the Municipal Code.

6.10 Conflicts of Law. In the event that state, regional or federal laws or regulations enacted after the Approval Date or the action or inaction of any other affected governmental jurisdiction prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall (a) provide the other party with written notice of such state, regional or federal restriction, provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement, and (b) Owner and the City staff shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement, but only to the minimum extent necessary to comply with such federal, regional or state law or regulation. The City shall cooperate with Owner in the securing of any permits which may be required as a result of such modifications. Owner may, at its option, upon notification by the City of any such required modification, elect to terminate this Agreement if the required modification that is not acceptable to Owner in its absolute discretion.

6.11 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Section 6.11. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

6.12 Successors and Assigns. Except as expressly provided to the contrary in this Agreement, the burdens and obligations 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 and all successors in interest to the Property or any portion thereof or any interest therein, and shall be covenants running with the land.

6.13 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California.

6.14 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

6.15 Statement of Compliance. Within thirty (30) days following any written request, in accordance with the notice provisions of this Agreement, which either party may make from time to time, the other party shall execute and deliver to the requesting party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (b) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults; and (c) any other information reasonably requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement 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. Said statement(s) shall be in the form reasonably satisfactory to the City, Owner and to any purchaser, lender, title company, governmental agency, or other person reasonably requesting such statement(s) in connection with the sale, use, development, construction, financing or marketing of the Property. The City and Owner, for their own respective uses, shall also be entitled to obtain a statement of compliance at any reasonable time.

6.16 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit the right of Owner at its sole discretion, to encumber the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device (collectively "Mortgage") securing financing of the purchase, development or operation of the Property or any portion of the Property as provided in this Agreement (including, without limitation, any combination of purchase financing, construction financing, bridge loans, take-out and permanent financing); provided, however, that any such Mortgage shall be subordinate to this Agreement.

The City acknowledges that prospective lenders providing such financing may request certain interpretations and modifications of this Agreement, and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to discuss in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification that the City determines is consistent with the intent and purposes of this Agreement and protects the interests of the City under this Agreement. Any Mortgagee of Property shall be entitled to the following rights and privileges:

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value.

If the 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, the City shall provide a copy of that notice to the Mortgagee within three (3) days of sending the notice of default to Owner, as the case may be. 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.

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. Under no circumstances shall any such Mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate until all fees and other obligations due by Owner under this Agreement have been performed and/or paid to the City, all defaults have been cured, and all otherwise applicable conditions to such permit or certificate have been satisfied.

6.17 Covenant of Good Faith and Fair Dealing. No party shall do anything which shall have the effect of harming or injuring the right of the other parties to receive the benefits of this Agreement.

6.18 Covenant of Cooperation. Owner and the City shall cooperate with and assist each other in the performance of the provisions of this Agreement, including assistance in obtaining permits for the development of the Property or the Project which may be required from public agencies other than the City. Owner reserves the right to challenge any ordinance, measure, moratorium or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.

6.19 Justifiable Reliance. The City acknowledges that, in investing money and planning effort in and to the Project and all public improvements and dedication offers required hereunder, and in undertaking commencement of the Project, Owner will be doing so in reliance upon the City's covenants contained in this Agreement and upon the enforceability of this Agreement, and the City agrees that it will be reasonable and justifiable for Owner to so rely.

6.20 Project Is Private Undertaking. It is specifically understood and agreed to by and between the parties hereto that: (1) the subject development is a private development; (2) except for the obligations of the City described herein, if any, the City has no responsibilities for

or duty to third parties concerning any public improvement until such time and only until such time that the City accepts the same pursuant to the provisions of this Agreement or in connection with any subdivision map approval; (3) Owner shall have full power over and exclusive control of the real property herein described subject only to the limitations and obligations of Owner under this Agreement and the Project Approvals; and (4) the contractual relationship between the City and Owner is such that Owner is not an agent of the City nor is City an agent of Owner.

Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to waive or modify any otherwise applicable obligations the City, acting in its governmental capacity and not as a party to this Agreement, may have to Owner or any other party, under and in accordance with all applicable laws.

6.21 Further Actions and Instruments. The parties to this Agreement shall cooperate with and provide reasonable assistance to the other parties to the extent contemplated in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of any party, the other parties 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.

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

6.23 Enforced Delay (Force Majeure).

(a) In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, litigation (including without limitation, third party legal challenges to the Project, the Project Approvals or the environmental clearance for the Project Approvals and the Project), governmental restrictions imposed or mandated by governmental entities (but only as to delays or defaults on the part of Owner), enactment of conflicting state or federal laws or regulations (but only if the party claiming delay complies at all times with the provisions of this Agreement pertaining to such conflicting laws), delays caused by the delay or failure by any entity other than the party claiming such delay to provide financing for or construction of needed public facilities or infrastructure as contemplated or required by this Agreement, delays due to the enforcement of environmental regulations, litigation brought by third parties, or similar bases for excused performance.

(b) An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other parties within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

(c) Notwithstanding the first sentence of paragraph (b), above, the following shall apply: (i) Owner shall be entitled to a Force Majeure Delay for a period longer

than the period of enforced delay if the City Council determines that such longer period is reasonably required; and (ii) Owner shall be entitled to a Force Majeure Delay notwithstanding the fact that Owner may not have given timely notice to the City, if the City Council determines that such Force Majeure Delay is reasonably required.

(d) A Force Majeure Delay shall not include the existence of any difficult or adverse market or economic conditions.

#### 6.24 Emergency Circumstances.

(a) If, as the result of specific facts, events or circumstances, the City believes that a severe and immediate emergency threat to the health or safety of the City or its residents, meeting the requirements of subparagraph (b), below, requires the modification, suspension or termination of this Agreement, the City will, after reasonable notice to Owner (in light of all the circumstances), hold a hearing on such facts, events or circumstances, at which Owner shall have the right to address the City Council. The City shall have the right to modify, suspend or terminate this Agreement, in whole or in part, if, following such hearing, the City Council determines that such modification, suspension or termination is required in order to protect the health and safety of the City and its residents.

(b) For purposes of this Section 6.24, an emergency must meet each of the following criteria: (i) it must be based on genuine health, safety and general welfare concerns (other than general growth management issues); (ii) it must arise out of a documented emergency situation, as declared by the President of the United States, Governor of California, or the Mayor, City Council or City Manager of the City of Diamond Bar; and (iii) based upon its terms or its effect as applied, it does not apply exclusively or primarily to the Property or the Project.

6.25 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement and/or the rights and obligations of the parties hereto.

6.26 Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has independently reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

6.27 Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original and all of which when taken together shall constitute one and the same instrument.

6.28 Entire Agreement. This Agreement consists of \_\_\_ pages, including \_ exhibits (designated A through \_), which constitute the entire understanding and agreement of the parties; provided, however, that nothing in this Agreement shall affect or modify the Memorandum of Understanding between the parties pertaining to Site D dated July 1, 2007, as amended by the First Amendment dated November 4, 2008, the Second Amendment dated

September 15, 2010, the Third Amendment dated January 19, 2011 and the Fourth Amendment dated September 22, 2011, which Memorandum of Understanding remains in full force and effect.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties have each executed this Agreement on the date first written above.

CITY OF DIAMOND BAR

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

WALNUT VALLEY UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_  
Its:

## EXHIBITS

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Exhibit A: Legal Description of Property

Exhibit B: Project Description

Exhibit C: Public Benefits of Project

Exhibit D: Project Development Fees

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of Diamond Bar, County of Los Angeles, State of California, described as follows:

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 9 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF LOT 76 (BREA CANYON CHANNEL) OF TRACT 27577, AS PER MAP RECORDED IN BOOK 702, PAGES 22 TO 25 INCLUSIVE OF MAPS, RECORDS OF SAID COUNTY, DISTANT THEREON NORTH 30°41'18" EAST 245.38 FEET FROM THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP AS HAVING A BEARING AND DISTANCE OF NORTH 30°41'18" EAST 745.38 FEET; THENCE SOUTH 59°18'42" EAST 235.80 FEET; THENCE SOUTH 71°00'13" EAST 580.00 FEET; THENCE SOUTH 34°00'00" EAST, 120.00 FEET; THENCE NORTH 56°00'00" EAST 340.00 FEET; THENCE NORTH 48°00'00" EAST 980.00 FEET; THENCE NORTH 28°07'43" WEST 570.00 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF DIAMOND BAR BOULEVARD, AS SHOWN ON MAP OF TRACT 25991, AS PER MAP RECORDED IN BOOK 702 PAGES 16 TO 21 INCLUSIVE OF MAPS, RECORDS OF SAID COUNTY; SAID POINT BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 2050.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 28°07'43" EAST; THENCE SOUTHWESTERLY ALONG SAID CURVE, ALONG THE SOUTHEASTERLY LINE OF SAID DIAMOND BAR BOULEVARD; THROUGH A CENTRAL ANGLE OF 41°1'33" AN ARC DISTANCE OF 150.00 FEET; THENCE TANGENT TO SAID LAST MENTIONED CURVE, ALONG THE SOUTHEASTERLY LINE OF SAID DIAMOND BAR BOULEVARD SOUTH 66°03'50" WEST 875.89 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1050.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, ALONG THE SOUTHEASTERLY LINE OF SAID DIAMOND BAR BOULEVARD, THROUGH A CENTRAL ANGLE OF 20°50'10" AN ARC DISTANCE OF 381.83 FEET TO THE NORTHEAST CORNER OF SAID LOT 76; THENCE SOUTH 30°41'18" WEST, ALONG THE SOUTHEASTERLY LINE OF SAID LOT 76, 500.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF SAID SECTION 29 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF LOT 76 OF TRACT 27577, AS PER MAP RECORDED IN BOOK 702 PAGES 22 TO 25 INCLUSIVE OF MAPS, RECORDS OF SAID COUNTY, DISTANT THEREON NORTH 30°41'18" EAST 259.67 FEET FROM THE

THE SOUTHEASTERLY LINE OF SAID LOT 76, NORTH 30°41'18" EAST 485.71 FEET TO THE SOUTHERLY LINE OF DIAMOND BAR BOULEVARD, AS SHOWN ON MAP OF SAID TRACT 27577; SAID SOUTHERLY LINE BEING A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 1050.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 421'50" AN ARC DISTANCE OF 79.97 FEET; THENCE SOUTH 30°41'18" WEST 527.99 FEET TO A LINE THAT BEARS SOUTH 63°26'06" EAST FROM THE POINT OF BEGINNING; THENCE NORTH 63°26'06" WEST 64.82 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT THEREFROM SAID LAND ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN OR THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, STORE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND FOR THE PURPOSE OF DEVELOPING OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN DESCRIBED HEREIN, AND SHALL NOT PENETRATE ANY PART OF PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF, AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS EXCEPTED AND RESERVED BY TRANSAMERICA DEVELOPMENT COMPANY, A CORPORATION WHICH ACQUIRED TITLE AS CAPITAL COMPANY, A CORPORATION, IN DEED RECORDED AUGUST 12, 1964 AS INSTRUMENT NO. 1401.

PARCEL 2:

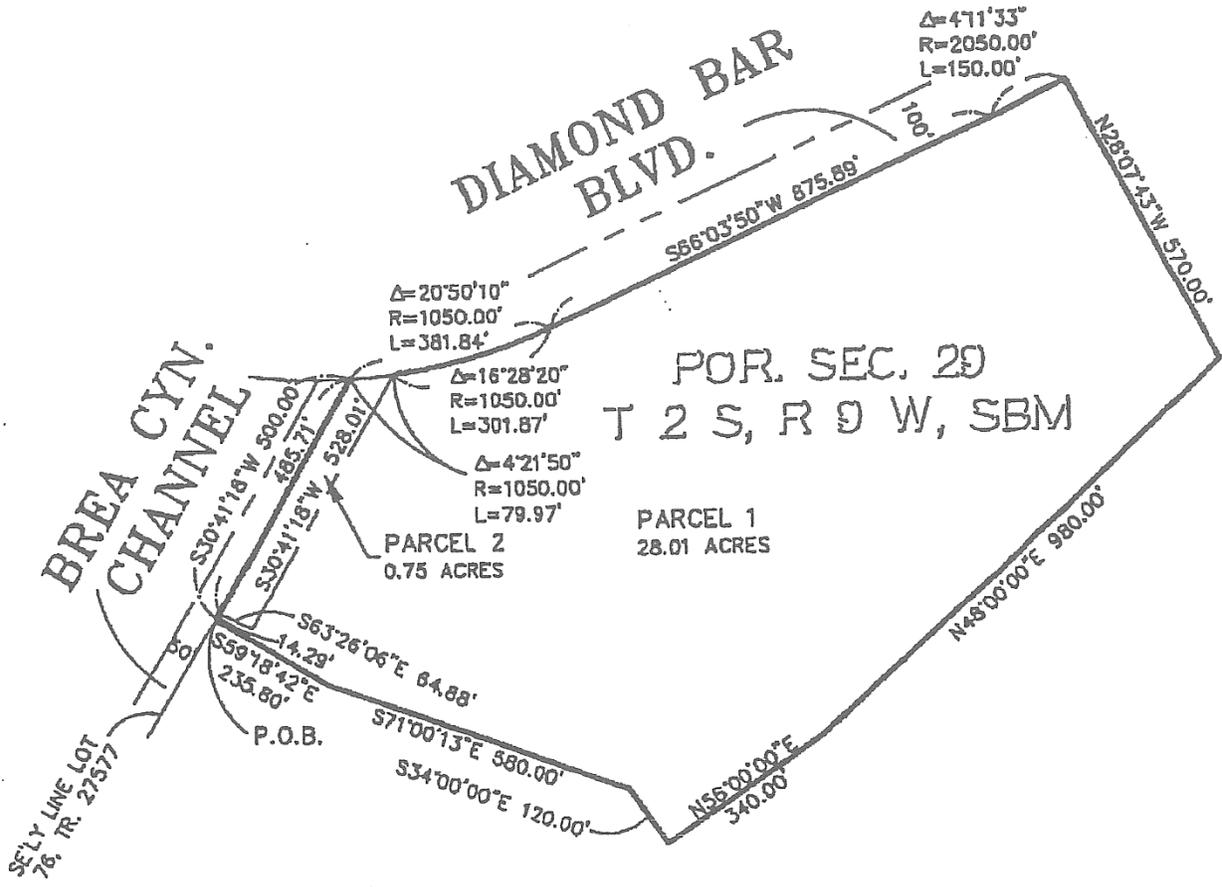
THAT PORTION OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 9 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHEASTERLY LINE OF LOT 76 OF TRACT 27577, AS PER MAP RECORDED IN BOOK 702, PAGES 22 TO 25, INCLUSIVE OF MAPS, RECORDS OF SAID COUNTY, DISTANT THEREON NORTH 30°41'18" EAST 259.67 FEET FROM THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING OF NORTH 30°41'18" EAST AND A DISTANCE OF 745.38 FEET; THENCE CONTINUING ALONG THE SOUTHEASTERLY LINE OF SAID LOT 76, NORTH 30°41'18" EAST, 485.71 FEET TO THE SOUTHERLY LINE OF DIAMOND BAR BOULEVARD, AS SHOWN ON MAP OF SAID TRACT 27577, SAID SOUTHERLY LINE) BEING A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 1050.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH CENTRAL ANGLE OF 421'50" AN ARC DISTANCE OF 79.97 FEET; THENCE SOUTH 30°41'18" WEST 527.99 FEET TO A LINE THAT BEARS SOUTH 63°26'06" EAST FROM THE POINT OF BEGINNING; THENCE NORTH 63°26'06" WEST 64.82 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN OR THEREUNDER, TOGETHER WITH THE EXCLUSIVE RIGHT TO DRILL FOR, PRODUCE, EXTRACT, TAKE AND MINE THEREFROM SUCH OIL, GAS AND OTHER HYDROCARBONS AND MINERALS AND TO STORE THE SAME UPON THE SURFACE OF SAID LAND; TOGETHER WITH THE RIGHT TO STORE UPON THE SURFACE OF SAID LAND, OIL, GAS AND OTHER HYDROCARBONS AND MINERALS WHICH MAY BE PRODUCED FROM OTHER LANDS, WITH THE RIGHT OF ENTRY THEREON FOR SAID PURPOSES, AND WITH THE RIGHT TO CONSTRUCT, USE, MAINTAIN, ERECT, REPAIR, REPLACE AND REMOVE THEREON AND THEREFROM, ALL PIPE LINES, TELEPHONE AND TELEGRAPH LINES, TANKS, MACHINERY, BUILDINGS AND OTHER STRUCTURES WHICH MAY BE NECESSARY AND REQUISITE TO CARRY ON OPERATIONS ON SAID LAND, WITH THE FURTHER RIGHT TO ERECT, MAINTAIN, OPERATE AND REMOVE A PLANT, WITH ALL NECESSARY APPURTENANCES FOR THE EXTRACTION OF GASOLINE FROM GAS, INCLUDING ALL RIGHTS NECESSARY OR CONVENIENT THERETO, AS EXCEPTED AND RESERVED IN THE DEED FROM TRANSAMERICA DEVELOPMENT COMPANY, A CORPORATION, RECORDED MARCH 29, 1968 AS INSTRUMENT NO. 2456, IN BOOK D3955 PAGE 185, OFFICIAL RECORDS AND RE-RECORDED JUNE 19, 1969 AS INSTRUMENT NO. 1776 IN BOOK D4407 PAGE 591, OFFICIAL RECORDS.

SAID INTEREST WAS CONVEYED TO TRANSAMERICA MINERALS COMPANY, A CALIFORNIA CORPORATION, BY DEED RECORDED JUNE 20, 1985 AS INSTRUMENT NO. 85-74005.

AN INSTRUMENT PURPORTEDLY QUITCLAIMING, RELEASING AND SURRENDERING ONLY THE SURFACE RIGHTS TO A DEPTH OF 500 FEET AND PROVIDING FOR REMOVAL OF ALL GAS, MINERALS AND HYDROCARBONS BELOW SAID DEPTH AS CONVEYED TO TRANSAMERICA DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION BY DEED RECORDED JANUARY 5, 1987 AS INSTRUMENT NO. 87-10522.



SCALE: 1"=300'

## **EXHIBIT “B”**

### **PROJECT DESCRIPTION**

The Site D Specific Plan will entitle a project to consist of 200 attached and/or detached residential dwelling units for individual sale and a neighborhood park containing not less than two usable acres to be dedicated to the City. Vehicular access to the residential and park uses would be provided via a signalized intersection at Cherrydale Drive and Diamond Bar Boulevard or at Crooked Creek and Diamond Bar Boulevard. The precise location, configuration, and amenities to be included in the proposed neighborhood park will be determined at the time a tentative subdivision map is processed for the residential development. In addition, an entry feature will be constructed near the intersection of Diamond Bar Boulevard and Brea Canyon Road. At minimum, the entry feature shall have a value not less than one half of one percent (0.5%) of the building permit valuation of the proposed residential development. Off-street, parkway separated walks and on-street bike trails will be provided within the community to allow residents to safely travel between the residential areas and the public park. The trails and walks will pedestrian access to the public park area from adjoining neighborhood at the terminus of Pasado Drive.

The parkland shall be dedicated to the City and constructed to City standards. The tentative and final tract maps shall show the parkland as a separate parcel (delineating the park boundaries) and offer the parcel for dedication to the City. The subsequent developer of Site D shall be responsible for designing the parkland improvements, producing all related construction documents (subject to Community Development Director and Community Services Director approval) and constructing the parkland improvements. No offer of dedication shall be accepted until construction of the parkland improvements is completed in a manner acceptable to the Community Services Director.

## EXHIBIT "C"

### PUBLIC BENEFITS OF PROJECT

- I. The Project will offer the following immediate public and project benefits:
- A. Vesting to develop 200 new housing units within the City, thus helping the City to respond to the identified housing demand outlined in the current Regional Housing Needs Assessment (RHNA) and the City's certified and adopted 2008-2014 Housing Element Update. These vested housing units represent about 18.5 percent of the projected housing needs the current Housing Element cycle;
  - B. Traffic improvements to be completed prior to the issuance of Project certificates of occupancy:
    - Pathfinder Road at Brea Canyon Cutoff Road: Widen and/or restripe eastbound Brea Canyon Cutoff Road to provide one left-turn lane, two through lanes and a separate right-turn lane. The implementation of this improvement may require some modification to existing traffic signal equipment (i.e. re-cut/install new vehicle loop detectors, modification to traffic signal controller);
    - SR-57 Southbound Ramps at Brea Canyon Cutoff Road/Diamond Bar Boulevard: Install a traffic signal. The implementation of this improvement may require some modification to existing signing and striping on Brea Canyon Cutoff or SR-57 southbound ramps; and
    - Cherrydale Drive or Crooked Creek at Diamond Bar Boulevard: Provide an option left/through lane and a separate right-turn lane on the northbound approach; restripe southbound approach to provide an option left/through/right-turn lane on Cherrydale or Crooked Creek. Widen eastbound approach to provide a separate right-turn lane. Modify median and restripe Diamond Bar Boulevard to provide dual westbound left-turn lanes. Install traffic signal. The implementation of this improvement may require some modification to existing signing and striping the affected streets.
- II. The Project will offer the following proposed extraordinary public benefits:

Residential Fees. Owner shall pay to the CITY a development agreement fee at the issuance of building permits for each dwelling unit in the Project as follows:

\$15,000.00 per Dwelling Unit

Public Park Dedication. Owner shall design and construct public park improvements as set forth in the Project Description (Exhibit B). Owner's construction of the park improvements and payment of the Quimby Act Fees fully and completely satisfies Owner's Quimby Act Fee obligation imposed against the dwelling units constructed in the Project. The public park land and improvements shall be conveyed to the City in fee as dedicated parkland.

## **EXHIBIT 'D'**

### **PROJECT DEVELOPMENT FEES**

Prior to the recordation of the final tract map, the Owner shall provide, to the satisfaction of the City Engineer, the intersection improvements identified in the EIR traffic impact analysis or provide a "fair-share" contribution toward the cost of the improvements to the following intersections: (1) Brea Canyon Road (W) at Pathfinder Road; (2) Diamond Bar Boulevard at Pathfinder Road; (3) Brea Canyon Road at Cold Spring Lane; (4) Diamond Bar Boulevard at Cold Spring Lane; (5) Pathfinder Road at Brea Canyon Cutoff; (6) SR-57 SB Ramps at Brea Canyon Cutoff Road; (7) SR-57 NB Ramps at Brea Canyon Cutoff/Diamond Bar Boulevard; (8) Brea Canyon Road at Silver Bullet Drive; (9) Diamond Bar Boulevard at Grand Avenue; and (10) Colima Road at Brea Canyon Cutoff.