



CITY OF LAGUNA HILLS CITY COUNCIL/PLANNING AGENCY

REGULAR MEETING AGENDA Tuesday, March 22, 2022 – 7:00 PM (Closed Session at 6:00 PM when scheduled)

Dave Wheeler, Mayor

Janine Heft, Mayor Pro Tempore
Erica Pezold, Council Member

Don Caskey, Council Member
Don Sedgwick, Council Member

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, CA 92653

Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink "Request to Speak" form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

Submission of Electronic Public Comments: While you may attend this meeting in person, those wishing to make electronic public comments may submit their comments by email to the City Clerk at publiccomments@lagunahillsCA.gov, by 5:00 p.m. on March 22, 2022. In the subject line of the email, please state your name and the item number you are commenting on. Any public comment received that does not specify a particular agenda item number will be announced during the general public comment portion of the agenda. If you wish to submit a public comment on more than one agenda item, please send a separate email for each item you are commenting on. All comments received by 5:00 p.m. on the date of the meeting will be provided to the City Council in advance to allow time for the Council Members to read them.

Announcement of Electronic Public Comments: During the applicable agenda item, the City Clerk will announce the name of the sender and subject matter of all email comments received by 5:00 p.m. on March 22, 2022. Email comments will NOT be read by the City Clerk during the meeting. Electronic public comments may only be submitted via email and comments via text and social media (Facebook, Twitter, etc.) will not be accepted. The email comments, including your name, will become part of the record of the City Council meeting and will be public information.

CLOSED SESSION - CONVENING AT 6:00 PM**CALL TO ORDER**

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

ROLL CALL OF CITY COUNCIL MEMBERS**ANNOUNCEMENT OF CLOSED SESSION ITEM(S)**

The City Council will convene into Closed Session, in the City Council Conference Room, City Hall, Laguna Hills Civic Center, to consider the following matter(s):

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: (1 potential case).

PUBLIC COMMENT ON CLOSED SESSION ITEM(S)**CONVENE INTO CLOSED SESSION**

The City Council will convene into Closed Session to consider the matter(s) listed above.

RECONVENE TO CITY COUNCIL CHAMBER**RECESS**



CITY OF LAGUNA HILLS CITY COUNCIL/PLANNING AGENCY

REGULAR MEETING AGENDA Tuesday, March 22, 2022 – 7:00 PM (Closed Session at 6:00 PM when scheduled)

Dave Wheeler, Mayor

Janine Heft, Mayor Pro Tempore
Erica Pezold, Council Member

Don Caskey, Council Member
Don Sedgwick, Council Member

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, CA 92653

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Submission of Electronic Public Comments: While you may attend this meeting in person, those wishing to make electronic public comments may submit their comments by email to the City Clerk at publiccomments@lagunahillsCA.gov, by 5:00 p.m. on March 22, 2022. In the subject line of the email, please state your name and the item number you are commenting on. Any public comment received that does not specify a particular agenda item number will be announced during the general public comment portion of the agenda. If you wish to submit a public comment on more than one agenda item, please send a separate email for each item you are commenting on. All comments received by 5:00 p.m. on the date of the meeting will be provided to the City Council in advance to allow time for the Council Members to read them.

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GENERAL BUSINESS - CONVENING AT 7:00 PM**CALL TO ORDER**

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

INVOCATION: Pastor Leland Lantz of Lutheran Church of the Cross

PLEDGE OF ALLEGIANCE: Council Member Sedgwick

ROLL CALL OF CITY COUNCIL MEMBERS**CLOSED SESSION REPORT****1. PRESENTATIONS AND PROCLAMATIONS****1.1 San Joaquin Elementary School Student Liaison**

Recommendation: That the City Council present a Certificate of Appointment and receive an oral report from San Joaquin Elementary School Student Liaison Vanessa Vivar.

1.2 Laguna Hills High School Student Liaison

Recommendation: That the City Council receive an oral report from Laguna Hills High School 2022 Spring Student Liaison Kaitlyn Heinecke.

1.3 Recognition of Kenneth H. Rosenfield on the Occasion of His Retirement

Recommendation: That the City Council present a City Tile and adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, recognizing Kenneth H. Rosenfield, P.E., for his service to the City as Interim City Manager, February 10, 2021 through April 1, 2022, and Public Services Director/City Engineer, July 17, 1995 through February 9, 2021."

2. SCHEDULE OF FUTURE EVENTS**2.1 Schedule of Future Events**

Recommendation: That the Assistant City Clerk announce the upcoming City events for the months of March and April 2022.

3. PUBLIC COMMENTS

This is the time to address the City Council on any matter not listed on this Agenda that is within the subject matter jurisdiction of the City Council. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

4. CONSENT CALENDAR

All matters listed under “CONSENT CALENDAR” are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

4.1 Waive Reading in Full of all Ordinances and Resolutions on the Agenda

Recommendation: That the City Council waive reading in full of all ordinances and resolutions on the agenda and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

4.2 Approval of Minutes for March 8, 2022, Special Meeting

Recommendation: That the City Council approve the Minutes for the March 8, 2022, Special Meeting.

4.3 Approval of Minutes for March 8, 2022 Regular Meeting

Recommendation: That the City Council approve the Minutes for the March 8, 2022, Special Meeting.

4.4 Ratification of March 22, 2022, Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the period from February 25, 2022, to March 10, 2022, in the amount of \$1,126,778.27.

4.5 Second Reading & Adoption of Proposed Ordinance Approving and Adopting a Development Agreement Between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC for the Village at Laguna Hills Project

Recommendation: That the City Council (1) adopt an Ordinance entitled: "An Ordinance of the City Council of the City of Laguna Hills, California, approving and adopting a Development Agreement between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC for the Village at Laguna Hills project", and (2) authorize the Mayor/Mayor Pro Tempore to execute the Ordinance.

4.6 Legislative Update for the 2022 Regular Session and Overview of Initiative No. 21-0042A1

Recommendation: That the City Council receive and file the report and take a Watch position on Legislation until later in the Legislative Session.

4.7 Proposed Office Lease for Suite 203 with Premier Group International for 24031 El Toro Road, Suite 203, Laguna Hills, California

Recommendation: That the City Council approve an office lease with Premier Group International, a California corporation, for 24031 El Toro Road, Suite 203, Laguna Hills, California, and authorize the City Manager to execute the Lease.

4.8 Resolution Establishing Banking Relations with Bank of the West and Designating the Persons Authorized to Transact Business on Behalf of the City

Recommendation: That the City Council adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, establishing banking relations with Bank of the West, designating the persons authorized to transact business on behalf of the City, and rescinding Resolution No. 2010-08-24-1."

4.9 2021 General Plan Annual Progress Report

Recommendation: That the City Council approve and direct Staff to forward the 2021 General Plan Annual Progress Report and Housing Element Annual Progress Report-Housing Implementation to the State of California Department of Housing and Community Development (HCD).

4.10 Progress Payment No. 4 for Citywide Pavement Rehabilitation, CIP No. 101-L & Ridge Route Drive Pavement Resurfacing, CIP No. 188

Recommendation: That the City Council approve Progress Payment No. 4, in the net amount of \$623,861.67, to Petrochem Materials Innovation, LLC, for Citywide Pavement Rehabilitation, CIP No. 101-L & Ridge Route Drive Pavement Resurfacing, CIP No. 188.

4.11 April 2022 Rooted Campaign Event and Arbor Day Recognition

Recommendation: That the City Council receive and file the report, and authorize the Mayor to sign the attached Arbor Day Proclamation as required by the Arbor Day Foundation for the Tree City USA Certification.

4.12 City Manager Recruitment - Appointment of Labor Negotiator

Recommendation: That the City Council appoint Mayor Pro Tempore Heft to serve as the Council-designated Labor Negotiator for purposes of facilitating the employment contract negotiation process necessary to retain a new City Manager following completion of the pending formal competitive selection process.

ITEMS REMOVED FROM THE CONSENT CALENDAR**5. PLANNING AGENCY****5.1. ROLL CALL OF PLANNING AGENCY MEMBERS****5.2. PUBLIC COMMENTS**

This is the time to address the Planning Agency on any matter not listed on this Agenda that is within the subject matter jurisdiction of the Planning Agency. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

5.3. APPROVAL OF MINUTES**5.4. ADMINISTRATIVE REPORTS****5.5. PLANNING AGENCY PUBLIC HEARINGS**

5.5.1 Site Development Permit (SDP) No. USE-0027-2020 and Joint Parking Use Permit (PUP) No. USE-0084-2022, a Request by GB Architecture on Behalf of Warmington Properties, Inc. for Architectural and Site Upgrades and to Establish Joint Use Parking Facilities at Honali Plaza, Located at 24721 – 24781 Alicia Parkway.

Recommendation: That the Planning Agency:

- 1) Conduct a public hearing;
- 2) Find and determine that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities);
- 3) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, approving Site Development Permit (SDP) No. USE-0027-2020, a Request by GB Architecture on behalf of Warmington Properties, Inc. for Architectural and Site Upgrades to Honali Plaza, Located at 24721 - 24781 Alicia Parkway, including an exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)”;
- 4) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, approving Joint Parking Use Permit (PUP) No. USE-0084-2022, a Request by GB Architecture on behalf of Warmington Properties, Inc. to Establish Joint Use Parking Facilities at Honali Plaza, Located at 24721 - 24781 Alicia Parkway, including an exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)”.

PLANNING AGENCY ADJOURNMENT

- 6. CITY COUNCIL PUBLIC HEARINGS**
- 7. ADMINISTRATIVE REPORTS**

7.1. City Manager**7.1.1 Notice of Retirement of Kenneth H. Rosenfield, Interim City Manager, and Acceptance of Letter of Resignation**

Recommendation: That the City Council:

- (1) Acknowledge Receipt of Notice of Retirement and Letter of Resignation Submitted by Interim City Manager/Public Services Director/City Engineer Kenneth H. Rosenfield, P.E., dated March 10, 2022;
- (2) Accept Notice of Retirement and Letter of Resignation Submitted by Interim City Manager/Public Services Director/City Engineer Kenneth H. Rosenfield, P.E., dated March 10, 2022 after 30 Years of Dedicated Service to the City of Laguna Hills; and Last Day of Service to the City will be April 1, 2022;

7.2. City Attorney**7.2.1 Temporary Appointment of Interim City Manager Pending Recruitment for Permanent City Manager Position**

Recommendation: That the City Council:

- (1) Certify that with the retirement of Kenneth H. Rosenfield on April 1, 2022, the position of City Manager will be vacant while the City Council continues its recruitment for a new City Manager;
- (2) Certify that while vacant, the position of City Manager will be a position to be filled for a limited duration by a retired annuitant on an interim basis;
- (3) Certify that the appointment is necessary to fill a critically needed position sooner than 180 days after Mr. Rosenfield's effective retirement date of April 1, 2022;
- (4) Temporarily appoint Mr. Rosenfield to the limited duration, retired annuitant position of Interim City Manager while the City Council completes its recruitment to fill the City Manager position on a permanent

basis; and

(5) Approve and authorize the Mayor/Mayor Pro Tempore to execute a retired annuitant employment agreement with Kenneth H. Rosenfield, P.E., for the position of Interim City Manager, which satisfies the CalPERS requirements for the temporary employment of a retired annuitant.

7.3. Deputy City Manager/Community Services Director

7.3.1 Permanent Monument Memorializing the 3/5 Dark Horse Marine Battalion

Recommendation: That the City Council: 1) Receive a presentation from Mike Bland on the installation of an existing Memorial Stone at the Community Center and Sports Complex, and 2) Defer the establishment of a Permanent Monument Memorializing the 3/5 Dark Horse Marine Battalion, pending further evaluation of the needs and opportunities for a monument through a Request for Proposal process for professional services as described herein.

7.4. Police Services

7.4.1 2021 Laguna Hills Police Services Annual Report

Recommendation: That the City Council receive and file the 2021 Laguna Hills Police Services Annual Report.

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS

9. CITY COUNCIL MEMBER COMMITTEE REPORTS

9.1. Committee Assignment Reports

Recommendation: That the City Council receive oral reports on the following City Council Committee Assignments:

1. OC Mosquito and Vector Control District Board of Trustees
(Council Member Pezold) - March 17, 2022 Meeting.

10. CITY COUNCIL MEMBER COMMENTS

ADJOURNMENT

The next Regular Meeting of the City Council/Planning Agency will be April 12, 2022, at 7:00 p.m., in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and the Courtyard at La Paz Center by March 18, 2022, at 5:00 p.m.



City Clerk

March 18, 2022

Date

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City Clerk at (949) 707-2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours.

City Council Members receive no additional compensation or stipend as a result of simultaneously convening meetings of the Laguna Hills Planning Agency.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Recognition of Kenneth H. Rosenfield on the Occasion of His Retirement

RECOMMENDATION: That the City Council present a City Tile and adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, recognizing Kenneth H. Rosenfield, P.E., for his service to the City as Interim City Manager, February 10, 2021 through April 1, 2022, and Public Services Director/City Engineer, July 17, 1995 through February 9, 2021."

SUMMARY:

Kenneth H. Rosenfield, P.E., was initially hired as a consultant to the City in 1992 and was ultimately hired as a City employee on July 17, 1995 to serve as the City's first Public Services Director/City Engineer, and has continuously served in that capacity since then. Additionally, of note, Mr. Rosenfield has served as the Interim City Manager for the past 14-months.

After thirty years of service to the City of Laguna Hills, and numerous accomplishments on behalf of the City, Mr. Rosenfield has decided to retire effective April 1, 2022. A Resolution has been prepared officially recognizing Kenneth H. Rosenfield, P.E., for his service to the City.

ATTACHMENTS:

- Resolution

RESOLUTION NO. 2022-03-22-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, RECOGNIZING KENNETH H. ROSENFELD, P.E., FOR HIS SERVICE TO THE CITY AS INTERIM CITY MANAGER, FEBRUARY 10, 2021 THROUGH APRIL 1, 2022, AND PUBLIC SERVICES DIRECTOR/CITY ENGINEER, JULY 17, 1995 THROUGH FEBRUARY 9, 2021

WHEREAS, Kenneth H. Rosenfield, P.E., was first hired by the City as a consultant for the establishment of the Public Services Department on March 10, 1992, and was later hired on July 17, 1995 as a City employee to serve as the City's first Public Services Director/City Engineer, and has served continuously in that position since then, ultimately serving as Assistant City Manager/Public Services Director; and

WHEREAS, Kenneth H. Rosenfield, P.E., has served as the Interim City Manager from February 10, 2021 through April 1, 2022; and

WHEREAS, Kenneth H. Rosenfield, P.E., has admirably overseen over 130 capital improvement program construction projects with a value of over \$146 million, including street improvements, development of parks throughout the City, storm drain upgrades, traffic signal upgrades and other various infrastructure improvement projects; and

WHEREAS, Kenneth H. Rosenfield, P.E., is a true professional in the field of Civil Engineering, recognized by his colleagues throughout California and the United States, having served as Region 9 Governor At-large of the American Society of Civil Engineers ("ASCE") and chaired several regional committees including the Government Relations Committee and the Transportation and Development Committee, as well as held the position of Chair of the Public Policy Committee for ASCE. Mr. Rosenfield formerly held the ASCE positions of President of the Los Angeles Section and President of the Orange County Branch, and is currently serving in his second year of a three-year term as Region 9 Director for the State of California and serves on the ASCE Board of Direction; and

WHEREAS, Kenneth H. Rosenfield's, P.E., career in Civil Engineering began over 42 years ago, consistently showing an unwavering commitment to the betterment of the City and his contributions to the City of Laguna Hills cannot be fully encapsulated; and

WHEREAS, Kenneth H. Rosenfield, P.E., has decided to retire after twenty-seven years as a City employee, effective April 1, 2022, and will be sincerely missed by friends, colleagues, and co-workers alike.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, does hereby express sincere appreciation and thanks to Kenneth H. Rosenfield, P.E., for his distinguished and dedicated service to the City of Laguna Hills, highly commends him for the manner in which he has carried out his duties as Interim City Manager and Public Services Director/City Engineer and wishes him nothing but the very best as he enjoys his retirement.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2022-03-22-x adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 22nd day of March 2022, by the following vote:

AYES:

NOES: None

ABSENT: None

ABSTAIN: None

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

Attachment: Resolution (2790 : Recognition of Kenneth H. Rosenfield on the Occasion of His Retirement)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Jennifer Lee
Assistant City Clerk
ISSUE: Schedule of Future Events

RECOMMENDATION: That the Assistant City Clerk announce the upcoming City events for the months of March and April 2022.

SUMMARY:

The following is a list of upcoming events for the City of Laguna Hills in the months of March and April 2022:

Special City Council Meeting – Housing Element Update Public Workshop

Saturday, March 26, 2022, 1:00 p.m., Laguna Hills Civic Center Council Chambers

Parks & Recreation Commission Meeting

Wednesday, April 6, 2022, 7:00 p.m., Laguna Hills Civic Center Council Chamber

Regular City Council Meeting

Tuesday, April 12, 2022, 7:00 p.m., Laguna Hills Civic Center Council Chamber

Rooted Event/Arbor Day Tree Planting Event

Saturday, April 16, 2022, 9:00 a.m., Costeau Park

Daddy Daughter Dinner Dance

Friday, April 22, 2022, 7:00 p.m., Laguna Hills Community Center

Regular City Council Meeting

Tuesday, April 26, 2022, 7:00 p.m., Laguna Hills Civic Center Council Chamber



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for March 8, 2022, Special Meeting

RECOMMENDATION: That the City Council approve the Minutes for the March 8, 2022, Special Meeting.

ATTACHMENTS:

- 220308 CC Special Minutes

**CITY OF LAGUNA HILLS
CITY COUNCIL**

**SPECIAL MEETING
MINUTES
Tuesday, March 8, 2022**

CALL TO ORDER

The meeting was called to order at 5:00 p.m. by Mayor Wheeler.

ROLL CALL OF CITY COUNCIL MEMBERS

Attendee Name	Title	Status	Arrived
Dave Wheeler	Mayor	Present	
Janine Heft	Mayor Pro Tempore	Present	
Don Caskey	Council Member	Present	
Erica Pezold	Council Member	Present	
Don Sedgwick	Council Member	Present	

ANNOUNCEMENT OF CLOSED SESSION ITEM(S)

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) and paragraph (5) of subdivision (e) of Government Code Section 54956.9: (1 potential case).

PUBLIC COMMENTS

There were no public comments on the Closed Session item.

ADJOURN TO CITY COUNCIL CONFERENCE ROOM OR COUNCIL CHAMBER

CONVENE INTO CLOSED SESSION

The City Council convened into closed session to consider the matter(s) listed above.

RECONVENE TO CITY COUNCIL CHAMBER

The City Council reconvened the City Council Meeting at 7:01 p.m. All Council Members were present in chamber.

CLOSED SESSION REPORT**A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Pursuant to Government Code Section 54956.9

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) and paragraph (5) of subdivision (e) of Government Code Section 54956.9: (1 potential case).

City Attorney Simonian stated that the City Council convened into Closed Session this evening pursuant to the authorities listed on the Agenda with no reportable action taken.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Wheeler declared the meeting adjourned at 7:00 p.m.

Melissa Au-Yeung, City Clerk

ATTEST:

Dave Wheeler, Mayor

Approved at meeting of March 22, 2022



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for March 8, 2022 Regular Meeting

RECOMMENDATION: That the City Council approve the Minutes for the March 8, 2022, Special Meeting.

ATTACHMENTS:

- 220308 CC Minutes

**CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY**

**REGULAR MEETING
MINUTES
Tuesday, March 8, 2022**

GENERAL BUSINESS - CONVENING AT 7:00 PM

CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Mayor Wheeler.

INVOCATION: Pastor Kathleen Bratun of The Connection Church

PLEDGE OF ALLEGIANCE: Mayor Pro Tempore Heft

ROLL CALL OF CITY COUNCIL MEMBERS

Attendee Name	Title	Status	Arrived
Dave Wheeler	Mayor	Present	
Janine Heft	Mayor Pro Tempore	Present	
Don Caskey	Council Member	Present	
Erica Pezold	Council Member	Present	
Don Sedgwick	Council Member	Present	

1. PRESENTATIONS AND PROCLAMATIONS

1.1 Laguna Hills High School Student Liaison

Recommendation: The City Council received an oral report from Laguna Hills High School 2022 Spring Student Liaison Austin Kays.

1.2 Crime Survivors, Inc.

Recommendation: The City Council received a presentation from Patricia Wenskunas, Founder/CEO of Crime Survivors, Inc.

1.3 Presentation by Mercy House on Homeless Outreach

Recommendation: The City Council received an update from Timothy Huynh on Mercy House's homeless outreach efforts in the City of Laguna Hills.

2. SCHEDULE OF FUTURE EVENTS

2.1 Schedule of Future Events

Recommendation: Assistant City Clerk Lee announced the upcoming City events for the month of March 2022.

3. PUBLIC COMMENTS

The following individuals addressed the City Council on non-agendized items:

Jimmy Hanes, a resident of Laguna Hills, spoke regarding neighborhood watch, Regional Housing Needs Allocations (RHNA) numbers, and high-density housing.

Anne Higuchi, a resident of Laguna Hills, spoke regarding integration of low-income housing and high-density housing.

Cameron Simbro, a resident of Laguna Hills, spoke regarding potential zone changes of commercial centers for high density housing.

Dawn Ford, a resident of Laguna Hills, spoke regarding information circulating through the community regarding housing, scheduling of City Council meetings, and the Build-A-Fort program.

4. CONSENT CALENDAR

Motion to approve the Consent Calendar.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Mayor Pro Tempore
SECONDER:	Erica Pezold, Council Member
AYES:	Dave Wheeler, Mayor; Janine Heft, Mayor Pro Tempore; Don Caskey, Council Member; Erica Pezold, Council Member; Don Sedgwick, Council Member

4.1 Waive Reading in Full of all Ordinances and Resolutions on the Agenda

Recommendation: That the City Council waive reading in full of all ordinances and resolutions on the agenda and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

4.2 Approval of Minutes for February 22, 2022, Regular Meeting

Recommendation: That the City Council approve the Minutes for the February 22, 2022, Regular Meeting.

4.3 Ratification of March 8, 2022, Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the period from February 11, 2022, to February 24, 2022, in the amount of \$310,919.63.

4.4 Progress Payment No. 2 for Laguna Hills Civic Center Suite 160 Tenant & Site Improvements

Recommendation: That the City Council approve Progress Payment No. 2, in the net amount of \$98,344.00, to SD Design Construction Corporation, for Laguna Hills Civic Center Suite 160 Tenant & Site Improvements.

ITEMS REMOVED FROM THE CONSENT CALENDAR

There were no items removed from the Consent Calendar.

5. PLANNING AGENCY

There were no separate Planning Agency Business Items for this meeting.

6. CITY COUNCIL PUBLIC HEARINGS

There were no City Council Public Hearings for this meeting.

7. ADMINISTRATIVE REPORTS**7.1. City Manager**

The City Manager gave no Administrative Reports.

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS**Mayor Pro Tempore Heft****8.1 Discussion of Funding, or Equivalent Services, in Support of the Laguna Hills Chamber of Commerce**

A motion to reconsider the issue was made by Mayor Pro Tempore Heft, seconded by Council Member Pezold.

RESULT:	APPROVED [4 TO 1]
MOVER:	Janine Heft, Mayor Pro Tempore
SECONDER:	Erica Pezold, Council Member

AYES:	Dave Wheeler, Mayor; Janine Heft, Mayor Pro Tempore; Don Caskey, Council Member; Erica Pezold, Council Member
NAYS:	Don Sedgwick, Council Member

Mayor Pro Tempore Heft provided information on the item and responded to Council Member requests for additional information.

Recommendation: Mayor Pro Tempore Heft recommends that the City Council direct Staff to begin work as expeditiously as possible with the Chamber of Commerce to develop funding agreement deal points in support of the Laguna Hills Chamber of Commerce.

A motion to direct Staff to work with the Chamber of Commerce to develop funding agreement deal points and return to the City Council at the April 12, 2022 meeting was made by Mayor Pro Tempore Heft, seconded by Mayor Wheeler.

RESULT:	APPROVED [4 TO 1]
MOVER:	Janine Heft, Mayor Pro Tempore
SECONDER:	Dave Wheeler, Mayor
AYES:	Dave Wheeler, Mayor; Janine Heft, Mayor Pro Tempore; Don Caskey, Council Member; Erica Pezold, Council Member
NAYS:	Don Sedgwick, Council Member

Mayor Wheeler recessed the City Council Meeting and, acting in capacity as Mayor/Chair, called the Joint Planning Agency/City Council Meeting to order at 7:46 p.m.

JOINT PLANNING AGENCY/CITY COUNCIL MEETING

ROLL CALL OF CITY COUNCIL/PLANNING AGENCY MEMBERS

Attendee Name	Title	Status	Arrived
Dave Wheeler	Mayor/Chair	Present	
Janine Heft	Mayor Pro Tempore/Vice Chair	Present	
Don Caskey	Council/Agency Member	Present	
Erica Pezold	Council/Agency Member	Present	
Don Sedgwick	Council/Agency Member	Present	

JOINT PLANNING AGENCY/CITY COUNCIL PUBLIC HEARINGS**Village at Laguna Hills Continued Joint Meeting**

Mayor/Chair Wheeler reopened the public hearing.

Community Development Director Longenecker reviewed the information in the staff report and read the staff recommendation into the record.

Special Counsel, Tom Clark, Stradling, Yocca, Carlson & Rauth, provided a presentation on the status of the proposed development agreement negotiations.

Stephen Logan, Vice President of Development, Merlone Geier Partners, provided a PowerPoint presentation on the project and the proposed development agreement changes and responded to Council Member requests for additional information.

Mayor/Chair Wheeler reopened the public comment portion of the public hearing.

At Mayor/Chair Wheeler's request, Assistant City Clerk Lee announced the electronic public comments that were received and forwarded to the Council/Agency prior to the meeting.

The following individuals address the Council/Agency on the public hearing item:

Ann Owens	Lauri Reveles	Neel Patel
Erik Huber	Vivian Stapleton	John Hanna
Victoria Hernandez	Denise Legters	Adam Wood
Lowell Reed	Charles Carnow	Robin Jochims

Mayor/Chair Wheeler closed the public hearing.

Recommendation: That the City Council and Planning Agency take the following actions:

- 1) Resume the Joint City Council and Planning Agency Meeting;
- 2) That the Planning Agency and City Council:
 - a) Independently consider the City of Laguna Hills General Plan Program Environmental Impact Report (PEIR) (State Clearinghouse No. 20080811100) as previously addended for the Five Lagunas Project along with the Fifth Addendum to the PEIR;

b) Adopt a Resolution entitled: “A Joint Resolution of the Planning Agency and the City Council of the City of Laguna Hills, California, adopting the Fifth Addendum to the 2009 General Plan Program Environmental Impact Report as previously addended for the Five Lagunas Project and a Mitigation Monitoring and Reporting Program for the Village at Laguna Hills Project pursuant to the California Environmental Quality Act”;

3) Adopt a Resolution entitled: “A Joint Resolution of the Planning Agency and City Council of the City of Laguna Hills, California, approving Site Development Permit, Master Sign Program, Conditional Use Permit, Vesting Tentative Tract Map, Development Agreement, Precise Plan No. USE-0010-2019, a request by MGP Fund X Laguna Hills, LLC, to modify the previously approved Five Lagunas Project to continue to redevelop the former Laguna Hills Mall site located at 24155 Laguna Hills Mall, and making certain findings in connection therewith”;

4) That the City Council introduce for first reading, read by title only, and waive further reading of an Ordinance entitled: “An Ordinance of the City Council of the City of Laguna Hills, California, approving and adopting a Development Agreement between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC for the Village at Laguna Hills Project.”

5) That the City Council dissolve the advisory ad hoc committee established on September 28, 2021, for the single-purpose of directing further development agreement negotiations for the Village at Laguna Hills Project.

A motion to approve the project and move to approve the staff recommendation was made by Council/Agency Member Sedgwick, seconded by Council/Agency Member Caskey.

RESULT:	APPROVED [3 TO 2]
MOVER:	Don Sedgwick, Council/Agency Member
SECONDER:	Don Caskey, Council/Agency Member
AYES:	Janine Heft, Mayor Pro Tempore/Vice Chair; Don Caskey, Council/Agency Member; Don Sedgwick, Council/Agency Member
NAYS:	Dave Wheeler, Mayor/Chair; Erica Pezold, Council/Agency Member

JOINT PLANNING AGENCY/CITY COUNCIL MEETING ADJOURNMENT

Mayor/Chair Wheeler adjourned the Joint Planning Agency/City Council Meeting and reconvened the City Council Meeting at 9:59 p.m. All Council Members were present in chamber.

9. CITY COUNCIL MEMBER COMMITTEE REPORTS**9.1. Committee Assignment Reports**

Recommendation: That the City Council receive oral reports on the following City Council Committee Assignments:

1. South OC Watershed Management Area Executive Committee
(Council Member Caskey) February 24, 2022 and March 3, 2022 Meetings.

Council Member Caskey had no report.

2. Orange County Fire Authority
(Council Member Sedgwick)

Council Member Sedgwick provided an oral report including a video on the Laguna Beach fire of February 10, 2022.

Council Member Pezold provided an oral report on an Orange County Mosquito and Vector Control District press release received earlier in the day regarding mosquitoes that tested positive for west nile virus in the Fullerton area and responded to Council requests for additional information.

Mayor Wheeler provided an oral report on the South OC Watershed Management Area Executive Committee.

3. California Mayors Coalition
(Mayor Wheeler) March 4, 2022 Meeting.

Mayor Wheeler had no report.

4. Orange County Public Libraries Advisory Board
(Mayor Wheeler) February 24, 2022 Meeting.

Mayor Wheeler provided an oral report.

5. Association of California Cities-Orange County Legislative & Regulatory Committee
(Mayor Wheeler) February 24, 2022 Meeting.

Mayor Wheeler provided an oral report.

10. CITY COUNCIL MEMBER COMMENTS**Council Member Pezold**

Council Member Pezold requested that a discussion regarding the formation of a Planning Commission be agendaized for a future meeting and received a second from Council Member Caskey.

Council Member Pezold spoke in remembrance of Laguna Hills High School graduate Skylar Scripter.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Wheeler declared the meeting adjourned at 10:14 p.m.

Melissa Au-Yeung, City Clerk

ATTEST:

Dave Wheeler, Mayor

Approved at meeting of March 22, 2022



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Janice Reyes
Finance Director
ISSUE: Ratification of March 22, 2022, Warrant Register

RECOMMENDATION: That the City Council ratify the accompanying Warrant Register for the period from February 25, 2022, to March 10, 2022, in the amount of \$1,126,778.27.

SUMMARY:

The City issues accounts payable disbursements on a regular basis and presents it to City Council for ratification at its next regularly scheduled City Council Meeting. The attached Warrant Register containing checks and electronic funds transfers for the period from February 25, 2022, to March 10, 2022, is being presented for ratification by the City Council. Payments have been reviewed and approved by the appropriate departmental staff. The Director of Finance certifies to the accuracy of the attached register and to the availability of monies for payment thereof.

ATTACHMENTS:

- Warrant Register - March 22, 2022
- Payables Detail Report - March 22, 2022



City of Laguna Hills, CA

Warrant Register - March 22, 2022

By Check Number

Date Range: 02/25/2022 - 03/10/2022

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Regular				
8820434	A-0378	A.Y. NURSERY, INC.	03/03/2022	1,452.47
8820435	B-0444	BOB HALL AND ASSOCIATES	03/03/2022	7,500.00
8820436	B-0440	BUCKNAM INFRASTRUCTURE GROUP, INC.	03/03/2022	3,262.50
8820437	C-1144	CHARLES ABBOTT ASSOCIATES, INC	03/03/2022	96,002.73
8820438	C-1181	CIVIC PLUS	03/03/2022	760.53
8820439	C-0023	COX COMMUNICATION	03/03/2022	661.17
8820440	D-0561	DOCU-TRUST	03/03/2022	100.00
8820441	E-0600	EWING IRRIGATION PRODUCTS, INC	03/03/2022	57.84
8820442	H-0804	HINDERLITER, DE LLAMAS & ASSOC., INC.	03/03/2022	2,750.00
8820443	H-0960	HR GREEN PACIFIC, INC.	03/03/2022	942.50
8820444	J-1071	JCTEES.COM CORPORATION	03/03/2022	504.64
8820445	J-1089	JD DESIGNS	03/03/2022	500.00
8820446	M-1388	MOBILE MINI, INC.	03/03/2022	526.48
8820447	N-1474	NIEVES LANDSCAPE, INC.	03/03/2022	807.59
8820448	Z-CS-0211	PALMERO, CARLOS	03/03/2022	500.00
8820449	P-1839	PAPER DEPOT	03/03/2022	25.80
8820450	P-1832	PRINTEX PRINTING AND GRAPHICS INC.	03/03/2022	762.87
8820451	R-1800	RALPH ANDERSEN & ASSOCIATES	03/03/2022	13,000.00
8820452	R-1830	RALPHS GROCERY COMPANY	03/03/2022	113.45
8820453	Z-CD-0173	ROOFING STANDARDS, INC.	03/03/2022	1,200.00
8820454	R-1967	RUSSELL, RICHARD WYATT	03/03/2022	6,212.80
8820455	S-1949	SMART & FINAL	03/03/2022	111.12
8820456	S-1904	SOUTHERN CALIFORNIA EDISON	03/03/2022	98.40
8820457	S-2105	SYMQUEST SERVICES	03/03/2022	241.24
8820458	T-2698	TPX COMMUNICATIONS	03/03/2022	689.60
8820459	A-0381	ADVANTEC CONSULTING ENGINEERS, INC.	03/10/2022	1,260.00
8820460	A-0380	AGRICULTURAL PEST CONTROL SERVICES	03/10/2022	628.00
8820461	A-0233	ALISO CREEK PRINTING MINUTEMAN PRESS	03/10/2022	8,049.00
8820462	A-0138	ALL CITY MANAGEMENT, INC.	03/10/2022	9,553.04
8820463	A-0360	ARC DOCUMENT SOLUTIONS, LLC	03/10/2022	87.56
8820464	B-0437	BRINKS, INCORPORATED	03/10/2022	179.02
8820465	C-1133	CALIFORNIA YELLOW CAB	03/10/2022	226.00
8820466	C-1179	CANON SOLUTIONS AMERICA	03/10/2022	36.28
8820467	C-1144	CHARLES ABBOTT ASSOCIATES, INC	03/10/2022	51,418.05
8820468	C-0023	COX COMMUNICATION	03/10/2022	298.25
8820469	C-1122	CROSTOWN ELECTRICAL & DATA, INC.	03/10/2022	3,644.70
8820470	D-0461	DATA TICKET, INC.	03/10/2022	500.92
8820471	D-0575	DOG WASTE DEPOT	03/10/2022	619.45
8820472	E-0554	ECONOMICS, INC.	03/10/2022	16,300.83
8820473	F-0604	FEDERAL EXPRESS CORPORATION	03/10/2022	56.12
8820474	C-1190	FINGERPRINT ID (AFIS) LAW ENF. - COUNTY OF ORANGE	03/10/2022	1,233.00
8820475	Z-CS-0383	FRANIE, JAN	03/10/2022	500.00
8820476	Z-CS-0384	GATES, MAUREEN	03/10/2022	180.00
8820477	G-0862	GRANICUS	03/10/2022	4,853.52
8820478	H-0894	HATTOX DESIGN GROUP, LLC	03/10/2022	2,417.50
8820479	H-0804	HINDERLITER, DE LLAMAS & ASSOC., INC.	03/10/2022	3,248.75
8820480	H-0960	HR GREEN PACIFIC, INC.	03/10/2022	362.50
8820481	J-1088	J THAYER COMPANY, INC	03/10/2022	340.90
8820482	J-1057	JAMEY CLARK, INC.	03/10/2022	3,114.41
8820483	M-1600	MERCY HOUSE LIVING CENTERS, INC.	03/10/2022	1,763.50
8820484	M-1302	MOULTON NIGUEL WATER DISTRICT	03/10/2022	14,038.68
8820485	N-1474	NIEVES LANDSCAPE, INC.	03/10/2022	103,100.61
8820486	C-1008	NPDES OC TREASURER-TAX COLLECTOR	03/10/2022	10,442.78

Attachment: Warrant Register - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

Warrant Register - March 22, 2022

Date Range: 02/25/2022 - 03/10/2022

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
8820487	O-1546	OFFICE SOLUTIONS	03/10/2022	207.53
8820488	C-1003	PARKING VIOLATIONS OC TREASURER-TAX COLLECTOR	03/10/2022	1,345.50
8820489	P-1834	PLACEWORKS, INC.	03/10/2022	12,198.75
8820490	R-1855	RICHARD FISHER ASSOCIATES	03/10/2022	2,457.48
8820491	R-1977	RJ ELECTRIC	03/10/2022	180.00
8820492	R-1946	RK ENGINEERING GROUP, INC.	03/10/2022	7,000.00
8820493	S-1902	SAN DIEGO GAS & ELECTRIC	03/10/2022	11,862.61
8820494	S-2267	SINTA DESIGN	03/10/2022	507.50
8820495	S-1904	SOUTHERN CALIFORNIA EDISON	03/10/2022	18.61
8820496	S-1904	SOUTHERN CALIFORNIA EDISON	03/10/2022	16,082.65
8820497	S-2250	SPARKLETTS	03/10/2022	277.59
8820498	S-2309	STRADLING YOCCA CARLSON & RAUTH	03/10/2022	46,444.00
8820499	S-2201	SUNSET PROPERTY SERVICES JONSET CORPORATION	03/10/2022	16,073.94
8820500	W-2302	THOMSON REUTERS - WEST	03/10/2022	279.94
8820501	U-2165	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA	03/10/2022	100.75
8820502	V-2224	VERIZON WIRELESS	03/10/2022	1,129.37
8820503	W-2448	WEST GATE CONTRACTOR	03/10/2022	8,750.00
8820504	W-2450	WEX BANK	03/10/2022	763.28
8820505	P-1841	PETROCHEM MATERIALS INNOVATION LLC	03/10/2022	623,861.67
Total Regular:				1,126,778.27

Bank Code AP Bank Summary

	Payable	Payment		
Payment Type	Count	Count	Discount	Payment
Regular Checks	108	72	0.00	1,126,778.27
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	108	72	0.00	1,126,778.27

Attachment: Warrant Register - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	108	72	0.00	1,126,778.27
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	108	72	0.00	1,126,778.27

Fund Summary

Fund	Name	Period	Amount
998	POOL	3/2022	1,126,778.27
			1,126,778.27



City of Laguna Hills, CA

Payables Detail Report

By Fund

Payment Dates 02/25/2022 - 03/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
Fund: 100 - GENERAL FUND					
03/03/2022	A.Y. NURSERY, INC.	0116990	Rooted Campaign Event, Feb '22	100-310-695500	1,452.47
03/03/2022	RALPHS GROCERY COMPANY	0122128986_22254827	Operating Supplies, Comm Ctr, Feb	100-310-622005	68.52
03/03/2022	COX COMMUNICATION	021722	T-1 Line, Feb '22	100-195-630000	446.41
03/03/2022	COX COMMUNICATION	021822	Cable, City Hall, Feb '22	100-195-630000	32.14
03/03/2022	COX COMMUNICATION	021922	WiFi, City Hall, Feb '22	100-195-630000	182.62
03/03/2022	SOUTHERN CALIFORNIA EDISON	022222 - Acct #70007600	Street Lights, Traffic Control, Jan '22	100-355-631000	50.78
03/03/2022	SOUTHERN CALIFORNIA EDISON	022222 - Acct #70007600	Street Lights, Traffic Control, Jan '22	100-356-631400	47.62
03/03/2022	RUSSELL, RICHARD WYATT	030222	Contract Instructor Services, Tennis	100-310-721500	6,212.80
03/03/2022	DOCU-TRUST	045562	Offsite Data Storage, Feb '22	100-155-700030	100.00
03/03/2022	BOB HALL AND ASSOCIATES	1068	Recruitment Services, Dec '21	100-155-700000	7,500.00
03/03/2022	SYMQUEST SERVICES	1097	Printer Repair, Feb '22	100-195-647000	241.24
03/03/2022	RALPHS GROCERY COMPANY	1321128569_22219266	Operating Supplies, Comm Ctr, Feb	100-310-622005	44.93
03/03/2022	HR GREEN PACIFIC, INC.	149348	Plan Check, Community Development, Dec '21	100-225-700000	942.50
03/03/2022	TPX COMMUNICATIONS	153674253-0	Communications Expense, Mar '22	100-195-630000	689.60
03/03/2022	EWING IRRIGATION PRODUCTS, INC	16057444	Rooted Campaign Event, Feb '22	100-310-695500	57.84
03/03/2022	JD DESIGNS	1764	Traffic Control, Memorial Day Race	100-310-695507	500.00
03/03/2022	CIVIC PLUS	222313	Additional SMS Subscribers, 2/25 - 12/14/22	100-195-720050	760.53
03/03/2022	PRINTEX PRINTING AND GRAPHICS INC.	22733	City Anniversary Expense, Feb '22	100-310-695530	73.27
03/03/2022	PRINTEX PRINTING AND GRAPHICS INC.	22738	Maint & Repair, Facility Comm Ctr, Feb '22	100-310-645500	689.60
03/03/2022	BUCKNAM INFRASTRUCTURE GROUP, INC.	361-01.22	Computer Consulting Services, Jan	100-195-700090	3,262.50
03/03/2022	SMART & FINAL	3831400026402	Operating Supplies, Feb '22	100-155-622000	48.77
03/03/2022	SMART & FINAL	3831400026402	Operating Supplies, Feb '22	100-195-622000	62.35
03/03/2022	CHARLES ABBOTT ASSOCIATES, INC	63142 Credit Memo	Professional Services, Aug '21	100-225-700000	(2,908.89)
03/03/2022	CHARLES ABBOTT ASSOCIATES, INC	63205 Credit Memo	Professional Services, Sep '21	100-225-700000	(1,121.00)
03/03/2022	CHARLES ABBOTT ASSOCIATES, INC	63356	Professional Services, Oct '21	100-225-700000	27,717.12
03/03/2022	CHARLES ABBOTT ASSOCIATES, INC	63520	Professional Services, Nov '21	100-225-700000	18,994.14
03/03/2022	CHARLES ABBOTT ASSOCIATES, INC	63604	Professional Services, Dec '21	100-225-700000	15,274.30
03/03/2022	CHARLES ABBOTT ASSOCIATES, INC	63799	Professional Services, Jan '22	100-225-700000	38,047.06
03/03/2022	NIEVES LANDSCAPE, INC.	71571	Rooted Campaign Event, Feb '22	100-310-695500	327.59
03/03/2022	NIEVES LANDSCAPE, INC.	71572	Rooted Campaign Event, Feb '22	100-310-695500	480.00
03/03/2022	JCTEES.COM CORPORATION	7813	Rooted Campaign Event, Feb '22	100-310-695500	504.64
03/03/2022	MOBILE MINI, INC.	9013095690	Storage Rental, Community Center, 2/16 - 3/15/22	100-310-641000	225.71
03/03/2022	MOBILE MINI, INC.	9013146566	Storage Rental, Community Center, 2/22 - 3/21/22	100-310-641000	82.97
03/03/2022	MOBILE MINI, INC.	9013156990	Storage Rental, Community Center, 2/23 - 3/22/22	100-310-641000	217.80
03/03/2022	PALMERO, CARLOS	FRD-0262	Refund, Facility Deposit, R #1034080.002	100-000-222000	500.00
03/03/2022	PAPER DEPOT	IN16534-8483	Professional Services, City Clerk, Nov '21	100-155-700030	25.80
03/03/2022	RALPH ANDERSEN & ASSOCIATES	INV-03498	Professional Services, Nov '21	100-155-700000	4,500.00
03/03/2022	RALPH ANDERSEN & ASSOCIATES	INV-03560	Professional Services, Dec '21	100-155-700000	8,500.00
03/03/2022	HINDERLITER, DE LLAMAS & ASSOC., INC.	SIN012551	Economic Development Services, Jul-Aug '21	100-155-700050	2,750.00
03/10/2022	COX COMMUNICATION	020822	Traffic Signal, Feb '22	100-195-630000	84.00
03/10/2022	MOULTON NIGUEL WATER DISTRICT	022422	Water Usage, Public Services, Feb '22	100-355-635000	13,953.19
03/10/2022	MOULTON NIGUEL WATER DISTRICT	022422a	Water Usage, Public Services, Feb '22	100-355-635000	85.49
03/10/2022	COX COMMUNICATION	022622	WiFi, Community Center, Feb '22	100-195-630000	214.25
03/10/2022	SAN DIEGO GAS & ELECTRIC	030222	Street Lights, Traffic Control, Feb '22	100-356-631400	11,862.61

Attachment: Payables Detail Report - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

Payables Detail Report

Payment Dates: 02/25/2022 - 03/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
03/10/2022	SOUTHERN CALIFORNIA EDISON	030222 - Acct #7002345C	Street Lights, Traffic Control, Jan & Feb '22	100-355-631000	784.25
03/10/2022	SOUTHERN CALIFORNIA EDISON	030222 - Acct #7002345C	Street Lights, Traffic Control, Jan & Feb '22	100-356-631400	15,298.40
03/10/2022	SOUTHERN CALIFORNIA EDISON	030422 - Acct #7006973C	Street Lights, Traffic Control, Feb '22	100-355-631000	18.61
03/10/2022	ARC DOCUMENT SOLUTIONS, LLC	11157450	Printing Services, Engineering, CIP 403, Feb '22	100-600-790600	87.56
03/10/2022	BRINKS, INCORPORATED	11869500	Courier Fee, Armored Transport, Mar '22	100-155-625000	179.02
03/10/2022	SPARKLETTS	12194330 030222	Operating Supplies, Comm Ctr, Feb	100-310-622005	146.78
03/10/2022	DATA TICKET, INC.	134372	Process Fee, Parking Citations, Jan	100-420-720823	500.92
03/10/2022	GRANICUS	147194	Agenda Software, 1/1/22 - 3/31/22	100-195-720050	4,853.52
03/10/2022	HR GREEN PACIFIC, INC.	150184	Plan Check, Community Development, Jan '22	100-225-700000	217.50
03/10/2022	HR GREEN PACIFIC, INC.	150799	Plan Check, Community Development, Feb '22	100-225-700000	145.00
03/10/2022	J THAYER COMPANY, INC	1579026-0	Office Supplies, Comm Ctr, Mar '22	100-310-620500	73.18
03/10/2022	J THAYER COMPANY, INC	1579177-0	Computer Supplies, Mar '22	100-195-621000	248.02
03/10/2022	J THAYER COMPANY, INC	1579510-0	Office Supplies, Comm Ctr, Mar '22	100-310-620500	19.70
03/10/2022	RK ENGINEERING GROUP, INC.	2202010	Traffic Impact Study, Feb '22	100-225-700201	750.00
03/10/2022	RK ENGINEERING GROUP, INC.	2202011	Traffic Engineer Services, Feb '22	100-356-700101	5,000.00
03/10/2022	RK ENGINEERING GROUP, INC.	2202012	Parking Study, Feb '22	100-225-700201	1,250.00
03/10/2022	HATTOX DESIGN GROUP, LLC	2202102	Civic Center Improvements, CIP #505	100-600-790600	2,417.50
03/10/2022	PETROCHEM MATERIALS INNOVATION LLC	2468	Citywide Pavement Rehabilitation, CIP 101-L	100-000-201001	(32,834.82)
03/10/2022	PETROCHEM MATERIALS INNOVATION LLC	2468	Citywide Pavement Rehabilitation, CIP 101-L	100-600-790600	656,696.49
03/10/2022	ALISO CREEK PRINTING MINUTEMAN PRESS	29918	Operating Supplies, Mar '22	100-355-622000	8,049.00
03/10/2022	WEST GATE CONTRACTOR	34	Graffiti Removal, Public Services, Feb '22	100-355-720500	8,750.00
03/10/2022	CANON SOLUTIONS AMERICA	4038973010	Copier Usage, Community Services, Feb '22	100-195-641200	36.28
03/10/2022	SPARKLETTS	4228482 022522	Operating Supplies, Feb '22	100-195-622000	130.81
03/10/2022	CROSSTOWN ELECTRICAL & DATA,	4296-22-002	Traffic Signal Maintenance, Feb '22	100-356-720420	3,644.70
03/10/2022	RICHARD FISHER ASSOCIATES	4471	Professional Services, CIP #403, Feb '22	100-600-790600	1,152.48
03/10/2022	RICHARD FISHER ASSOCIATES	4472	Professional Services, CIP #519, Feb '22	100-600-790600	1,305.00
03/10/2022	DOG WASTE DEPOT	467358	Operating Supplies, Feb '22	100-355-622000	619.45
03/10/2022	MERCY HOUSE LIVING CENTERS, INC.	5003-21-11	Contract Services - Homelessness, Nov '21	100-310-720302	1,763.50
03/10/2022	RJ ELECTRIC	60509	Parks Contract Repair, Feb '22	100-355-720701	180.00
03/10/2022	AGRICULTURAL PEST CONTROL SERVICES	628100	Landscape Maintenance, Feb '22	100-355-720700	628.00
03/10/2022	CHARLES ABBOTT ASSOCIATES, INC	63855-A - PARKS BILLING	Parks Contract Repair, Feb '22	100-355-720701	70.00
03/10/2022	CHARLES ABBOTT ASSOCIATES, INC	63875	Professional Services, Feb '22	100-225-700000	23,826.88
03/10/2022	NIEVES LANDSCAPE, INC.	71401	Monthly and Misc Landscape, Feb	100-355-720700	87,636.69
03/10/2022	NIEVES LANDSCAPE, INC.	71520	Monthly and Misc Landscape, Feb	100-355-720700	452.03
03/10/2022	NIEVES LANDSCAPE, INC.	71667	Tree Trimming, Mar '22	100-355-720702	14,375.00
03/10/2022	NIEVES LANDSCAPE, INC.	71673	Monthly and Misc Landscape, Mar	100-355-720700	103.11
03/10/2022	NIEVES LANDSCAPE, INC.	71675	Monthly and Misc Landscape, Mar	100-355-720700	533.78
03/10/2022	JAMEY CLARK, INC.	73005	Park Repairs, Public Services, Feb '22	100-355-720701	2,553.88
03/10/2022	JAMEY CLARK, INC.	73006	Park Repairs, Public Services, Feb '22	100-355-720701	184.53
03/10/2022	JAMEY CLARK, INC.	73023	Graffiti Removal, Public Services, Feb '22	100-355-720500	376.00
03/10/2022	ALL CITY MANAGEMENT, INC.	74546	Crossing Guard Services, 12/26/21 - 1/8/22	100-420-720822	3,411.80
03/10/2022	ALL CITY MANAGEMENT, INC.	75517	Crossing Guard Services, 2/6/22 - 2/19/22	100-420-720822	6,141.24
03/10/2022	FEDERAL EXPRESS CORPORATION	7-665-80709	Delivery Services, Feb '22	100-195-625000	56.12
03/10/2022	PLACEWORKS, INC.	77777	Professional Services, USE-0072-2021, Feb '22	100-000-223000	12,198.75

Attachment: Payables Detail Report - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

Payables Detail Report

Payment Dates: 02/25/2022 - 03/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
03/10/2022	PLACEWORKS, INC.	77777	Professional Services, USE-0072-2021, Feb '22	100-000-452000	(12,198.75)
03/10/2022	PLACEWORKS, INC.	77777	Professional Services, USE-0072-2021, Feb '22	100-225-700201	12,198.75
03/10/2022	WEX BANK	78914410 PUBWKS	Vehicle Fuel, Feb '22	100-356-613100	319.15
03/10/2022	WEX BANK	78914410 PUBWKS	Vehicle Fuel, Feb '22	100-356-646100	48.99
03/10/2022	WEX BANK	78914517 COMDEV	Vehicle Fuel, Feb '22	100-225-613100	169.04
03/10/2022	WEX BANK	78914532 POLSVCS	Vehicle Fuel, Feb '22	100-420-613100	131.17
03/10/2022	WEX BANK	78914598 COMSVCS	Vehicle Fuel, Feb '22	100-310-613100	94.93
03/10/2022	THOMSON REUTERS - WEST	845933963	Subscription, City Clerk, Feb '22	100-155-626000	279.94
03/10/2022	ADVANTEC CONSULTING ENGINEERS, INC.	9801-0638-03	Engineering Services, USE-0055-2021, Jan '22	100-000-223000	1,260.00
03/10/2022	ADVANTEC CONSULTING ENGINEERS, INC.	9801-0638-03	Engineering Services, USE-0055-2021, Jan '22	100-000-452000	(1,260.00)
03/10/2022	ADVANTEC CONSULTING ENGINEERS, INC.	9801-0638-03	Engineering Services, USE-0055-2021, Jan '22	100-225-700201	1,260.00
03/10/2022	VERIZON WIRELESS	9900406120	Communication Expense, Feb '22	100-195-630000	1,129.37
03/10/2022	PARKING VIOLATIONS OC	FEB 22	Parking Fee Surcharge, Feb '22	100-420-720823	1,345.50
03/10/2022	TREASURER-TAX COLLECTOR GATES, MAUREEN	FRD-0263	Refund, Facility Deposit, R #1034567.002	100-000-451100	180.00
03/10/2022	FRANIE, JAN	FRD-0264	Refund, Facility Deposit, R #1034665.002	100-000-222000	500.00
03/10/2022	OFFICE SOLUTIONS	I-01971515	Office/Operating Supplies, Feb '22	100-195-620000	102.94
03/10/2022	OFFICE SOLUTIONS	I-01971515	Office/Operating Supplies, Feb '22	100-225-622000	47.55
03/10/2022	OFFICE SOLUTIONS	I-01971553	Office Supplies, Feb '22	100-195-620000	12.54
03/10/2022	OFFICE SOLUTIONS	I-01972909	Operating Supplies, Feb '22	100-195-622000	44.50
03/10/2022	SINTA DESIGN	lhbm_030522	1/2 Marathon Expense, Dec '21 - Feb '22	100-310-695507	507.50
03/10/2022	NPDES OC TREASURER-TAX COLLECTOR	PW220452	Watershed Monitoring, CIP #410	100-600-790600	10,442.78
03/10/2022	FINGERPRINT ID (AFIS) LAW ENF. - COUNTY OF ORANGE	SH 61582	Fingerprint ID System Charges, Mar	100-420-720835	1,233.00
03/10/2022	HINDERLITER, DE LLAMAS & ASSOC., INC.	SIN015155	Sales Tax 1stQtr , Audit Sales 3rd Qtr	100-155-700052	3,248.75
Fund 100 - GENERAL FUND Total:					1,018,911.58
Fund: 101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT					
03/10/2022	STRADLING YOCCA CARLSON &	384150-0005	Professional Services Legal, Jan '22	101-000-223000	46,444.00
03/10/2022	STRADLING YOCCA CARLSON &	384150-0005	Professional Services Legal, Jan '22	101-000-450000	(46,444.00)
03/10/2022	STRADLING YOCCA CARLSON &	384150-0005	Professional Services Legal, Jan '22	101-225-700012	46,444.00
Fund 101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT Total:					46,444.00
Fund: 212 - MEASURE M					
03/10/2022	SUNSET PROPERTY SERVICES JONSET CORPORATION	128462SP	Street Sweeping Services, Feb '22	212-355-720410	16,073.94
03/10/2022	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA	220220371	Street Maintenance, Feb '22	212-355-720400	100.75
03/10/2022	CHARLES ABBOTT ASSOCIATES, INC	63855	Road Maintenance, Feb '22	212-355-720400	27,521.17
Fund 212 - MEASURE M Total:					43,695.86
Fund: 221 - SENIOR MOBILITY PROGRAM					
03/10/2022	CALIFORNIA YELLOW CAB	2406022	Senior Mobility Program, Feb '22	221-310-720000	226.00
Fund 221 - SENIOR MOBILITY PROGRAM Total:					226.00
Fund: 307 - C & D FORFEITED DEPOSITS					
03/03/2022	ROOFING STANDARDS, INC.	CD-0812-BLDR-0708-202	Refund, C&D Deposit, REC-004359-2021	307-000-436000	1,200.00
03/10/2022	ECONOMICS, INC.	2017-2018.56	Professional Services, Recycling Program, Feb '22	307-355-700000	16,300.83
Fund 307 - C & D FORFEITED DEPOSITS Total:					17,500.83
Fund: 600 - CAPITAL IMPROVEMENT PROJECT					
03/10/2022	ARC DOCUMENT SOLUTIONS, LLC	11157450	Printing Services, Engineering, CIP 403, Feb '22	600-000-490100	(87.56)

Attachment: Payables Detail Report - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

Payables Detail Report

Payment Dates: 02/25/2022 - 03/10/2022

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
03/10/2022	ARC DOCUMENT SOLUTIONS, LLC	11157450	Printing Services, Engineering, CIP 403, Feb '22	600-254-950403	87.56
03/10/2022	HATTOX DESIGN GROUP, LLC	2202102	Civic Center Improvements, CIP #505	600-000-490100	(2,417.50)
03/10/2022	HATTOX DESIGN GROUP, LLC	2202102	Civic Center Improvements, CIP #505	600-255-950505	2,417.50
03/10/2022	PETROCHEM MATERIALS INNOVATION LLC	2468	Citywide Pavement Rehabilitation, CIP 101-L	600-000-490100	(656,696.49)
03/10/2022	PETROCHEM MATERIALS INNOVATION LLC	2468	Citywide Pavement Rehabilitation, CIP 101-L	600-251-950101	656,696.49
03/10/2022	RICHARD FISHER ASSOCIATES	4471	Professional Services, CIP #403, Feb '22	600-000-490100	(1,152.48)
03/10/2022	RICHARD FISHER ASSOCIATES	4471	Professional Services, CIP #403, Feb '22	600-254-950403	1,152.48
03/10/2022	RICHARD FISHER ASSOCIATES	4472	Professional Services, CIP #519, Feb '22	600-000-490100	(1,305.00)
03/10/2022	RICHARD FISHER ASSOCIATES	4472	Professional Services, CIP #519, Feb '22	600-255-950519	1,305.00
03/10/2022	NPDES OC TREASURER-TAX COLLECTOR	PW220452	Watershed Monitoring, CIP #410	600-000-490100	(10,442.78)
03/10/2022	NPDES OC TREASURER-TAX COLLECTOR	PW220452	Watershed Monitoring, CIP #410	600-254-950410	10,442.78
Fund 600 - CAPITAL IMPROVEMENT PROJECT Total:					-
Grand Total:					1,126,778.27

Attachment: Payables Detail Report - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

Report Summary

Fund Summary

Fund	Expense Amount	Payment Amount
100 - GENERAL FUND	1,018,911.58	1,018,911.58
101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT	46,444.00	46,444.00
212 - MEASURE M	43,695.86	43,695.86
221 - SENIOR MOBILITY PROGRAM	226.00	226.00
307 - C & D FORFEITED DEPOSITS	17,500.83	17,500.83
600 - CAPITAL IMPROVEMENT PROJECT	-	-
Grand Total:	1,126,778.27	1,126,778.27

Account Summary

Account Number	Account Name	Expense Amount	Payment Amount
100-000-201001	Accounts Payable - Retention	(32,834.82)	(32,834.82)
100-000-222000	Refundable Deposits	1,000.00	1,000.00
100-000-223000	Plan Application Deposit	13,458.75	13,458.75
100-000-451100	Recreation Fees-Reservation	180.00	180.00
100-000-452000	Plan Check Fee - Fee Base	(13,458.75)	(13,458.75)
100-155-622000	Operating Supplies	48.77	48.77
100-155-625000	Postage & Delivery	179.02	179.02
100-155-626000	Subscriptions & Books	279.94	279.94
100-155-700000	Professional Services	20,500.00	20,500.00
100-155-700030	Professional Svcs- City Clerk	125.80	125.80
100-155-700050	Professional Services- Financial	2,750.00	2,750.00
100-155-700052	Compliance Audit Services - Sales	3,248.75	3,248.75
100-195-620000	Office Supplies	115.48	115.48
100-195-621000	Computer Supplies	248.02	248.02
100-195-622000	Operating Supplies	237.66	237.66
100-195-625000	Postage & Delivery	56.12	56.12
100-195-630000	Telephone & Communication	2,778.39	2,778.39
100-195-641200	Rent/Lease - Copier	36.28	36.28
100-195-647000	Maint & Repair - Comp Eqpt	241.24	241.24
100-195-700090	Computer Consulting Services	3,262.50	3,262.50
100-195-720050	Contract Serv-Software Support	5,614.05	5,614.05
100-225-613100	Vehicle-Fuel	169.04	169.04
100-225-622000	Operating Supplies	47.55	47.55
100-225-700000	Prof. Svcs - Building & Safety	121,134.61	121,134.61
100-225-700201	Plan Application	15,458.75	15,458.75
100-310-613100	Vehicle-Fuel	94.93	94.93
100-310-620500	Office Supplies - Comm Ctr	92.88	92.88
100-310-622005	Operating Supplies Comm Ctr	260.23	260.23
100-310-641000	Rent/Lease - Equipment	526.48	526.48
100-310-645500	Maint&Repair-Facility Comm Ctr	689.60	689.60
100-310-695500	Special Events-Program Service	2,822.54	2,822.54
100-310-695507	Marathon 5k	1,007.50	1,007.50
100-310-695530	City Anniversary Program	73.27	73.27
100-310-720302	Contract Services - Homelessness	1,763.50	1,763.50
100-310-721500	Contract Services-Program Svce	6,212.80	6,212.80
100-355-622000	Operating Supplies	8,668.45	8,668.45
100-355-631000	Utilities - Electric	853.64	853.64
100-355-635000	Utilities - Water	14,038.68	14,038.68
100-355-720500	Graffiti Removal	9,126.00	9,126.00
100-355-720700	Landscape Maintenance Contract	89,353.61	89,353.61
100-355-720701	Parks Contract Repair	2,988.41	2,988.41
100-355-720702	Tree Maintenance	14,375.00	14,375.00
100-356-613100	MOE Vehicle Fuel	319.15	319.15
100-356-631400	MOE Electricity-Streetlights &	27,208.63	27,208.63
100-356-646100	MOE Maintenance & Repairs	48.99	48.99
100-356-700101	MOE Traffic Engineer Services	5,000.00	5,000.00
100-356-720420	MOE Traffic Signal Maintenance	3,644.70	3,644.70

Attachment: Payables Detail Report - March 22, 2022 (2783 : Warrant Register, March 22, 2022)

Payables Detail Report

Payment Dates: 02/25/2022 - 03/10/2022

Account Summary

Account Number	Account Name	Expense Amount	Payment Amount
100-420-613100	Vehicle-Fuel	131.17	131.17
100-420-720822	Crossing Guard Services	9,553.04	9,553.04
100-420-720823	Parking Citation Processing	1,846.42	1,846.42
100-420-720835	Fingerprint Identification Svc	1,233.00	1,233.00
100-600-790600	Transfers Out - Capital Imprv	672,101.81	672,101.81
101-000-223000	Plan Application Deposit	46,444.00	46,444.00
101-000-450000	Planning Fees	(46,444.00)	(46,444.00)
101-225-700012	Legal Services	46,444.00	46,444.00
212-355-720400	Street Maintenance	27,621.92	27,621.92
212-355-720410	Street Sweeping	16,073.94	16,073.94
221-310-720000	Contract Services	226.00	226.00
307-000-436000	Recycling Revenues	1,200.00	1,200.00
307-355-700000	Professional Services	16,300.83	16,300.83
600-000-490100	Transfer In- General Fund	(672,101.81)	(672,101.81)
600-251-950101	CIP-Annual Street Maintenance	656,696.49	656,696.49
600-254-950403	CIP-Misc Storms Drains	1,240.04	1,240.04
600-254-950410	NPDES Permit & Fees	10,442.78	10,442.78
600-255-950505	CIP-Civic Center Improvements	2,417.50	2,417.50
600-255-950519	Holiday Pavilion Landscape	1,305.00	1,305.00
Grand Total:		1,126,778.27	1,126,778.27

Project Account Summary

Project Account Key	Expense Amount	Payment Amount
None	1,126,778.27	1,126,778.27
Grand Total:	1,126,778.27	1,126,778.27

Attachment: Payables Detail Report - March 22, 2022 (2783 : Warrant Register, March 22, 2022)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Second Reading & Adoption of Proposed Ordinance Approving and Adopting a Development Agreement Between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC for the Village at Laguna Hills Project

RECOMMENDATION: That the City Council (1) adopt an Ordinance entitled: “An Ordinance of the City Council of the City of Laguna Hills, California, approving and adopting a Development Agreement between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC for the Village at Laguna Hills project”, and (2) authorize the Mayor/Mayor Pro Tempore to execute the Ordinance.

SUMMARY:

The proposed Ordinance will approve and adopt a Development Agreement (“DA”) between the City of Laguna Hills and MGP Fund X Laguna Hills, pertaining to the redevelopment of the former Laguna Hills Mall as the Village at Laguna Hills. For the City, the proposed DA advances the planning policies of developing an “Urban Village” with office, residential, hotel, park, and retail uses, providing safe and attractive pedestrian connections within the Project, but also to offsite destinations. The DA also requires significant development fees to be paid on a schedule more accelerated than would normally be required under the City’s typical development processes, construction of affordable housing units, and community benefit payments, which will offset certain lost sales tax due to the closure of the former Laguna Hills Mall. For the Applicant, the DA eliminates uncertainties in the City’s development process by providing commitments from the City to allow greater flexibility in the timing of development, facilitating plan review and permit issuance, and guaranteeing the right to

Second Reading & Adoption of Ordinance - Village at Laguna Hills Mixed Use Project
March 22, 2022
Page 2

develop the full Project under current zoning and development standards over an extended time horizon.

A copy of the proposed Ordinance and the Staff Report for the introduction of the Ordinance, including attachments, are included as attachments to this report. The City Council introduced the Ordinance by a vote of 3-2 on March 8, 2022. It is now in order to adopt the Ordinance and to authorize the Mayor/Mayor Pro Tempore to sign the Ordinance.

ATTACHMENTS:

- Proposed Ordinance and Development Agreement
- March 8, 2022 - Introduction of Ordinance Staff Report and Attachments

ORDINANCE NO. ORD 2022-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND MGP FUND X LAGUNA HILLS, LLC FOR THE VILLAGE AT LAGUNA HILLS PROJECT.

WHEREAS, MGP Fund X Laguna Hills, LLC ("Owner") initiated an application with the City of Laguna Hills ("City") for approval of a development agreement to implement land use entitlements in order to continue to redevelop the existing approximately 68-acre former Laguna Hills Mall site generally located along the southerly side of El Toro Road and the westerly side of Avenida de la Carlota of in the City of Laguna Hills (the "Property") through the demolition and removal of the remaining portions of the Laguna Hills Mall structure and the construction of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park) and related amenities, (the "Project"); and,

WHEREAS, on March 8, 2022 the City adopted Resolution No. PA2022-03-08-2 approving land use entitlements for the Project delineated as Case No. USE-010-2019, which consist of a Site Development Permit for new development, a Master Sign Program for various on-site signs, a Conditional Use Permit for a new health club facility, a Conditional Use Permit for a new hotel, a Conditional Use Permit to allow shared parking, a Vesting Tentative Tract Map to subdivide the property into 16 lots, and a Precise Plan for mixed use development of the site, along with conditions of approval with respect thereto; and

WHEREAS, the City has evaluated the Project's potential environmental impacts and, on March 8, 2022, adopted Resolution No. PA2022-03-08-1 making corresponding findings regarding the Project's compliance with the California Environmental Quality Act pursuant to Public Resources Code Section 21166 and California Code of Regulations, Title 14, Sections 15162 and 15164, and adopting a Fifth Addendum to the Laguna Hills General Plan Program Environmental Impact Report for the Project; and,

WHEREAS, the City Council serves as, and is, the Planning Agency of the City pursuant to Government Code Section 65100; and

WHEREAS, on April 2, 2021 and April 5, 2021, as required by Government Code Section 65867, the City caused public notice to be given of the City Council's intention to consider adoption of the development agreement for the Project as provided in Government Code Sections 65090 and 65091 and Chapter 9-96 of the Laguna Hills Municipal Code, and on: April 27, 2021; June 24, 2021; June 29, 2021; February 8, 2022, and March 8, 2022, as required by Government Code Section 65867, the City Council

held a public hearing on adoption of the development agreement, and introduction and first reading of this ordinance; and,

WHEREAS, on March 22, 2022, the City Council considered the adoption of this ordinance approving and authorizing the execution of the development agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The development agreement with the Owner for the Project attached hereto as Exhibit "A" is hereby APPROVED based on the following statement of findings:

- A. The development agreement and the Project are consistent with the objectives, policies, general land uses, and programs of the Laguna Hills General Plan and the Urban Village Specific Plan encouraging an urban village identity to include a variety of high-quality public, regional commercial, recreational, and high-density residential uses working in concert to create an "urban village" with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas.

The Project includes modifications to the Five Lagunas Project approved in 2016 that will result in Development of the following on the Property:

- i. up to 250,000 square feet of space within Retail Buildings;
 - ii. up to 465,000 square feet of space within Office Buildings;
 - iii. two Parking Structures to serve the office uses;
 - iv. a Hotel containing between 100 to 150 rooms;
 - v. up to five (5) Residential Buildings containing up to 1,500 multiple family residential units, 200 of which will be Affordable Units;
 - vi. the construction of park and open space improvements within the Village Park; and
 - vii. the construction of associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure.
- B. The development agreement and the Project are consistent and compatible with the densities and uses authorized for the Project site specified in the Laguna Hills General Plan, the Urban Village Specific Plan, and the Zoning and Development Code of the City.
- C. The development agreement provides for the orderly development of the Project property. The development agreement identifies the different phases and timing for construction of the Project and public improvements.

SECTION 2. The City Council finds that the above recitations are true and correct and constitute the findings of the City Council and Planning Agency in this case.

SECTION 3. The City Manager is hereby directed and authorized to take all necessary actions to implement this ordinance, including but not limited to, to execute the development agreement attached hereto as Exhibit "A" and other related documents, and to make minor clerical or non-substantive changes thereto.

SECTION 4. A fully executed copy of the development agreement attached hereto as Exhibit "A" between the City and the Owner shall be filed and maintained in the office of the City Clerk.

SECTION 5. The City Clerk shall record a copy of the development agreement with the Orange County Clerk-Recorder within 10 days of the effective date of this ordinance, on or before May 2, 2022.

SECTION 6. This ordinance shall become effective 30 days after its adoption, on April 22, 2022.

SECTION 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 8. The City Clerk shall certify to the adoption of this ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this ordinance and a certified copy of the text of this ordinance shall be posted in the office of the City Clerk five days prior to the date of adoption of this ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this ordinance, together with the vote for and against the same, in the office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 22nd day of March, 2022.

DAVID WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing Ordinance No. ORD 2022-1 was duly introduced
and placed upon its first reading at a Regular Meeting of the City Council on the 8th day
of March, 2022, and that thereafter, said ordinance was duly adopted and passed at a
Regular Meeting of the City Council held on the 22nd day of March, 2022, by the following
vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

EXHIBIT "A"
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

**DEVELOPMENT AGREEMENT
(Village at Laguna Hills Mixed Use Project)**

BY AND BETWEEN

**THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing
under the Constitution and laws of the State of California**

AND

MGP FUND X LAGUNA HILLS, LLC, a Delaware limited liability company

THIS DEVELOPMENT AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF ITS EFFECTIVE DATE
PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

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**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAGUNA HILLS
AND
MGP FUND X LAGUNA HILLS, LLC**

This Development Agreement (“Development Agreement”) is made and entered into this 22nd day of April, 2022 (“Development Agreement Date”), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California (“City”) and MGP FUND X Laguna Hills, LLC, a Delaware limited liability company (“Owner”), pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division I of Title 7, Sections 65864 through 65869.5 of the California Government Code (the “Development Agreement Statute”).

RECITALS

This Development Agreement is predicated upon the following facts:

A. City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the “Development Agreement Statute”) and Chapter 9-84 of the Laguna Hills Municipal Code (the “Development Agreement Ordinance”) to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in project costs and to encourage investment in and commitment to comprehensive land use planning, which will make maximum efficient utilization of resources at the least economic cost to the public; provide assurance to the applicants of development projects: (i) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements, and (ii) encourage private participation in comprehensive planning and reduce the private and public economic costs of development.

B. These Recitals refer to and utilize certain terms which are defined in this Development Agreement. The Parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

C. Owner represents that it owns in fee the approximately 68-acre former Laguna Hills Mall site (the “Property”) located in the City of Laguna Hills, within the Specific Plan area, which is more particularly described and depicted in **Exhibit A** to this Development Agreement.

D. City desires that the approximately 240 acre area bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and I-5 on the east be developed in a manner consistent with the Village Commercial land use designation of the City’s General Plan, which generally envisions the development of this area as a community core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to

create an “urban village” with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas.

E. In order to carry out the goals and policies of the General Plan for the Village Commercial area, on November 26, 2002, the Laguna Hills City Council adopted the Urban Village Specific Plan (the “Specific Plan”), establishing a land use concept, plans for additional public open space and pedestrian pathways, design guidelines, and development standards for new developments in the Specific Plan area aimed at creating an urban village identity. The allowed development intensity in the Specific Plan area is determined based upon vehicle trip generation limits, rather than land use type or size, and the Specific Plan provides for flexibility in development options and the mixture of land uses, provided established anticipated aggregate vehicle trip limits generated by new development are not exceeded. The City implements this aspect of the Specific Plan through a vehicle trip budget debiting process pursuant to which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the Specific Plan area (the “Specific Plan Area Trip Budget Allocation”). Pursuant to the Specific Plan, applicants for new development projects are authorized to develop to the maximum intensity of their plans, otherwise consistent with the Specific Plan, upon verification that the vehicle trip generation impacts created by the new development shall not exceed the remaining Specific Plan Area Trip Budget Allocation. In July 2009, the Laguna Hills City Council adopted a comprehensive update to the City’s General Plan, which authorized increased development intensity, and a corresponding increased number of authorized aggregate additional vehicle trips to accommodate future development projects, within the Specific Plan area. In April 2011, the Laguna Hills City Council approved amendments to the Specific Plan in order to implement the General Plan update.

F. In March 2016, the City Council approved Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 for the Property, which authorized redevelopment of the Laguna Hills Mall and the Property with a mixed-use retail and residential project, branded the Five Lagunas Project.

G. Owner now desires to modify the Five Lagunas Project and ultimately replace it with revised land use entitlements to permit redevelopment of the Property through the demolition and removal of the former Laguna Hills Mall structure and the construction on the Property of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park) and related amenities branded as the Villages at Laguna Hills, all as more particularly defined herein (hereinafter collectively referred to as the “Project”).

H. The City has evaluated the Project’s environmental potential impacts and, on March 8, 2022 adopted Resolution No. PA2022-03-08-01 making corresponding findings regarding the Project’s compliance with the California Environmental Quality Act pursuant to Public Resources Code Section 21166 and California Code of Regulations, Title 14, Sections 15162 and 15164, and adopting a Fifth Addendum to the Laguna Hills General Plan Program Environmental Impact Report for the Project.

I. In order to implement the Project, Owner has submitted, and City has approved, Case No. USE-010-2019 for the Project, which includes the following discretionary permits: a Site Development Permit, a Precise Plan, a Master Sign Program, a Vesting Tentative Tract Map, a Parking Use Permit, a Conditional Use Permit for a hotel, and a Conditional Use Permit for a health club, along with associated conditions of approval.

J. City desires to accomplish the goals and objectives set forth in City's General Plan and the Specific Plan and finds that the Project will accomplish said goals and objectives. The City has determined that the Project is consistent with the General Plan, the Specific Plan and the Existing Land Use Regulations, as defined below.

K. In accordance with the Specific Plan, a traffic impact analysis dated September 1, 2020 (the "Traffic Impact Analysis") was prepared by Linscott, Law & Greenspan, Engineers, which analyzes the potential traffic impacts of the Project in comparison to the Five Lagunas Project, calculates the net change in peak hour vehicle trips that will be generated as a result of the Project, and demonstrates that there are sufficient remaining additional peak hour vehicle trips available in the current Specific Plan Area Trip Budget Allocation to accommodate the Project.

L. As consideration for the benefits gained by Owner from the vested rights acquired pursuant to the Development Agreement Statute and to conform with the requirements of the Specific Plan, City is requiring that Owner construct and install as part of Development of the Project certain public improvements and provide other public benefits.

M. In order to avoid any misunderstandings or disputes which may arise from time to time between Owner and City concerning the proposed Development of the Project and to assure each party of the intention of the other as to the processing of any land use entitlements which now or hereafter may be required for such development, the Parties believe it is desirable to set forth their intentions and understandings in this Development Agreement. In order for both City and Owner to achieve their respective objectives, it is imperative that each be as certain as possible that Owner will develop and that City will permit Owner to proceed with Development of the Project and public improvements and other public benefits as approved by City within the time periods provided in this Development Agreement, except as otherwise indicated herein.

N. The City caused public notice to be given of the City Council's intention to consider adoption of a development agreement for the Project as required by Section 65867 of the Development Agreement Statute.

O. The City Council held public hearings on the Development Agreement as required by Section 65867 of the Development Agreement Statute.

P. The City Council hereby finds and determines that this Development Agreement: (i) is consistent with the objectives, policies, general land uses, and programs contained City's General Plan and Urban Village Specific Plan; (ii) is compatible with the uses authorized in the Village Commercial land use district; (iii) provides for the orderly development of the Property; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

Q. In preparing and adopting the General Plan and in granting the Existing Development Approvals, City considered the health, safety and general welfare of the residents of City and prepared in this regard an extensive environmental impact report and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and in granting the Existing Development Approvals, the City Council carefully considered and determined the projected needs (taking into consideration the planned development of the Project and all other areas within the City) for water service, sewer service, storm drains, electrical facilities, traffic/circulation infrastructure, police and fire services, paramedic and similar improvements, facilities and services within the Specific Plan area, and the appropriateness of the density and intensity of the development comprising the Project and the needs of City and surrounding areas for other infrastructure.

R. On March 22, 2022, the City Council adopted the Authorizing Ordinance approving and authorizing the execution of this Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and pursuant to the Development Agreement Ordinance, and pursuant to the mutual promises and covenants herein contained, the Parties hereto agree as follows:

SECTION 1 DEFINITIONS

The following words and phrases are used as defined terms throughout this Development Agreement, and each defined term shall have the meaning set forth below.

1.1 Affordable Housing Implementation Plan. “Affordable Housing Implementation Plan” or “AHIP” means the Village at Laguna Hills Affordable Housing Implementation Plan attached as **Exhibit F** to this Development Agreement.

1.2 Affordable Unit(s). “Affordable Unit(s)” means a unit or units of housing that is/are located within a Residential Building and is/are affordable to Moderate Income Households or Lower Income Households, as those terms are defined herein.

1.3 Authorizing Ordinance. The “Authorizing Ordinance” means Ordinance No. ORD 2022-01 approving and authorizing this Development Agreement.

1.4 CEQA. “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and the regulations adopted pursuant thereto (Title 14 of the California Code of Regulations, Section 15000 *et seq.*), as they may be amended from time to time.

1.5 Certificate(s) of Occupancy. “Certificate(s) of Occupancy” means certificate(s) of occupancy granted by the building department of the City in accordance with the Uniform Building Code.

1.6 Commence Construction or Commenced Construction. With respect to Residential Buildings, Retail Buildings, and Office Buildings, “Commence Construction” or “Commenced Construction” means Owner has begun actual construction of vertical components of buildings. With respect to the Village Park, “Commence Construction” or “Commenced Construction”

means Owner has completed precise grading of the portion of the Property designated for the Village Park and begun actual installation of the landscaping and irrigation required to be included in the Village Park pursuant to the Existing Development Approvals. Once the Owner has Commenced Construction of each of the Residential Buildings, Retail Buildings, Office Buildings, Hotel, and/or Village Park, the Owner shall Complete Construction, as hereinafter defined, with commercially reasonable diligence.

1.7 Complete Construction, Completed Construction, or Completion of Construction. With respect to Residential Buildings, Retail Buildings, Office Buildings, and the Hotel, “Complete Construction,” “Completed Construction,” or “Completion of Construction” means that the Owner (i) has requested and is entitled to issuance of Certificate(s) of Occupancy, and (ii) has obtained written approval from the appropriate City officials for all Public Improvements required to be completed prior to issuance of the relevant Certificate(s) of Occupancy pursuant to the Existing Development Approvals. With respect to the Village Park, “Complete Construction,” “Completed Construction,” or “Completion of Construction” means that Owner has installed all landscaping, irrigation, lighting, pedestrian pathways, water features, shade structures, seating, equipment, and/or other infrastructure required to be included in the Village Park pursuant to the Existing Development Approvals.

1.8 City. “City” means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

1.9 City Manager. “City Manager” means the City Manager of the City of Laguna Hills or his or her designee.

1.10 Community Benefit Fees. “Community Benefit Fees” shall have the meaning ascribed in Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not Development Fees and subject to the Mitigation Fee Act or the Quimby Act, and City may deposit such payments into the City’s general fund and expend such funds for any lawful purpose.

1.11 Covenant Agreement. “Covenant Agreement” means the covenant agreement with the City as required by the Existing Development Approvals.

1.12 Develop, Developed, or Development. “Develop,” “Developed,” or “Development” means the improvement or renovation of the Property for the purposes of completing the structures, improvements and facilities comprising the Project, including, without limitation: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of buildings, structures, and other facilities; the installation of landscaping; and the construction of other facilities and improvements necessary or appropriate for the Project. “Develop,” “Developed,” or “Development” does not mean the maintenance, repair or reconstruction of any building, structure, improvement, landscaping or facility after the Completion of Construction.

1.13 Development Agreement. “Development Agreement” means this Development Agreement and any subsequent amendments to this Development Agreement which have been

made in compliance with the provisions of this Development Agreement, the Development Agreement Statute, and the Development Agreement Ordinance.

1.14 Development Agreement Date. The “Development Agreement Date” means the effective date of the Authorizing Ordinance, which date is shown on page 1, paragraph 1 of this Development Agreement.

1.15 Development Agreement Ordinance. The “Development Agreement Ordinance” means Chapter 9-84 of the Laguna Hills Municipal Code.

1.16 Development Agreement Statute. The “Development Agreement Statute” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Development Agreement Date.

1.17 Development Fees. “Development Fees” shall have the meaning ascribed in Section 10.1 of this Development Agreement, as specified in **Exhibit B** to this Development Agreement.

1.18 Development Plan. “Development Plan” means this Development Agreement, the Existing Development Approvals, and the Existing Land Use Regulations, as well as all Subsequent Development Approvals, and all Subsequent Land Use Regulations to which Owner has consented to in writing, which consent shall be in Owner’s sole and absolute discretion. Depending on the context, “Development Plan” may also mean Development of the Project in accordance with the Development Plan.

1.19 Discretionary Action(s), Discretionary Approval(s), or Discretionary Permit(s). “Discretionary Action(s)”, “Discretionary Approval(s)”, or “Discretionary Permit(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Action, Ministerial Approval, or Ministerial Permit.

1.20 Excusable Delay. “Excusable Delay” is defined in Section 22.1.

1.21 Excusable Delay re Hotel. “Excusable Delay re Hotel” means a delay in the construction of the Hotel which results from the failure of the market to support an Upscale hotel as demonstrated by an Updated Hotel Study. Owner shall demonstrate the existence of Excusable Delay re Hotel pursuant to those procedures described in Subsection 5.4.1(H). Notwithstanding anything herein to the contrary, “Excusable Delay,” as described in Section 22.1, is not applicable to the Development of the Hotel.

1.22 Existing Development Approvals. “Existing Development Approvals” means those certain land use entitlements associated with Case No. USE-010-2019, which were approved for the Project by the City on March 8, 2022, and which include a Site Development Permit, a Precise Plan, a Master Sign Program, a Vesting Tentative Tract Map, a Parking Use Permit, a Conditional Use Permit for a Hotel, and a Conditional Use Permit for a health club, along with all conditions of approval with respect thereto. To the extent any of the land use entitlements approved for the Project are amended from time to time upon application by Owner, “Existing Development

Approvals” shall include such matters as so amended. If this Development Agreement is required by law to be amended in order for “Existing Development Approvals” to include any such amendments, “Existing Development Approvals” shall not include such amendments unless and until this Development Agreement is so amended.

1.23 Existing Land Use Regulations. “Existing Land Use Regulations” means all ordinances, laws, resolutions, codes, rules, regulations, moratoria, initiatives, policies, requirements, or guidelines of the City in effect on the Development Agreement Date, which govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, the Specific Plan, Mitigation Monitoring Program, and all other ordinances of City establishing subdivision standards, park regulations, impact or Development Fees and building and improvement standards. Existing Land Use Regulations do not include non-land use regulations, which include, without limitation, all City ordinances, resolutions, rules, regulations or official policies governing: business licenses issued by the City for the conduct of businesses, professions, and occupations; taxes and assessments; the control and abatement of nuisances; the granting of encroachment permits and the conveyance of rights and interests which provide for the use of the entry upon public property; and/or the exercise of the power of eminent domain.

1.24 Final Map(s). “Final Map(s)” refers to one or more final maps which may be filed with respect to the vesting tentative tract map approved as part of the Project Approvals, as provided in Government Code Sections 66456 et. seq.

1.25 Five Lagunas Project. “Five Lagunas Project” means development of the Property in the manner authorized by the Five Lagunas Entitlements.

1.26 Five Lagunas Entitlements. “Five Lagunas Entitlements” mean that certain Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 approved by the City on March 22, 2016, as amended, and all permits and approvals implementing the foregoing granted by the City.

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

1.28 Hotel. “Hotel” means the hotel structure and related use(s) and associated parking facilities and infrastructure authorized to be Developed pursuant to the Existing Development Approvals. The quality of the Hotel shall be not less than Upscale. The approximate size and location of the Hotel is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Hotel.”

1.29 Hotel Feasibility Study. “Hotel Feasibility Study” means a study conducted by a “Qualified Hotel Consultant” determining whether or not the operation of an Upscale Hotel of approximately 100-150 rooms is supported by market data.

1.30 HVS. “HVS” means HVS Consulting & Valuation, a division of TS Worldwide, LLC.

1.31 Initial Hotel Feasibility Study. “Initial Hotel Feasibility Study” means the study dated December 13, 2021, as supplemented by letter dated December 14, 2021, conducted by HVS evaluating the market feasibility of an Upper-Upscale hotel and Upscale hotel within the Property and determining that an Upscale select-serve hotel would be feasible and that an Upper-Upscale hotel would be infeasible.

1.32 Litigation Delay. “Litigation Delay” means any period of excusable delay described in Subsection 22.1.1(D) of this Development Agreement.

1.33 Lower Income Households. “Lower Income Households” has the meaning set forth in California Health and Safety Code Section 50079.5.

1.34 Major Project Modification(s). “Major Project Modification(s)” means any Discretionary Approval or Discretionary Permit requested by Owner that is approved, granted, or issued after the Development Agreement Date, which would result in the authorization for any of the following: (i) the Development of more than five (5) Residential Buildings and/or more than 1,500 residential units on the Property; (ii) the Development of fewer than four (4) Residential Buildings on the Property; (iii) the Development of fewer than 200 Affordable Units on the Property; (iv) the Development of fewer than one hundred (100) hotel rooms on the Property; (v) the Development of less than 230,000 square feet of space within Retail Buildings on the Property; (vi) the Development of more than four (4) Office Buildings and/or 465,000 square feet of space within Office Buildings on the Property; (vii) the Development of a Village Park that is less than two and a half (2.5) acres in size; and/or (viii) the construction or relocation of any Residential Building, Retail Building, Office Building, or Parking Structure to a location on the Property different from that authorized by the Existing Development Approvals, provided, however, that a minor change to the orientation, location, and/or building footprint of such a structure within the boundaries of the same legal lot shall not be deemed to be a Major Project Modification. Notwithstanding anything herein to the contrary, Major Project Modifications may be granted, denied, or conditionally approved by the City acting in its sole and absolute discretion.

1.35 Milestones. “Milestones” means the outside dates by which specified obligations of Owner under this Development Agreement are required to have been performed. The Milestones are summarized in **Exhibit D** to this Development Agreement, with reference to the section of the Development Agreement stating each obligation. **Exhibit D** shall be incorporated into this Development Agreement and considered an enforceable part thereof.

1.36 Ministerial Action(s), Ministerial Approval(s), or Ministerial Permit(s). “Ministerial Action(s)”, “Ministerial Approval(s)”, and “Ministerial Permit(s)” means a permit approval or clearance in conformance with the Existing Land Use Regulations, including, without limitation, conformance maps for tentative maps, determinations of compliance with the Project conditions of approval of the Existing Development Approvals, grading plans, improvement plans, buildings plans and specifications, and ministerial issuance of one or more Final Maps, zoning clearances, grading permits, improvement permits, wall permits, building permits, demolition permits, lot line adjustments, encroachment permits, temporary use permits, and certificates of use and occupancy as necessary for completion of the Development of the Property in accordance with the Development Plan, as distinguished from an activity which is defined herein as a Discretionary Action, Discretionary Approval, or Discretionary Permit.

1.37 Mitigation Fee Act. “Mitigation Fee Act” shall mean California Government Code Section 66000 et. seq., as it may be amended from time to time.

1.38 Mitigation Monitoring Program. “Mitigation Monitoring Program” means those portions of the Mitigation Monitoring and Reporting Program adopted by the City Council on July 14, 2009 in conjunction with certification of the Program Environmental Impact Report prepared in connection with the 2009 Comprehensive Update of the City’s General Plan (“PEIR”) and as made applicable to the Five Lagunas Project. The Five Lagunas Project’s mitigation measures apply to the Project as indicated in the Fifth Addendum to the PEIR and Exhibit B of Resolution No. PA2022-03-08-02 approving the Existing Development Approvals.

1.39 Moderate Income Households. “Moderate Income Households” means persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current median income of the County of Orange adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time.

1.40 Mortgage. “Mortgage” means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security.

1.41 Mortgagee. “Mortgagee” means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.42 New Retail. “New Retail” means that portion of the minimum one hundred forty thousand (140,000) square feet of space within Retail Buildings required to be Developed in Phase One other than the existing approximately 10,125 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Restaurant” and the approximately 12,970 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Building.”

1.43 Office Buildings. “Office Buildings” means the office structures intended to house business, medical, and professional office, financial institution, and ancillary office-serving supportive retail and service uses, and associated parking facilities and infrastructure, authorized to be Developed pursuant to the Existing Development Approvals. The Office Buildings do not include the Hotel, the Retail Buildings, or the Residential Buildings. The approximate size and location of the Office Buildings are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Office.”

1.44 Owner. “Owner” is MGP FUND X Laguna Hills, LLC and any person or entity with which or into which MGP FUND X Laguna Hills, LLC may merge, and any person or entity who may acquire substantially all of the assets of MGP FUND X Laguna Hills, LLC and any person or entity who receives any of the rights or obligations under this Development Agreement in accordance with the provisions of Section 21 (Assignment) of this Development Agreement.

1.45 Parking Structure(s). “Parking Structure(s)” means the two (2) parking structures authorized to be Developed pursuant to the Existing Development Approvals. The approximate

size and location of the Parking Structures are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Parking Structure.”

1.46 Owner’s Public Art Obligation. “Owner’s Public Art Obligation” shall have the meaning ascribed in Section 7.4 of this Development Agreement.

1.47 Parties; Party. “Parties” means the Owner and the City. A “Party” refers to either the Owner or the City.

1.48 Phase One. “Phase One” means the Development of the portions of the Project described in Subsection 5.4.1 of this Development Agreement. Phase One generally includes, without limitation, Development of the following, including the associated demolition of existing improvements, on the Property: (i) the Village Park; (ii) at least 140,000 square feet of space within Retail Buildings, and up to 250,000 square feet of space within Retail Buildings; (iii) a Hotel, of Upscale quality, containing between 100 and 150 rooms; (iv) at least two (2), but no more than four (4), of Residential Buildings I, II, III, and/or V; (v), up to 200 Affordable Units; (vi) up to 465,000 square feet of space within up to four (4) Office Buildings and associated Parking Structures; and (vii) associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required to be Developed prior to Completion of Construction of the foregoing improvements pursuant to the conditions of approval of the Existing Development Approvals.

1.49 Phase Two. “Phase Two” means the Development of the portions of the Project described in Subsection 5.4.2 of this Development Agreement. Phase Two generally includes, without limitation, Development of the following, including the associated demolition of existing improvements, on the Property: (i) sufficient additional space within Retail Buildings, such that the aggregate total amount of space within Retail Buildings Developed in Phase One and Phase Two, combined, is at least 230,000 square feet, and up to the entire 250,000 square feet of space within Retail Buildings authorized by the Existing Development Approvals; (ii) each of Residential Buildings I, II, III and/or V that are not Developed as part of Phase One and, at Owner’s option, Residential Building IV; (iii) the remainder of the 200 Affordable Units that are not Developed as part of Phase One; (iv) up to the entire 465,000 square feet of space within up to four (4) Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One; and (v) associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required to be Developed prior to Completion of Construction of the foregoing improvements pursuant to the conditions of approval of the Existing Development Approvals.

1.50 Project. The “Project” means those certain improvements described in the Existing Development Approvals, the Subsequent Development Approvals, and any Major Project Modifications. In general, the Project consists of the Development of the Property with a multi-phase, mixed-use project generally consisting of multiple family residential units, retail uses, office uses, a hotel, park and public/communal open space improvements, parking structures and lots, pedestrian pathways, private and public infrastructure improvements, and the public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals. The Project generally includes modifications to the Five Lagunas Project that result in Development of the following on the Property (i) up to

250,000 square feet of space within Retail Buildings; (ii) up to 465,000 square feet of space within Office Buildings and associated Parking Structures; (iii) a Hotel containing between 100 to 150 rooms; (iv) up to five (5) Residential Buildings containing up to 1,500 multiple family residential units, 200 of which shall be Affordable Units; (v) the construction of park and open space improvements within the Village Park; (vi) and the construction of associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure. The approximate locations and/or building envelope of the Residential Buildings, Retail Buildings, Hotel, Office Buildings, Parking Structures, Village Park, and other improvements authorized by the Existing Development Approvals are generally depicted on **Exhibit C** to this Development Agreement.

1.51 Project Trip Budget Allocation. “Project Trip Budget Allocation” means the total aggregate net change in AM and PM peak hour vehicle trips anticipated to be generated as a result of full development of the Project, as determined by the Traffic Impact Analysis and in accordance with Section 5.6. As set forth in the Traffic Impact Analysis, as of the Development Agreement Date, the Project is anticipated to generate 119 total additional AM peak hour vehicle trips and 910 total fewer PM peak hour vehicle trips than the Five Lagunas Project.

1.52 Property. The “Property” means the real property described and depicted in **Exhibit A** to this Development Agreement.

1.53 Public Art. “Public Art” has the meaning ascribed to this term in the “Public Art” provisions of Section V, at pages 39-40, of the Specific Plan. As specified in the Specific Plan, Public Art includes, but is not limited to, sculptures, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources.

1.54 Qualified Hotel Consultant. “Qualified Hotel Consultant” means HVS or another hotel consultant, mutually agreed upon by the Parties, qualified to determine whether market conditions support the operation of an Upscale quality Hotel, as mutually agreed upon by the Parties.

1.55 Residential Building(s). “Residential Building(s)” means the five (5) multiple-family residential structures and associated parking facilities and infrastructure authorized to be Developed pursuant to the Existing Development Approvals. For purposes of this Development Agreement, the Residential Buildings are separately identified as “Residential” or “Residential Building” I, II, III, IV, and V. The approximate locations of the Residential Buildings and the approximate number of residential units currently anticipated to be constructed within each Residential Building are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement.

1.56 Residential Unit. “Residential Unit” means each separate rentable unit which is or will be rented for residential purposes within each Residential Building.

1.57 Retail Buildings. “Retail Buildings” means the commercial structures intended to house retail, restaurant, service, health club, theatre, and similar uses, and associated parking facilities and infrastructure, authorized to be Developed pursuant to the Existing Development Approvals. The Retail Buildings include those ground floor portions of the structures housing the Hotel and Residential Building I which contain retail or service uses that are intended to serve the

general public, but do not include any other portion of the Hotel, any portion of the Office Buildings, or any other portions of Residential Building I or the other Residential Buildings. The approximate size and location of the Retail Buildings are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Retail,” “Shops,” “Anchor,” “Pad,” (E) Restaurant,” and “(E) Building.”

1.58 Quimby Act. “Quimby Act” shall mean California Government Code Section 66477, as it may be amended from time to time.

1.59 Senior(s). “Senior(s)” means an individual(s) that is(are) fifty-five (55) years of age or older.

1.60 Specific Plan. “Specific Plan” means the Urban Village Specific Plan approved by the City Council on November 26, 2002, and amended by the City Council in 2011.

1.61 Specific Plan Area Trip Budget Allocation. “Specific Plan Area Trip Budget Allocation” means the then current number of remaining AM and PM peak hour vehicle trips available to accommodate future new development in the Specific Plan area as calculated by the City in accordance with the vehicle trip budget debiting process contemplated by the General Plan and the Specific Plan.

1.62 Subsequent Development Approvals. “Subsequent Development Approvals” means all Ministerial Actions, Ministerial Approvals, Ministerial Permits, Discretionary Actions, Discretionary Approvals, and Discretionary Permits, which do not constitute Major Project Modifications, that are approved, granted, or issued for the Project after the Development Agreement Date, which are required or permitted by the Existing Land Use Regulations, or by the Subsequent Land Use Regulations to which Owner has consented in writing (which consent shall be in Owner’s sole and absolute discretion), the Existing Development Approvals, and this Development Agreement. Subsequent Development Approvals include, without limitation: (i) Final Maps; (ii) grading, building and other similar permits necessary to implement the Existing Development Approvals; (iii) design, landscaping, lighting, or similar plans expressly contemplated or required by the conditions of approval to the Existing Development Approvals; (iv) design approvals, site plans, site development permits, or similar Discretionary Approvals necessary for the Development of the Village Park, Retail Buildings, Hotel, Residential Buildings, Office Buildings, Parking Structures, and/or associated infrastructure and parking facilities in the locations authorized by the Existing Development Approvals; (v) conditional use permits; (vi) parking use permits; (vii) master sign programs; and (viii) amendments to the Existing Development Approvals that do not constitute Major Project Modifications.

1.63 Subsequent Land Use Regulations. “Subsequent Land Use Regulations” means any change in or addition to the Existing Land Use Regulations adopted or becoming effective after the Development Agreement Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or any other board, agency, commission or department of City, or any officer or employee thereof, or by the

electorate, as the case may be, or changes in state law, which would, absent this Development Agreement, otherwise be applicable to the Project.

1.64 Term. “Term” is defined in Section 2 of this Development Agreement.

1.65 Third Party Challenge. “Third Party Challenge” shall have the meaning ascribed in Subsection 22.1.1(D) of this Development Agreement.

1.66 Traffic Impact Analysis. “Traffic Impact Analysis” means the traffic impact analysis dated September 1, 2020, prepared by Linscott, Law & Greenspan, Engineers pursuant to the Specific Plan and included as Appendix G to the Fifth Addendum, which analyzes the anticipated traffic impacts of the Project and calculates the change in AM and PM peak hour vehicle trips that will be generated by the Project in comparison to the Five Lagunas Project. Pursuant to the Traffic Impact Analysis, the estimated total AM and PM peak hour vehicle trips that will be generated by the Project are calculated utilizing the trip generation rates set forth in the 10th Edition of *Trip Generation*, published by the Institute of Transportation Engineers (ITE).

1.67 Twenty Year Period. “Twenty Year Period” means the period commencing on the Development Agreement Date and terminating on end of the day of the twentieth anniversary of the Development Agreement Date.

1.68 Uniform Codes. “Uniform Codes” means codes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by the City, if applicable City-wide.

1.69 Updated Hotel Feasibility Study. Updated Hotel Feasibility Study is defined in Section 5.4.1(H).

1.70 Upscale. “Upscale” means hotel brands classified as “Upscale,” on the chain scale hotel classification list for North America published by Smith Travel Research or another similar list mutually acceptable to the City and the Owner. By way of example only, hotel brands currently listed as “Upscale” by Smith Travel Research include, but are not limited to, Courtyard by Marriott, Residence Inn, Radisson, and Doubletree.

1.71 Upper-Upscale. Upper-Upscale means hotel brands classified as “Upper-Upscale” on the chain scale hotel classification list published by Smith Travel Research or other similar list mutually acceptable to City and Owner. By way of example, hotel brands currently listed as Upper-Upscale by Smith Travel Research include, but are not limited to Embassy Suites, Sheraton Hotel, and Westin.

1.72 Veteran(s). “Veteran(s)” means an individual(s) that is/are a United States armed forces veteran(s).

1.73 Village Park. “Village Park” means the approximately 2.6 acre private park, inclusive of communal open space improvements and related pathways, features, equipment, and infrastructure authorized and required to be Developed by the Existing Development Approvals.

The approximate location of the Village Park is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement.

1.74 Zoning Code. “Zoning Code” refers to Title 9 of the Laguna Hills Municipal Code.

SECTION 2 TERM

2.1 Duration of Term. The term (“Term”) of this Development Agreement shall be that period of time during which this Development Agreement shall be in effect and bind the Parties hereto. The Term shall commence on the Development Agreement Date and shall extend for an initial period of fifteen (15) years thereafter, terminating at the end of the day on the fifteenth (15th) anniversary of the Development Agreement Date, subject to the mandatory extension provisions of Section 2.2, the termination provisions of Sections 2.3, 2.4, and 10.6, the mutual cancellation provisions of Section 17, the periodic review provisions of Section 18, the Default provisions of Section 19, and the excusable delay tolling provisions of Section 22.1, respectively, of this Development Agreement.

2.2 Extension of Term. The Term of this Development Agreement shall be automatically extended an additional five (5) years if, prior to expiration of the initial Term, as defined in Section 2.1, Owner has Completed Construction of all required portions of Phase One of the Project set forth in Subsection 5.4.1(C) of this Development Agreement and has obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two set forth in Subsection 5.4.2(B) of this Development Agreement, provided however, if the failure to Complete Construction of the Hotel is the only reason that would otherwise prevent the automatic extension, automatic extension shall nonetheless occur if such failure is a result of Excusable Delay re Hotel. Notwithstanding the foregoing, the Parties may mutually agree to extend the Term of the Development Agreement, regardless of whether the mandatory extension provisions of this Section 2.2 are applicable.

2.3 Termination Due to Judicial Order. Subject to Section 22.3, this Development Agreement shall terminate and be of no further force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after all appeals have been exhausted, directed to City as a result of any lawsuit filed against City to set aside, withdraw or abrogate the approval of the City Council of this Development Agreement.

2.4 Automatic Termination upon Completion of Project. If not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement shall automatically terminate and be of no further force and effect upon Completion of Construction of the Project pursuant to the terms of this Development Agreement and any further amendments thereto and the issuance of all occupancy permits and acceptance by City of all dedications and improvements as required by the Development of the Project.

2.5 Effect of Expiration of Term Prior to Completion of Project. Except as otherwise expressly provided in Subsection 5.4.3(D) or any other provision of this Development Agreement, if not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement and the life of all Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications shall

automatically terminate and be of no further force and effect upon expiration of the Term, regardless of whether the Project has been completed, and Owner's rights to proceed with Development of the Project pursuant to this Development Agreement shall also automatically terminate and be of no further force and effect. This Section 2.5 shall not be construed to automatically terminate (i) Owner's right, pursuant to Subsection 5.4.3(D) of this Development Agreement, to Complete Construction of structures it has Commenced Construction of prior to expiration of the Term, or (ii) Owner's rights under applicable law to continue to use any structure or portion of the Project that Owner Completes Construction of pursuant to this Development Agreement.

SECTION 3 BINDING COVENANTS

The provisions of this Development Agreement, to the extent permitted by law, shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Development Agreement shall bind and inure to the benefit of the Parties and all successors in interest to the Parties hereto.

SECTION 4 EFFECT OF AGREEMENT

As a material part of the consideration of this Development Agreement, unless otherwise provided in the Existing Development Approvals or in this Development Agreement, the Parties agree that the Existing Land Use Regulations shall be applicable to Development of the Project. In connection with all Subsequent Development Approvals that are Discretionary Actions, Discretionary Approvals, or Discretionary Permits, which City takes or has the right to take under this Development Agreement relating to the Project, including any review, approval, renewal, conditional approval or denial, City shall exercise its discretion or take action in a manner which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement) and such other standards, terms and conditions expressly contained in this Development Agreement. City shall accept and timely process, in the normal manner for processing such matters as may then be applicable, all applications for Subsequent Development Approvals requested by Owner with respect to the Project called for or required under this Development Agreement.

SECTION 5 DEVELOPMENT OF PROJECT

5.1 Rights to Develop. Subject to and during the Term of this Development Agreement, including Section 10 (Fees), Section 12 (Future Approvals) and Section 16 (Reserved Authority), Owner shall have a vested right to Develop the Project in accordance with, and to the extent of, the Development Plan. No Subsequent Land Use Regulation shall apply to Development of the Project, or shall delay, hinder, or impede the purpose or the effect of this vested right or apply to Development of the Project, except as specifically permitted by this Development Agreement or agreed to in writing by Owner. Subject to Section 12.1, the Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided herein, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes shall be those set forth in the Development Plan. Notwithstanding the foregoing, while this Development

Agreement is in effect, Owner waives any right Owner may have to a density bonus under Government Code Section 65915 through 65918 or the Zoning Code, as they may be amended from time to time. Densities vested hereunder include all densities available as density bonuses under the Zoning Code and Government Code Section 65915 through 65918. In addition, while this Development Agreement is in effect, Owner waives any right Owner may have to approval by the City of any Major Project Modification under California law or the Zoning Code and agrees that the City shall have sole and absolute discretion in determining whether to approve, conditionally approve, or deny any Major Project Modification requested by Owner.

5.2 Vesting of Rights of Developer. The City agrees that the right to Develop the Project consistent with the Development Plan is vested in Owner by this Development Agreement. Owner's right to develop the Project consistent with the Development Plan shall be vested in accordance with this Development Agreement and the Development Agreement Statute. Notwithstanding the foregoing, Owner shall have no vested right to Develop the Project in accordance with any Major Project Modification until and unless such Major Project Modification is approved by the City, in its sole and absolute discretion, and is expressly incorporated into the Development Plan.

5.3 Effect of Development Agreement on Land Use Regulations. Except as otherwise provided in the Existing Development Approvals or under the terms of this Development Agreement, the only rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Project, shall be those set forth in the Existing Land Use Regulations and the Subsequent Land Use Regulations to which Owner has consented in writing in Owner's sole and absolute discretion, subject to the terms of this Development Agreement.

5.4 Timing of Development. For purposes of this Development Agreement, the components of the Project required and/or authorized to be Developed within specified time periods are described by reference to "Phase One," "Phase Two," and "Subsequent Phases." Owner expressly understands and agrees that its commitment to satisfy the Milestones and to Commence and Complete Construction of the various Project components pursuant to this Section 5.4 is a material inducement to City's approval of this Development Agreement.

5.4.1 Phase One. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of Phase One.

(A) First Phase One Final Map. Owner shall submit to the City a complete application for a Final Map for those parcels on which the Village Park, the Hotel, Retail Buildings containing at least one hundred forty thousand (140,000) square feet of space, and at least two (2) Residential Buildings for Phase One shall be Developed by no later than eighteen (18) months from the Development Agreement Date (**Exhibit D**, Milestone Three).

(B) First Building Permit. Owner shall submit to the City a complete application for a building permit for vertical construction of at least one Phase One building on or before the earlier to occur of the following dates: (i) the date that is thirty-six (36) months from

the date a complete application for the first Final Map associated with Phase One is submitted by Owner to City, or (ii) the date that is fifty-four (54) months from the Development Agreement Date (**Exhibit D**, Milestone Five).

(C) Completion of Phase One. Except as otherwise expressly provided herein, Owner shall Complete Construction of the following components of Phase One on or before the date that is seven (7) years from the Development Agreement Date (**Exhibit D**, Milestone Six).

(i) The Village Park.

(ii) At least one hundred forty thousand (140,000) square feet of space within the Retail Buildings. The minimum 140,000 square feet of space within Retail Buildings required for Phase One may include the existing approximately 10,125 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Restaurant” and the approximately 12,970 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Building,” but shall not include any other vacant or occupied structures existing on the Property as of the Development Agreement Date or any space within the Office Buildings. Owner may, but shall not be required, to Develop up to the entire 250,000 square feet of space within the Retail Buildings that is authorized by the Existing Development Approvals as part of Phase One.

(iii) A Hotel that is Upscale in quality and contains no less than one hundred (100) rooms. Owner’s obligation to complete the Hotel shall be subject to Subsection 5.4.1(H), below.

(iv) At least (2) of Residential Buildings I, II, III, and/or V, which shall be subject to Subsections 5.4.1 (D) and (E), below. Owner may, but shall not be required, to Develop either three (3), or all four (4), of Residential Buildings I, II, III, and/or V as part of Phase One, subject to Subsections 5.4.1 (D) and (E).

(v) The Affordable Units required to be Developed within each Residential Building pursuant to the provisions of Section 7.2 (Affordable Housing) and the Affordable Housing Implementation Plan attached at **Exhibit F** to this Development Agreement.

(vi) All public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required by the Development Plan to be Developed prior to Completion of Construction of the improvements described in Subsection 5.4.1(C)(i)-(v).

(D) Assurance of Timely Development of Village Park and Retail Buildings. Owner shall not be entitled to issuance of a Certificate of Occupancy for more than two (2) Residential Buildings unless it has both: (i) Completed Construction of the Village Park; and (ii) Commenced Construction of Retail Buildings containing at least 140,000 square feet of space.

(E) Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase One, Owner must concurrently Develop the associated Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these

Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as “Shops 2 ± 17,500 SF,” “Retail ± 14,500 SF,” “Retail ± 13,500 SF,” and “Retail ± 12,000 SF.” Owner shall not be entitled to issuance of a Certificate of Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

(F) Development of Office Buildings. Owner may, but is not required to, Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals as part of Phase One. Owner shall use commercially reasonable efforts to market development opportunities for Office Buildings in Phase One, but shall have no obligation to Commence or Complete Construction of any Office Buildings or the Parking Structures as part of Phase One. In no event shall development of Office Buildings be a prerequisite to automatic extension of the Development Agreement pursuant to Section 2.2.

(G) Concurrent Development of Phase One and Phase Two. Provided Owner has Commenced Construction of both the Village Park and Retail Buildings housing at least 140,000 square feet of space, then, except as otherwise specified herein, including, but not limited to, Subsections 5.4.2 (C) and (D), Owner may proceed to Develop any component of Phase Two, as provided in Subsection 5.4.2.

(H) Construction of Hotel. Notwithstanding anything herein to the contrary, and subject to Excusable Delay re Hotel and to the final sentence of this Subsection 5.4.1(H) (describing the City’s exclusive remedies in the event of an Owner Default under this Subsection 5.4.1(H)), Completion of Construction of the Hotel conforming to this Development Agreement shall occur prior to the earlier of (i) the seventh anniversary of the Development Agreement Date or (ii) granting of Certificates of Occupancy for the third Residential Building. In the event that Owner seeks Certificates of Occupancy for the fourth or fifth Residential Building prior to Completion of Construction of the Hotel, City shall withhold Certificates of Occupancy for the fourth and/or fifth Residential Building, as applicable, until Completion of Construction of the Hotel, unless Owner’s obligation to Complete Construction of the Hotel is temporarily excused due to Excusable Delay re Hotel. To demonstrate Excusable Delay re Hotel, Owner must provide City with a Hotel Feasibility Study prepared by a Qualified Hotel Consultant which determines that the Hotel is not feasible as of the date for which Owner seeks a Certificate of Occupancy for the subject Residential Building (“Updated Hotel Feasibility Study”). Upon receipt of the Updated Hotel Feasibility Study, City shall engage an independent Qualified Hotel Consultant to evaluate the Updated Hotel Feasibility Study and to provide an additional opinion on feasibility. If the City’s Qualified Hotel Consultant disagrees with the conclusions of the Updated Hotel Feasibility Study and determines that the Hotel is feasible, Owner and City will seek the opinion of a third Qualified Hotel Consultant, and Owner will be entitled to claim Excusable Delay re Hotel only if at least two out of the three Qualified Hotel Consultants determine that the Hotel is infeasible. In order for Owner to be entitled to continue to claim Excusable Delay re Hotel, the process described in the previous three (3) sentences for demonstrating the existence of Excusable Delay re Hotel shall be repeated at least once every eighteen (18) months following Owner’s initial invocation of Excusable Delay re Hotel until either Completion of Construction of the Hotel or termination of the Development Agreement. Excusable Delay re Hotel shall end, and Owner’s obligation to Complete Construction of the Hotel shall recommence immediately, subject to the limitations on remedies in the final sentence of this Section 5.4.1(H), if (i) Owner fails to submit an Updated

Hotel Feasibility Study within eighteen (18) months of the date of the immediately previous determination that the Hotel is infeasible, (ii) an Updated Hotel Feasibility Study concludes that the Hotel is feasible, or (iii) if at least two out of the three Qualified Hotel Consultants do not determine that the Hotel is infeasible. Excusable Delay re Hotel shall not excuse Owner from its obligation to timely pay Community Benefit Fees described in Subsection 10.5.2. Notwithstanding anything to the contrary in this Development Agreement, the City's exclusive remedies in the event that Owner does not Complete Construction of the Hotel in a timely manner are: (i) the withholding of Certificates of Occupancy for the fourth and fifth Residential Buildings as described in this Subsection 5.4.1(H); (ii) the payment of Community Benefit Fees as described in Subsection 10.5.2; and (iii) the Five Hundred Thousand Dollar (\$500,000) Community Benefit Fee to be paid to City if Owner fails to Complete Construction of the Hotel within seven (7) years of the Development Agreement Date as described in Subsection 10.5.2.

5.4.2 Phase Two. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of Phase Two.

(A) Commencement of Phase Two. Within five (5) years of the City's issuance of the final Certificate of Occupancy for the Retail Buildings, Residential Buildings, and Affordable Units required to be Developed as part of Phase One pursuant to Subsection 5.4.1(C)(ii), (iv), and (v), above, Owner shall have both (i) recorded a Final Map approved by the City for those parcels on which the Retail Buildings and Residential Buildings for Phase Two required to be completed pursuant to Subsection 5.4.2(B), below, shall be Developed, and (ii) obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two (**Exhibit D**, Milestone Seven).

(B) Completion of Phase Two. Owner shall Complete Construction of the following components of Phase Two prior to expiration of the Term of this Development Agreement (**Exhibit D**, Milestones Eight and Nine).

(i) Sufficient additional Retail Buildings such that the aggregate total amount of space within Retail Buildings Developed in Phase One and Phase Two, combined, is no less than 230,000 square feet. In Owner's discretion, Owner may Develop Retail Buildings containing in excess of 230,000 square feet of space, up to 250,000 square feet of space, as part of Phase Two.

(ii) Each of Residential Buildings I, II, III, and/or V that are not Developed as part of Phase One, subject to Subsections 5.4.2 (C) and (D), below.

(iii) The Affordable Units required to be Developed within each Residential Building pursuant to the provisions of Section 7.2 (Affordable Housing) and the Affordable Housing Implementation Plan attached at **Exhibit F** to this Development Agreement.

(iv) All public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required by the Development Plan to be Developed prior to Completion of Construction of the improvements described in Subsections 5.4.2(B)(i)-(iii).

(C) Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase Two, Owner must concurrently Develop the associated ground floor Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as “Shops 2 ± 17,500 SF,” “Retail ± 14,500 SF,” “Retail ± 13,500 SF,” and “Retail ± 12,000 SF.” Owner shall not be entitled to issuance of a Certificate of Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

(D) Residential Building IV. As part of Phase Two, Owner may, but is not required to, Develop Residential Building IV. However, Owner shall not be entitled to issuance of a certificate of occupancy for Residential Building IV unless it has Completed Construction of Residential Buildings I, II, and V; provided, however, that if Owner has Commenced Construction of the Hotel, then Owner shall be entitled to a certificate of occupancy for Residential Building IV if it has Completed Construction of both Residential Buildings I and V and either of Residential Buildings II or III. Pursuant to Section 10.5.7, Owner shall not be entitled to issuance of a building permit for Residential Building IV until it pays City Two Million Dollars (\$2,000,000) as an additional Community Benefit Fee.

(E) Development of Office Buildings. As part of Phase Two, Owner may, but is not required to, Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One. Owner shall use commercially reasonable efforts to market development opportunities for Office Buildings in Phase Two, but shall have no obligation to Commence or Complete Construction of any Office Buildings or the Parking Structures as part of Phase Two.

5.4.3 Subsequent Phases. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of any Residential Buildings, Retail Buildings, or Office Buildings not Developed as part of Phase One or Phase Two.

(A) Residential Building IV. If Residential Building IV is not developed as part of Phase Two, Owner may proceed to Develop Residential Building IV at any time prior to expiration of the Term, provided Owner has Completed Construction of all the required components of Phase One and Phase Two pursuant to Subsections 5.4.1(C) and 5.4.2(B) of this Development Agreement.

(B) Retail Buildings. Owner may proceed to Develop up to the entire 250,000 square feet of space within Retail Buildings authorized by the Existing Development Approvals that are not Developed as part of Phase One and/or Phase Two at any time prior to expiration of the Term.

(C) Office Buildings. Owner may proceed to Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One and/or Phase Two at any time prior to expiration of the Term.

(D) Right to Complete Development. Owner shall have the right to Complete Construction of each Retail Building, Office Building, Parking Structure, and/or Residential Building it has Commenced Construction of prior to expiration of the Term pursuant to this Subsection 5.4.3 (**Exhibit D**, Milestones Eight and Nine), provided Owner continues to diligently Develop such Retail Building, Office Building, Parking Structure, or Residential Building to completion and no applicable Ministerial Approvals or Ministerial Permits for such use, structure, or building are revoked or expire.

5.4.4 Owner's Discretion in Timing of Development. The Parties acknowledge that Owner cannot at this time predict when or the precise rate at which the Property shall be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand and other similar factors. The California Supreme Court held in *Pardee Construction v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a latter-enacted initiative restricting the timing of development to prevail over such parties' agreement. It is the Parties' intent to cure that deficiency by expressly addressing the timing of Development. Except as expressly set forth in the Development Plan, including, without limitation, this Development Agreement, regardless of any future enactment, whether by initiative or otherwise, Owner shall have the vested right to Develop the various components of the Project in such order, at such rate, and at such times as Owner deems appropriate within the exercise of its subjective business judgment.

5.4.5 Owner's Obligation to Keep City Informed of Development Status. In addition to Owner's obligation to submit information to the City pursuant to Section 18.2 of this Development Agreement, within thirty (30) days of receipt of written request of the City, Owner shall: (i) inform the City in writing regarding the status of, anticipated timeframe for, and actual or potential constraints to Development of the various components of the Project; (ii) inform the City in writing regarding Owner's actual or intended efforts to market development opportunities for Office Buildings and the economic, financial, and other factors that Owner contends makes such efforts commercially reasonable; and (iii) inform the City in writing regarding Owner's actual or intended efforts to reach an agreement with a hotel operator at fair market value for the disposition and development of the Hotel and the economic, financial, and other factors that Owner contends makes such efforts commercially reasonable; and (iv) afford the City the opportunity to provide input to the Owner regarding the foregoing.

5.5 Tentative Subdivision Map and Other Entitlement Extensions. In accordance with California Government Code Sections 65863.9 and 66452.6, the life of all tentative subdivision maps or tentative parcel maps, whether vesting or not, or any other Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications, except for grading and building permits and certificates of occupancy, which may be approved by the City in connection with Development of the Project, is hereby extended to be coterminous with the Term of this Development Agreement. The Parties also agree that up to six (6) phased Final Maps may be processed and recorded. All tentative maps prepared for the Project shall comply with the provisions of Government Code Section 66473.7 to the extent applicable hereto.

5.6 Project Trip Budget Allocation. During the Term of this Development Agreement, the City shall adjust the number of A.M. and P.M. peak hour vehicle trips in the Specific Plan Area

Trip Budget Allocation that are available for other future new development in the Specific Plan area in an amount equal to the Project Trip Budget Allocation. During the Term of this Development Agreement, the Project Trip Budget Allocation shall be automatically adjusted without the need to amend this Development Agreement, to account for future changes in the trip generation rates published in future editions of the ITE's Trip Generation Manual. Prior to issuance or approval of any permits or land use entitlements for the expansion or intensification of existing uses or the construction of new development in the Specific Plan area that would necessitate adjustment to the Specific Plan Area Trip Budget Allocation, the City Manager shall review the trip generation rates published in the then latest edition of the ITE's Trip Generation Manual and determine whether the Project Trip Budget Allocation should be automatically adjusted in accordance therewith. If the City Manager determines, in his or her reasonable discretion, that the Project Trip Budget Allocation should be automatically adjusted due to changes in the published trip generation rates, City shall make corresponding adjustments to the number of A.M. and P.M. peak hour vehicle trips in the Specific Plan Area Trip Budget Allocation available for other future new development in the Specific Plan area.

The purpose of this Section 5.6 is to ensure that sufficient peak hour vehicle trips remain in the Specific Plan Area Trip Budget Allocation during the Term of this Development Agreement to accommodate Development of the Project at the densities and intensities authorized by the Development Plan. The Parties expressly acknowledge and agree that this Section 5.6 and this Development Agreement shall not be interpreted to give Owner a vested right to a specific number of peak hour vehicle trips from the Specific Plan Area Trip Budget Allocation for the purpose of either expanding or limiting Owner's vested rights to Develop the Project at the densities and intensities authorized by the Development Plan in the event that the published trip generation rates in the ITE Trip Generation Manual change. The Parties further expressly acknowledge and agree that no adjustment to the Project Trip Budget Allocation by the City for any reason whatsoever after the Development Agreement Date (including, but not limited to, changes to applicable ITE trip generation rates, changes to surrounding projects' trip budget allocations, or other changed circumstances) shall operate to impede Developer's vested right to develop the Project, including but not limited to the full range of uses and intensities specified in the Existing Development Approvals.

SECTION 6 ENFORCEMENT

Unless this Development Agreement is terminated or cancelled pursuant to the provisions of this Development Agreement, this Development Agreement or any amendment hereto, shall be enforceable by any Party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by City which alters or amends the rules, regulations or policies of Development of the Project as provided in this Development Agreement pursuant to Section 65865.4 of the Development Agreement Statute; provided, however, that the limitations of this Section shall not apply to changes mandated by State or Federal laws or other permissible changes or new regulations as more particularly set forth in Section 16 of this Development Agreement.

SECTION 7 PUBLIC BENEFITS

7.1 Payment of Community Benefit Fees. As material consideration for City's entering into this Development Agreement, Owner shall pay City nonrefundable Community Benefit Fees in accordance with Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not subject to the Mitigation Fee Act or the Quimby Act.

7.2 Affordable Housing. Owner recognizes City's obligations under State law to facilitate the development of housing at various levels of affordability and the policy of the City stated in the General Plan Housing Element to coordinate with the private sector in the development of affordable housing. As material consideration for City's entering into this Development Agreement, Owner agrees to coordinate with the City in the provision of affordable housing by complying with the terms of the Affordable Housing Implementation Plan ("AHIP") attached as **Exhibit F** to this Development Agreement.

The AHIP requires that Owner Develop two hundred (200) Affordable Units at a specified ratio and unit size mix within Residential Buildings I, II, III, and V. The Affordable Housing Implementation Plan further provides that no less than one hundred (100) of these Affordable Units shall be reserved for Lower Income Households, and the balance of the Affordable Units shall be reserved for Moderate Income Households, for an affordability period of at least fifty-five (55) years. The AHIP also requires that Owner market the Affordable Units to Seniors, Veterans, and City residents and that priority for the rental or lease of the Affordable Units must be given to Seniors, Veterans (including Veterans of the City adopted 3rd Battalion, 5th Marines), and City residents.

Pursuant to the AHIP, Owner is required to enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") with the City with respect to each Residential Building containing Affordable Units, in substantially the form as set forth in Attachment 1 to the AHIP, or in a similar form approved by the City Manager and City Attorney, and to record said Regulatory Agreement against the parcel on which the subject Residential Building is proposed prior to the issuance of a vertical building permit for the Residential Building. The City Manager is hereby authorized to approve and execute each such Regulatory Agreement and all amendments thereto and to establish and levy associated fees on behalf of the City, and City shall maintain authority of each Regulatory Agreement and the authority to implement each Regulatory Agreement through the City Manager, as more fully set forth in the AHIP.

Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the requirements and restrictions set forth in the AHIP, and Owner covenants that it shall not enter into any agreement that is inconsistent with such requirements and restrictions without the express written consent of the City. The provisions of the AHIP shall be senior, non-subordinate covenants and an encumbrance running with the land for the full Term of this Development Agreement. In no event shall the provisions of the AHIP be made junior or subordinate to any deed of trust or other documents providing financing for Development or operation of the Project, or any lien or encumbrance whatsoever for the entire Term of this Development Agreement. Nor shall the provisions of the AHIP be made junior or

subordinate to any extension, amendment, or modification of any lien or encumbrance recorded against the Property prior to the Development Agreement Date.

7.3 Provision of the Village Park Improvements. In accordance with the Development Plan, Owner shall Complete Construction of the Village Park in Phase One of the Project pursuant to Subsection 5.4.1 of this Development Agreement. Although the Village Park will be available for public access and will be publicly accessible, the Village Park shall be privately owned, operated, and maintained by Owner. The Covenant Agreement shall contain a provision requiring the Village Park to be accessible and usable by the public, subject to reasonable limitations on public access to address, among other things, public safety, the security of users of the Village Park, reasonable late-night and after-hours restrictions, or occasional private events which provision shall be made enforceable by the City.

7.4 Provision of Public Art and Payment of Public Art In-Lieu Fees. Owner shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of this Development Agreement (“Owner’s Public Art Obligation”). Pursuant to the Specific Plan, the minimum aggregate value of Owner’s Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which shall be based on the valuation as determined by the City’s Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project. The Parties agree that (a) Six Hundred Fifty Thousand Dollars (\$650,000) of Owner’s Public Art Obligation shall be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of this Development Agreement, and (b) that portion of Owner’s Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Property by Owner, as approved by the City, and may not be satisfied through contribution to the City’s Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in the “Public Art” provisions of Section V, at pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The procedures, timing, and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in **Exhibit H** to this Development Agreement.

7.5 Provision of Public Improvements. Owner shall pay for and/or construct and install, and where required, maintain, the public improvements required by the Existing Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in Section 8 of and **Exhibit E** to this Development Agreement.

7.6 Provision of Private Infrastructure Improvements On and Within the Property. To the extent required by, and in accordance with timing and phasing conditions of, the Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications (including, but not limited to the District Sequencing Plan reflected in the conditions of approval to the Existing Development Approvals), Owner shall complete construction and installation of all private infrastructure improvements on or within the Property, including, but not limited to the following: streets; sidewalks and pedestrian walkways; bicycle lanes and pathways; private bus

access improvements; street furniture; pet waste stations; parking improvements; lighting; landscaping; directional signage; entry monuments and features; storm drain lines; debris gates and full capture trash screens for all private catch basin inlets; low impact development, hydromodification, and other structural BMPs described in the approved Water Quality Management Plan for the Project; infrastructure improvements that create coordinated and compatible linkages between the Property and the adjacent Oakbrook Village Shopping Center, including, but not limited to, bicycle and pedestrian connections at the existing vehicular connection between the two properties and a pedestrian walkway that connects the Oakbrook Village property with the Laguna Hills Transportation Center; and other private infrastructure improvements required by the Existing Development Approvals and/or any Subsequent Development Approvals or Major Project Modifications. Although certain private streets, sidewalks, bus stops, street furniture, pedestrian pathways, bicycle lanes and pathways, parking areas, and other developed portions of the Property will be available for public access and will be publicly accessible, all such areas of the Property shall be privately owned, operated, and maintained by Owner. The Covenant Agreement shall contain a provision expressly making the areas described in the previous sentence available for public access, subject to reasonable limitations to public access to address, among other things, public safety, the security of users of the area, reasonable late night and after-hours restrictions, or occasional private events, which provision shall be expressly made enforceable by the City.

SECTION 8 PUBLIC IMPROVEMENTS AND SERVICES

8.1 Public Improvements Required to Support the Project. As material consideration for City's entering into this Development Agreement, Owner shall pay for and/or undertake the construction and installation of, public improvements required by the Existing Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in **Exhibit E** to this Development Agreement. **Exhibit E** constitutes a complete list of all required public improvements for the Project, unless the Project is modified, requiring the modification of **Exhibit E**.

8.2 Cooperation by City and Owner for Public Improvements. The required public improvements shall be designed and constructed in phases as required to service the Project or as otherwise required by the Project conditions of approval and/or this Development Agreement. Owner shall design and construct these public improvements in accordance with all applicable federal, state and City laws, ordinances, regulations, codes, standards, and other applicable requirements. These improvements shall be subject to City's approval and acceptance. City shall cooperate with Owner for the purpose of coordinating all public improvements constructed under the Existing Development Approvals, Subsequent Development Approvals, Major Project Modifications, or this Development Agreement to existing or newly constructed public improvements, whether located within or outside of the Property. Owner shall be responsible for and use good faith efforts to acquire any right(s)-of-way necessary to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, the Existing Development Approvals, any Subsequent Development Approvals, and/or any Major Project Modifications. Should it become necessary due to Owner's failure or inability to acquire said right(s)-of-way within four (4) months after Owner begins its efforts to so acquire said right(s)-of-way, City shall negotiate the purchase of the necessary right(s)-of-way to construct the public improvements as required by, or otherwise necessary to

comply with the conditions of, this Development Agreement and, if necessary in accordance with the procedures established by State law, and the limitations hereinafter set forth in this Section, City may use its powers of eminent domain to condemn said required right(s)-of-way. Owner agrees to pay for all costs associated with said acquisition and condemnation proceedings. If City cannot make the proper findings or elects not to exercise its discretion to adopt a resolution of necessity, or if for some other reason under the condemnation laws City is prevented from acquiring the necessary right(s)-of-way to enable Owner to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, then the Parties agree to amend this Development Agreement to modify Owner's obligations accordingly. Any such required modification shall involve the substitution of other considerations or obligations by Owner (of similar value) as are negotiated in good faith between the Parties. Nothing contained in this Section shall be deemed to constitute a determination or resolution of necessity by City to initiate condemnation proceedings.

8.3 Timing, Phasing and Sequence of Public Improvements and Facilities. The timing, phasing and sequence of the construction of public improvements, facilities or the payment of fees therefore shall be constructed or paid in accordance with the timing, phasing and sequence set forth in the Development Plan.

8.4 Maintenance of Public Improvements. City shall not be responsible or liable for the maintenance or care of public improvements, intended to be dedicated to the City, until City approves and accepts them. City shall exercise no control over the public improvements until accepted. Any use by any person of the public improvements, or any portion thereof, shall be at the sole and exclusive risk of the Owner at all times prior to City's acceptance of the public improvements. Owner shall maintain all the public improvements in a state of good repair until they are completed by Owner and approved and accepted by City. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the public improvements or their condition prior to acceptance. Approval and acceptance of public improvements shall not be unreasonably withheld by the City. Notwithstanding the foregoing, to the extent the Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications require Owner to maintain public improvements after acceptance by the City, Owner shall be responsible and liable for the maintenance and care of such public improvements to the standards specified in the therein. If Owner fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Owner under this Development Agreement.

8.5 Acceptance of Improvements; As-Built or Record Drawings. If the public improvements are properly completed by Owner and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City shall accept the public improvements. Prior to the total or partial acceptance of the public improvements by City, Owner shall file with the Recorder's Office of the County of Orange a notice of completion for the accepted public improvements in accordance with California Civil Code section 8182, at which time the accepted public improvements shall become the sole and exclusive property of City without payment therefore. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any public improvements. Notwithstanding the foregoing, City may not accept any public improvements unless and until Owner provides the

required sets of “as built” or record drawings or plans to the City for review and approval for all such public improvements. The drawings shall be certified and shall reflect the condition of the public improvements as constructed, with all changes incorporated therein.

SECTION 9 DEDICATIONS AND EXACTIONS

9.1 Dedications In Conjunction With Public Improvements. Right-of-way or property for required public improvements shall be irrevocably offered for dedication as required by the Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications. These dedications shall be in fee or as an easement at the discretion of City. The City may accept the Owner’s offer of dedication upon Owner’s completion and acceptance by City of the associated improvements in compliance with the specifications as approved by City. Nothing contained in this Development Agreement, however, shall be deemed to preclude City from exercising the power of eminent domain with respect to the Property or the Project, or any part thereof.

9.2 Dedication for Enhanced Parkway Improvements Along Avenida de la Carlota. Owner shall dedicate a landscape and/or pedestrian access easement to the City associated with the enhanced parkway improvements along Avenida de la Carlota described in **Exhibit E**, paragraphs 10 and 11, for any area described therein not already included within the public right of way. Such dedication shall be made by an instrument in a form acceptable to the City’s Public Services Director and City Attorney.

9.3 Dedication of Landscape Maintenance Easement for Entry Monuments. Owner shall dedicate a landscape maintenance easement to City to coincide with and matching the rear curblin of the corner entry monuments at the Property’s entrance on the southerly side of El Toro Road at Regional Center Drive. Such dedication shall be made pursuant to the applicable Final Map or by a separate dedication instrument in a form approved by the City’s Public Services Director and City Attorney, to be recorded prior to the issuance of a Certificate of Occupancy for any building.

9.4 Dedication of Easement for Traffic Signal Equipment. Owner shall dedicate a traffic signal maintenance easement to City to coincide with any traffic signal equipment, if any, that is installed on the Property in association with construction an installation of the traffic signal at the intersection of Avenida de la Carlotta and the extension of Health Center Drive described in paragraph 5 of **Exhibit E**. Such dedication shall be pursuant to a separate dedication instrument in a form approved by the City’s Public Services Director and City Attorney, to be recorded prior to completion of construction of the traffic signal.

SECTION 10 FEES

10.1 Development Fees Applicable to the Project. Subject to the provisions of this Section 10, Owner shall pay all existing impact and development fees applicable to the Project on the Development Agreement Date charged by City for the purpose of defraying all or a portion of the cost of public facilities related to development of the Project (“Development Fees”). For avoidance of doubt, Community Benefit Fees are not Development Fees and the only Development Fees that shall apply to the Project are those listed in **Exhibit B** to this Development Agreement.

The Parties acknowledge that the following fees, taxes, and charges do not constitute Development Fees and that nothing in this Development Agreement is intended or shall be construed to release Owner from the obligation to pay these fees, taxes, and charges, including increases, if and when they become due:

- (a) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; and
- (b) The annual Development Agreement administration fee required to be paid pursuant to Section 10.7, below.
- (c) Any fees and charges required to be paid by Owner pursuant to the AHIP.
- (d) Fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; and
- (e) Community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, and new water meter fees.

10.2 Fees Applicable for Modified Existing Development Approvals. Notwithstanding Section 10.1 of this Development Agreement, if and to the extent that the Existing Development Approvals are modified or amended after the Development Agreement Date and Owner is authorized under the modified Existing Development Approvals to develop any additional density or intensity of use beyond what is allowed as of the Development Agreement Date, City shall retain the right to require Owner to pay all City fees for such additional density or intensity of use to the extent such fees would be applicable in the absence of this Development Agreement.

10.3 Public Park In-lieu Fees.

10.3.1 Amount of Fee. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to the Project, regardless of whether Owner proposes a subdivision map for each Residential Building. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code.

10.3.2 Nonrefundable Guaranteed Fees. As material consideration for City's entering into this Development Agreement, the Owner expressly agrees that, except as provided in Subsection 10.5.8 and Section 17.4 of this Development Agreement, notwithstanding any provision of Chapter 8-06 of the Laguna Hills Municipal Code, the Quimby Act, or other provisions of law, Eighteen Million One Hundred Sixty Nine Thousand Thirty Two Dollars

(\$18,169,032), which represents an amount equal to the Public Park In-lieu Fees attributable to the first one thousand one hundred sixty two (1,162) residential units anticipated to be Developed by Owner, shall be nonrefundable and guaranteed, and must be paid to City even if no or less than one thousand one hundred sixty two (1,162) residential units are actually constructed. Owner agrees to pay these nonrefundable guaranteed fees at the times set forth in Subsection 10.3.3, below, and **Exhibits B and D**. To the extent any portion of said fees are paid prior to the issuance of a vertical building permit for the Residential Building containing any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E), below, such portion shall constitute Community Benefit Fees when paid, subject to Subsection 10.5.4, but shall be credited against and applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for the Residential Building containing said residential unit, provided a vertical building permit is issued for the Residential Building containing the residential unit during the Term of this Development Agreement and such building permit is not revoked and does not expire. No portion of the nonrefundable, guaranteed fees that are paid or owed pursuant to this Section 10.3 shall be credited or applied to any residential units on the Property for which a vertical building permit is issued after the expiration or termination of this Development Agreement. Said payments shall be subject to Subsection 10.5.4 of this Development Agreement, and Owner expressly agrees that these payments shall be nonrefundable and guaranteed, and that the City may retain and expend that portion, if any, of such nonrefundable guaranteed fees that are paid by Owner to City, which are attributable to residential units which are not actually constructed, or which City would otherwise be required to refund to Owner or other record owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Subsection 10.3.2 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

10.3.3 Timing of Payment of the Community Benefit Fees that may be deemed Credits Against Public Park In-lieu Fees. Notwithstanding any provision of Chapters 8-06 or 8.07 of the Laguna Hills Municipal Code, the Quimby Act, or other law, the Parties expressly agree that the Public Park In-lieu Fees attributable to the residential units constructed, or anticipated to be constructed, as part of the Project, shall be paid in the amounts and at the times specified below:

(A) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(B) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues a vertical building permit for any Retail Buildings or any Office Buildings; or (ii) the date that is four (4) years after the Development Agreement Date (**Exhibit D**, Milestone Four). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development

Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(C) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues the first Certificate of Occupancy for any Retail Buildings or any Office Buildings; or (ii) the date that is seven (7) years after the Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(D) Owner shall pay City Six Million Five Hundred Seventy-One Thousand Three Hundred Forty Four Dollars (\$6,571,344) in increments at the following times: (i) Eight Thousand One Hundred Seventy Three Dollars (\$8,173)¹ per unit for each of the first 804 residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is seven (7) years after the Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the amount of the Public Park In-Lieu Fees applicable to the first 804 residential units that are required to be paid pursuant to this Subsection 10.3.3(D) have been reduced to reflect the three payments of Two Million Dollars (\$2,000,000) required pursuant to Subsections 10.3.3 (A)-(C), above.

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636) per unit for each of the next 358 residential units² prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Eight). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(F) Owner shall pay City Fifteen Thousand Six Hundred Thirty-Six Dollars (\$15,636) per unit for each additional residential unit Owner Develops as part of the Project after the 1,162nd residential unit, prior to the issuance of a vertical building permit for the Residential Building containing the residential unit.

10.3.4 The Parties expressly acknowledge and agree that the Public Park In-lieu Fee payment obligations set forth in this Section 10.3 may be assumed, in whole or in part, by a

¹ This amount is calculated as follows: $[(\$15,636 \text{ per unit} \times 804 \text{ units}) - (\$6,000,000)] / 804 \text{ units}$.

² This amount applies to the 805th residential unit through the 1,162nd residential unit.

residential developer or other person or entity that purchases a portion of the Property on which a Residential Building is designated to be Developed, and agrees to assume such payment obligations in accordance with the provisions of Section 21 of this Development Agreement (Assignment).

10.4 Public Art In-lieu Fees. The Parties expressly agree that Owner's Public Art Obligation shall be subject to the provisions set forth in Subsections 10.4.1 and 10.4.2, below.

10.4.1 Credit. The City acknowledges and agrees that Owner paid a Public Art In-lieu Fee to the City in the amount of Three Hundred Thousand Dollars (\$300,000) for improvements authorized by the 2016 Five Lagunas Entitlements that were ultimately not constructed. Accordingly, the City agrees it will credit this payment towards Owner's Public Art Obligation for the Project.

10.4.2 Nonrefundable Advance. Notwithstanding any provision of the Specific Plan, the Mitigation Fee Act, or other provisions of State law, the Parties expressly agree that Owner shall pay City a nonrefundable guaranteed Public Art In-lieu Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), in advance, on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement. The City shall credit this payment against Owner's Public Art Obligation for the Project. However, said payment shall be subject to the provisions of Subsection 10.5.3, below, and Owner expressly agrees that this payment shall be guaranteed and nonrefundable to Owner, and that the City may retain and expend such payment, even if Owner's Public Art Obligation for the Project is less than Three Hundred Fifty Thousand Dollars (\$350,000). Owner acknowledges and agrees that the Three Hundred Thousand Dollar (\$300,000) credit provided for in Subsection 10.4.1, above, shall not be applied to reduce Owner's obligation to pay the nonrefundable guaranteed fee required by this Subsection 10.4.2. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Subsection 10.4.2 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

10.5 Community Benefit Fees. In addition to Development Fees payable by Owner pursuant to the foregoing provisions of this Section 10, as material consideration for City's entering into this Development Agreement, the Owner agrees to pay City, in addition to the payment of Community Benefit Fees pursuant to Section 10.3, which remain Community Benefit Fees unless and until such fees are credited to Public Park In-lieu Fees, nonrefundable guaranteed Community Benefit Fees in accordance with this Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not subject to the Mitigation Fee Act or the Quimby Act, and City may deposit such payments into the City's general fund and expend such funds for any lawful purpose.

10.5.1 Guaranteed Community Benefit Fees. Owner shall pay a nonrefundable guaranteed Community Benefit Fee in the amount of Four Million Seven Hundred Twenty-Seven Thousand Sixty-Six Dollars (\$4,727,066) in the amounts and at the times specified below:

(A) Owner shall pay City One Million One Hundred Thirteen Thousand Five Hundred Thirty-Three Dollars (\$1,113,533) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(B) Owner shall pay City One Million One Hundred Thirteen Thousand Five Hundred Thirty-Three Dollars (\$1,113,533) on or before the date that is fifteen (15) months after the Development Agreement Date (**Exhibit D**, Milestone Two). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(C) Owner shall pay City Two Million Five Hundred Thousand Dollars (\$2,500,000) in five (5) installments of Five Hundred Thousand Dollars (\$500,000) each to be paid to City on the first, second, third, fourth, and fifth anniversaries of the Development Agreement Date. Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

10.5.2 Community Benefit Fees with respect to the Hotel. In addition to any other Community Benefit Fees payable pursuant to this Section 10.5, the Owner shall pay to the City the amount of \$396 each year, increased at the rate of three percent (3.0%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement and annually thereafter, for each Residential Unit within a Residential Building for which a Certificate of Occupancy has been issued. Owner's obligation to pay this additional Community Benefit Fee shall terminate upon the earliest to occur of: (i) the date that the Hotel is open for business; (ii) the end of the Twenty Year Period; or (iii) Owner's termination of this Development Agreement as a result of Default by the City. In addition to the above, in the event the Owner has not Completed Construction of the Hotel within seven (7) years of the Development Agreement Date, and notwithstanding Excusable Delay and/or Excusable Delay re Hotel, the Owner shall pay the City an additional Community Benefit Fee in the amount of Five Hundred Thousand Dollars (\$500,000) on or before the date that is seven (7) years after the Development Agreement Date. Owner's obligation to make these payments by the dates set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) or Subsection 5.4.1(H) (Construction of Hotel) of this Development Agreement.

10.5.3 Nonrefundable Public Art In-lieu Fee Advance Deemed an Additional Community Benefit Fee in Event Project Not Developed. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, that portion, if any, of the nonrefundable guaranteed Public Art In-lieu Fee payment advance made by Owner pursuant to Subsection 10.4.2 of this Development Agreement, which is in excess of Owner's Public Art Obligation for the Project, or which City would otherwise be required to refund to Owner or other record owner(s) of the Property pursuant to the Specific Plan, the Mitigation Fee Act, or other law, shall be deemed a Community Benefit Fee for purposes of this Development Agreement. Notwithstanding any provision of the Mitigation Fee Act or other law, under no circumstances shall the City be obligated to return this Public Art In-Lieu Fee Advance to the Owner or other record owner(s) of the Property.

10.5.4 Nonrefundable Guaranteed Public Park In-lieu Fee Payments Deemed Community Benefit Fees in Event Residential Units Not Timely Developed. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the event the Owner Develops no or fewer than One Thousand One Hundred Sixty-Two (1,162) residential dwelling units during the Term of this Development Agreement, that portion, if any, of the nonrefundable guaranteed Public Park In-lieu Fees paid by Owner to City pursuant to Subsection 10.3.2 of this Development Agreement, which are attributable to residential units that are not actually constructed, or which City would otherwise be required to refund to Owner or the subsequent owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law, shall be deemed Community Benefit Fees for purposes of this Development Agreement. Notwithstanding any provision of the Mitigation Fee Act, Quimby Act, or other law, under no circumstances shall the City be obligated to return said fees to the Owner or other record owner(s) of the Property.

10.5.5 Community Benefit Fees with respect to Retail. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the event less than sixty thousand (60,000) square feet of New Retail is leased by operating tenants by the date Owner Completes Construction of the third Residential Building, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars (\$120) per year, increased at the rate of three percent (3%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement Date and annually thereafter, for each Residential Unit in the fourth and fifth Residential Buildings for which Owner has received Certificates of Occupancy. For purposes of this Subsection 10.5.5, Owner's execution of a lease with an operating tenant to fill a vacancy that arises after the Development Agreement Date and before Completion of Construction of the third Residential Building in the approximately 10,125 square foot building identified on Exhibit C as "(E) Restaurant" or the approximately 12,970 square foot building identified on Exhibit C as "(E) Building" shall count towards the calculation of the sixty thousand (60,000) square feet of New Retail leasing threshold. Owner's obligation to pay this additional Community Benefit Fee shall commence upon issuance of a Certificate of Occupancy for the third Residential Building and shall terminate on the earlier to occur of the following: (i) the date that at least 60,000 square feet of New Retail becomes leased; or (ii) the later to occur of either (x) the end of the Twenty Year Period or (y) expiration of the Term of this Development Agreement.

10.5.6 Additional Community Benefit Fees. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars (\$120) per year, increased at the rate of three percent (3.0%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement and annually thereafter, for each Residential Unit located in a Residential Building for which Owner has received a Certificate of Occupancy. Notwithstanding any other provision of this Development Agreement, Owner's obligation to pay the Community Benefit Fees described in this Subsection 10.5.6 shall terminate upon the expiration of this Development Agreement. Owner shall remain obligated to pay the Community Benefit Fees required in this Subsection 10.5.6 for the period of time that is equivalent to sixteen (16) years from the date of the Development Agreement Date if Owner terminates this Development Agreement for a reason other than City Default or City terminates this Development Agreement for cause under Sections 18 or 19.

10.5.7 Building IV Community Benefit Fee. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, if Owner proceeds to develop Building IV, no building permit for Residential Building IV shall issue until Owner pays City Two Million Dollars (\$2,000,000) as a non-refundable Community Benefit Fee.

10.5.8 Survival of Termination of Development Agreement. Notwithstanding any other provision of this Development Agreement to the contrary, to the extent, and for the period, necessary to implement the provisions hereof, this Section 10.5 shall survive termination of this Development Agreement pursuant to Section 2.4, Section 10.6, Section 18 and/or Section 19 of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement. Notwithstanding the previous sentence, in the event the City exercises its right to unilaterally terminate this Development Agreement pursuant to Section 10.6, Section 18 and/or Section or Section 19 of this Development Agreement before Owner has Completed Construction of the required components of Phase One pursuant to Subsection 5.4.1(C) of this Development Agreement, the City shall be deemed to have waived all rights it may otherwise have pursuant to this Development Agreement to collect from Owner that portion, if any, of the Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in Public Park In-lieu Fees attributable to that portion of the 805th through 1,162nd residential units that Owner does not Develop, which are owed pursuant to Subsection 10.3.3(E)(ii), but which have not yet been paid, and Owner's obligation to pay nonrefundable guaranteed Public Park In-lieu Fees pursuant to Subsections 10.3.2 and 10.5.4 of this Development Agreement that are attributable to Residential Units Owner does not Develop shall be capped at Twelve Million Five Hundred Seventy One Thousand Three Hundred Forty Four Dollars (\$12,571,344) [$\$15,636 \text{ per unit} \times 804 \text{ units} = \$12,571,344$].

10.6 Additional City Remedies for Non-Payment of Fees Owed by Owner. In the event the Owner fails to pay any Development Fees or Community Benefit Fees within the times set forth in this Section 10, in addition to all other legal remedies City may have pursuant to this Development Agreement and applicable law, City shall be entitled to withhold any further Ministerial Actions, Ministerial Approvals, and/or Ministerial Permits until all fees owed are paid in full. In addition to the rights granted City under Sections 17, 18, and 19, or any other provisions of this Development Agreement, and without complying with the provisions of Sections 17, 18, and 19, it is expressly understood and agreed by the Parties that the City Council may unilaterally terminate this Development Agreement if, following notice and a public hearing in accordance with applicable law, the City Council finds that Owner has failed to pay any overdue Development Fees or Community Benefit Fees in full within thirty (30) days of the date the City provides written notice to the Owner stating the type and amount of overdue fees owed. Notwithstanding Section 5.5 of this Development Agreement, this Development Agreement, the Existing Development Approvals, all Subsequent Development Approvals, and all Major Project Modifications shall automatically expire, terminate and be of no further force and effect upon the effective date of an ordinance adopted by the City Council terminating this Development Agreement based on such a finding pursuant to this Section.

10.7 Annual Development Agreement Administration Fee. Commencing July 1, 2022, and annually, on or before July 1st of every year thereafter through and including July 1, 2031, Owner shall pay City a fixed fee to partially offset the costs incurred by the City to administer this Development Agreement (the "DA Administration Fee"). The initial amount of the DA

Administration Fee shall be Twenty Thousand Dollars (\$20,000). Commencing July 1, 2023, and on each subsequent July 1st through and including July 1, 2031, the amount of the DA Administration Fee to be paid by Owner to City shall increase by three percent (3.0%).

SECTION 11 EXISTING USES; AUTOMATIC RESCISSION OF 2016 FIVE LAGUNAS ENTITLEMENTS

11.1 Existing Uses. City and Owner agree that those existing legally established uses on the Property may be retained until the Project is implemented.

11.2 Automatic Rescission of 2016 Five Lagunas Entitlements. City and Owner agree that the 2016 Five Lagunas Entitlements, and all of Owner's rights thereunder, whether vested or not, shall terminate and become null, void, and of no further force and effect at such time as all of the following have occurred: (i) the Authorizing Ordinance and this Development Agreement have each taken effect and are no longer subject to referendum; (ii) the times for appeal of the City's approval of the Existing Development Approvals and this Development Agreement have expired; (iii) all appeals, if any, by persons or entities other than Owner of the City's approval of the Existing Development Approvals and this Development Agreement have been heard and denied; (iv) the times in which to bring a legal challenge to the City's approval of the Existing Development Approvals and/or this Development Agreement have expired; and (v) any litigation filed attacking the City's approval of the Existing Development Approvals, the Project, or this Development Agreement has been finally resolved such that the Existing Development Approvals remain in full force and effect and the time in which to appeal has expired.

SECTION 12 FUTURE APPROVALS

12.1 Basis for Denying or Conditionally Granting Future Subsequent Development Approvals. Before Owner can begin Development of the Project, Owner must secure additional Subsequent Development Approvals from City. The Parties agree that to the extent said Subsequent Development Approvals are Ministerial Actions, Ministerial Approvals or Ministerial Permits, City shall not, through the enactment or enforcement of any subsequent ordinances, rules, regulations, initiatives, policies, requirements, guidelines, or other constraints, withhold such approvals as a means of blocking construction or of imposing conditions on the Project which were not imposed during an earlier approval period unless City has been ordered to do so by a court of competent jurisdiction. The Parties further agree that to the extent said Subsequent Development Approvals are Discretionary Actions, Discretionary Approvals or Discretionary Permits, City shall exercise its discretion in a manner consistent with and in recognition of the Development Plan and which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement), those Subsequent Land Use Regulations to which Owner has consented to in writing (which consent shall be in Owner's sole and absolute discretion), and such other standards, terms and conditions expressly contained in this Development Agreement. Notwithstanding the previous two sentences, City and Owner will use reasonable efforts to ensure each other that all applications for and approvals of all required Subsequent Development Approvals necessary for Owner to develop the Project in accordance with this Development Agreement are sought and processed in a timely manner.

12.2 Standard of Review of Subsequent Development Approvals. Except as otherwise provided under the Existing Development Approvals or the terms of this Development Agreement, the rules, regulations and policies that apply to any Subsequent Development Approvals which Owner must secure prior to the Development of the Property shall be the Existing Land Use Regulations, as defined in this Development Agreement.

12.3 City Review of Major Project Modifications. The rules, regulations and policies that apply to any Major Project Modification requested by Owner shall be those rules, regulations and policies in effect on the date Owner submits a complete application for said Major Project Modification. Notwithstanding the foregoing sentence or anything herein to the contrary, Owner expressly agrees that, while this Development Agreement is in effect, City shall have sole and absolute discretion whether to approve, conditionally approve, or deny any Major Project Modification requested by Owner, and Owner expressly waives any right Owner may otherwise have to approval by the City of any Major Project Modification under California law or the Zoning Code.

SECTION 13 AMENDMENT

13.1 Initiation of Amendment. Either Party may propose an amendment to this Development Agreement.

13.2 Procedure. The procedure for proposing and adopting an amendment to this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance.

13.3 Consent. Except as provided elsewhere within this Development Agreement, any amendment to this Development Agreement shall require the consent of both Parties, each in their sole and absolute discretion. No amendment of this Development Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each Party hereto.

13.4 Effect of Amendment to Development Agreement. The Parties agree that except as expressly set forth in any such amendment, an amendment to this Development Agreement shall not alter, affect, impair, modify, waive or otherwise impact any other rights, duties or obligations of either Party under this Development Agreement.

13.5 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation and flexibility between the City and Owner. The Development of the Project may demonstrate that clarifications to the Development Plan or clarifications or modifications to this Development Agreement are appropriate with respect to the details of performance of the City and Owner. To the extent allowable by law, Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Development Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda ("Operating Memoranda") approved by the Parties in writing which reference this Section 13.5. City agrees to promptly process Operating Memoranda when requested by Owner. Operating

Memoranda are not intended to constitute either a substantive change or an amendment to this Development Agreement, but are ministerial clarification; therefore public notices and hearings shall not be required. Operating Memoranda may be used and thus deemed non-substantive and/or procedural if they do not result in, for example: i) a material changes in fees or costs; ii) an increase in density or intensity of use; iii) a change in permitted uses; iv) an increase in the maximum height and size of buildings; v) a decrease in the amount of land to be dedicated for public purposes; or vi) the reduction of improvement and construction standards and specifications for the Project. The City Attorney shall be authorized, upon consultation with, and approval of, the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute either a substantive change or an amendment to this Development Agreement which requires compliance with the provisions of Section 13.2 of this Development Agreement.

SECTION 14 NON-CANCELLATION OF RIGHTS

Subject to defeasance pursuant to Sections 2, 10.6, 17, 18, 19, 21 or 22 of this Development Agreement, Owner's rights pursuant to the Existing Development Approvals shall be vested in the Property upon recordation of this Development Agreement.

SECTION 15 UNDERTAKINGS AND ASSURANCES CONTEMPLATED AND PROMOTED BY DEVELOPMENT AGREEMENT STATUTE

The mutual undertakings and assurances described above and provided for in this Development Agreement are for the benefit of City and Owner and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development which was contemplated and promoted by the Development Agreement Statute. City agrees that it will not take any actions which are intended to circumvent this Development Agreement; provided, however, that any action of the electorate shall not be deemed an action for purposes of this Section.

SECTION 16 RESERVED AUTHORITY

16.1 Reservation of Authority With Respect to Subsequent Development Approvals and Major Project Modifications. In addition to the normal and customary discretion exercised by the City in connection with consideration of applications for land use entitlements in accordance with Section 12, Owner expressly understands and agrees that all Subsequent Development Approvals that are Discretionary Actions, Discretionary Approvals, or Discretionary Permits, and all Major Project Modifications, shall also be subject to review by the City pursuant to CEQA, including but not limited to CEQA Guidelines sections 15162-15164. Notwithstanding any other provision set forth in this Development Agreement to the contrary, City reserves the right, after the Development Agreement Date to exercise the same degree of discretion and control in its consideration of Subsequent Development Approvals and Major Project Modifications that it would have in the absence of this Development Agreement to impose conditions under CEQA, and other applicable laws and regulations that apply to all similar development throughout the City, in order to mitigate the Project's impact on the environment. In addition, consistent with Section 5.1 of this Development Agreement, notwithstanding any provision of California law or

the Zoning Code to the contrary, City reserves the right after the Development Agreement Date to exercise sole and absolute discretion and control in its consideration of any Major Project Modification requested by Owner.

16.2 State and Federal Laws and Regulations. In the event that the State or Federal laws or regulations enacted after this Development Agreement has been entered into prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of the Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Development Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

16.3 Uniform Codes. This Development Agreement shall not prevent City from applying new rules, regulations and policies contained in Uniform Codes as long as adoption of the Uniform Codes applies to all development in the City.

16.4 Public Health and Safety. This Development Agreement shall not prevent City from adopting new rules, regulations and policies, including amendments or modifications to Uniform Codes described in Section 16.3 of this Development Agreement, which directly result from findings by City that failure to adopt such rules, regulations or policies would result in a condition injurious or detrimental to the public health and safety.

SECTION 17 CANCELLATION

17.1 Initiation of Cancellation. Either Party may propose cancellation of this Development Agreement.

17.2 Procedure. The procedure for proposing a cancellation of and cancelling this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance. Such procedures are set forth in Section 65868 of the California Government Code.

17.3 Consent of Owner and City. Subject to the Parties' rights and obligations regarding cancellation set forth in Section 22.3, except as otherwise provided in Section 10.6 of this Development Agreement, any cancellation of this Development Agreement shall require the mutual written consent of Owner and City, each in their sole and absolute discretion.

17.4 Fee Payment Obligations. In the event this Development Agreement is cancelled pursuant to the provisions of this Section 17, City shall be entitled to retain and/or seek payment from Owner of all Development Fees and Community Benefit Fees due to be paid pursuant to the terms of this Development Agreement prior to the date cancellation is proposed by a Party; however, Owner shall have no obligation to pay any Development Fees or Community Benefit Fees that are subject to deferral pursuant to Section 22.1.4 as of the date of cancellation or are due to be paid pursuant to the terms of this Development Agreement after the date cancellation is proposed by a Party.

SECTION 18 PERIODIC REVIEW

18.1 Time for Review. In accordance with the procedures set forth in the Development Agreement Ordinance, City shall, at least every twelve (12) months after the Development Agreement Date, review the extent of good faith compliance by Owner with the terms and conditions of this Development Agreement. Such periodic review shall determine compliance with the terms of this Development Agreement pursuant to California Government Code Section 65865.1 and other successor laws and regulations. If City fails to review the Project and the Owner's compliance with the material terms of this Development Agreement, Owner will be deemed to be in compliance with the provisions of this Development Agreement, and the Development Agreement will be deemed in full force and effect. The City's failure to review the Project or Owner's compliance with the terms of the Development Agreement, or Owner's failure to submit evidence concerning its good faith compliance with the material terms of the Development Agreement as specified in Section 18.2 of this Development Agreement, shall not constitute or be asserted by either Party as a breach of the Development Agreement by the other Party.

18.2 Owner's Submission. Each year, not less than forty-five (45) days nor more than ninety (90) days prior to the anniversary of the Development Agreement Date, Owner shall submit evidence to the City's Community Development Director demonstrating its good faith compliance with the terms and conditions of this Development Agreement.

18.3 Findings. Within sixty (60) days after the submission of Owner's evidence, the City Council shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied in good faith with the terms and conditions of this Development Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds that Owner has so complied, the review for that period shall be deemed concluded. If the City Council finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of this Development Agreement for the period under review, Owner shall be deemed to be in non-compliance of the Development Agreement, and City may proceed in accordance with Section 18.5.

18.4 Initiation of Review by City. In addition to the periodic review set forth in this Development Agreement, the City may at any time initiate a review of this Development Agreement upon the giving of written notice thereof to Owner. Within thirty (30) days following receipt of such notice, Owner shall submit evidence to the City's Community Development Director of Owner's good faith compliance with this Development Agreement and such review and determination shall proceed in the manner as otherwise provided in this Development Agreement.

18.5 Non-Compliance by Owner. If the City Council finds and determines, on the basis of substantial evidence, and subject to limitations on remedies in this Development Agreement, that Owner has not complied in good faith with the terms and conditions of this Development Agreement, City may, by written notice to Owner, specify the manner in which Owner has failed to so comply and state the steps Owner must take to bring itself into compliance. Owner shall be given at least sixty (60) days to cure such non-compliance and if the actions required to cure such non-compliance take more than sixty (60) days, then City shall give Owner additional time

provided that Owner is making reasonable progress towards such end. If during the cure period, Owner fails to cure such noncompliance or is not making reasonable good faith progress towards such end, then, the City Council may, at its discretion, proceed to modify or terminate this Development Agreement or establish a time schedule for compliance in accordance with the procedures set forth in Section 18.5 or 18.11 of this Development Agreement.

18.6 Notice to Owner. City shall give notice to Owner of the City Council's intention to proceed to modify or terminate this Development Agreement or establish a time schedule for compliance within ten (10) days of making City's findings.

18.7 Public Hearing. The City Council shall set and give notice of a public hearing on modification, termination or a time schedule for compliance to be held within forty-five (45) days after the City Council gives notice to Owner.

18.8 Decision. The City Council shall announce its findings and decisions on whether this Development Agreement is to be terminated, how this Development Agreement is to be modified or the provisions of the Development Agreement with which Owner must comply and a time schedule therefore not more than ten (10) days following completion of the public hearing.

18.9 Standard of Review. Any determination by City to terminate this Development Agreement because Owner has not complied in good faith with the terms of this Development Agreement must be based upon a finding by the City Council, on the basis of substantial evidence, that Owner is in Default and has not cured that Default in the timeframe permitted by Sections 18 and 19 of this Development Agreement, as applicable.

18.10 Implementation. Modifying or terminating this Development Agreement shall be accomplished by City enacting an ordinance. The ordinance shall recite the reasons which, in the opinion of City, make the modification or termination of this Development Agreement necessary. Not later than ten (10) days following the adoption of the ordinance, one copy thereof shall be forwarded to Owner. This Development Agreement shall be terminated or this Development Agreement as modified shall become effective on the effective date of the ordinance terminating or modifying this Development Agreement.

18.11 Schedule for Compliance. Setting a reasonable time schedule for compliance with this Development Agreement may be accomplished by City enacting a resolution. The resolution shall recite the reasons which, in the opinion of City, make it advisable to set a schedule for compliance and why the time schedule is reasonable. Not later than ten (10) days following adoption of the resolution, one copy thereof shall be forwarded to Owner. Compliance with any time schedule so established as an alternative to modification or termination shall be subject to periodic review as provided in this Development Agreement and lack of good faith compliance by Owner with the time schedule shall be basis for termination or modification of this Development Agreement.

SECTION 19 DEFAULTS AND REMEDIES

19.1 Default. In addition to the rights and remedies described in Section 18, either party may avail itself of the rights and remedies pursuant to this Section 19. Subject to Excusable Delay, Excusable Delay re Hotel, and limitations on remedies in this Development Agreement, as

applicable, and compliance with the provisions of this Development Agreement, failure or delay by either party to perform any material term or provision of this Development Agreement (a “Breach”) following notice and failure to cure as described hereafter constitutes a “Default” under this Development Agreement.

19.2 Notice of Default / Cure. The non-defaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the non-defaulting party (“Notice of Default”). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion (“Cure Period”). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a Default hereunder.

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.

19.3 Remedies. After implementation of the Project, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Development Agreement and will be investing even more significant time in implementing the Project in reliance upon the terms of this Development Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if City fails to carry out its obligations under this Development Agreement. Therefore, specific performance of this Development Agreement is the only remedy which would compensate Owner if City fails to carry out its obligations under this Development Agreement, and City hereby agrees that Owner shall be entitled to specific performance in the event of a Default by City hereunder. City and Owner acknowledge that, if Owner fails to carry out its obligations under this Development Agreement, City shall have the right, subject to Excusable Delay, Excusable Delay re Hotel, limitations on remedies in this Development Agreement, and Notice of Default and Cure Period obligations of the City in this Development Agreement, to refuse to issue any permits or other approvals which Owner would otherwise have been entitled to pursuant to this Development Agreement. If City issues a permit or other approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. Except as expressly provided in the next sentence, City’s right to specific performance shall be limited to those circumstances set forth above, and City shall have no right to seek specific performance to cause Owner to otherwise proceed with the Development of the Project in any manner. Notwithstanding the foregoing, in the event Owner Defaults on an obligation to pay any fee at the

time required pursuant to Section 10 of this Development Agreement, City shall be entitled to pursue whatever legal or equitable remedies are available to collect any such amounts due subject to Notice of Default and Cure Period provisions elsewhere in this Development Agreement.

SECTION 20 [INTENTIONALLY OMITTED]

SECTION 21 ASSIGNMENT

21.1 Right to Assign. Subject to Section 21.3, Owner shall have the right to sell, mortgage, hypothecate, assign or transfer this Development Agreement, and any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation at any time during the Term of this Development Agreement, provided that any such sale, mortgage, hypothecation, assignment or transfer must be pursuant to a sale, assignment or other transfer of the interest of Owner in the Property, or a portion thereof. In the event of any such sale, mortgage, hypothecation, assignment or transfer, (a) Owner shall notify City of such event and the name of the transferee, together with the corresponding entitlements being transferred to such transferee, and (b) the agreement between Owner and such transferee shall provide that either Owner or the transferee or both shall be liable for the performance of all obligations of Owner pursuant to this Development Agreement, the Existing Development Approvals, the Subsequent Development Approvals, and/or any Major Project Modifications. Such transferee and/or Owner shall notify City in writing which entity shall be liable for the performance of such obligations, and upon the express written assumption of any or all of the obligations of Owner under this Development Agreement by such assignee, transferee or purchaser shall, relieve Owner of its legal duty to perform said obligations under this Development Agreement with respect to the Property or portion thereof, so transferred, except to the extent Owner is in Default under the terms of this Development Agreement and/or City's consent to the assignment is required pursuant to Section 21.3.

21.2 Release upon Transfer. It is understood and agreed by the Parties that the Property may be subdivided following the Development Agreement Date. Subject to Section 21.3, one or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Development Agreement. Effective upon such sale, mortgage, hypothecation, assignment or transfer, the obligations of Owner shall become several and not joint. Upon the sale, transfer, or assignment of Owner's rights and interests under this Development Agreement as permitted pursuant to Section 21.1 of this Development Agreement, Owner shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so transferred, provided that (a) Owner is not then in Default under this Development Agreement, (b) Owner has provided to City the notice of such transfer specified in Section 21.1 of this Development Agreement, and (c) the transferee executes and delivers to City a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all the obligations of Owner under this Development Agreement, the Existing Development Approvals, the Subsequent Development Approvals, and the Major Project Modifications with respect to the property, or portion thereof, so transferred. Non-compliance by any such transferee with the terms and conditions of this Development Agreement shall not be deemed a Default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against the other Party or persons then owning or holding interest in the Property or any

portion thereof and not themselves in Default hereunder. The provisions of this Section shall be self-executing and shall not require the execution or recordation of any further document or instrument. Any and all successors, assigns and transferees of Owner shall have all of the same rights, benefits and obligations of Owner as used in this Development Agreement and the term “Owner” as used in this Development Agreement shall refer to any such successors, assigns and transferees unless expressly provided herein to the contrary.

21.3 City’s Consent. The City’s consent shall not be required to a transfer or assignment between Owner(s). Moreover, the City’s consent to a transfer or assignment pursuant to this Section 21 shall not be required unless, at the time of the transfer or assignment, Owner is in Default under the terms of this Development Agreement. If Owner is in Default under the terms of this Development Agreement, City shall consent in writing to any transfer or assignment which provides adequate security to City, in the reasonable exercise of the City’s discretion, to guarantee the cure of the Default upon completion of the transfer or assignment.

SECTION 22 GENERAL

22.1 Excusable Delay.

22.1.1 Types of Delay. Except as otherwise expressly provided in this Development Agreement, including without limitation Excusable Delay re Hotel, and subject to Subsections 22.1.2 and 22.1.3, below, performance by either Party of its obligations under this Development Agreement shall be excused, and the Term shall be extended, for periods equal to the duration of any of the following:

(A) Economic Delay. A recession, as defined by the National Bureau of Economic Research, excluding the period from the Development Agreement Date through December 31, 2022.

(B) Force Majeure Delay. Except for the Covid-19 epidemic / pandemic existing as of the Development Agreement Date, floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party’s control (including the Party’s employment force), epidemics, pandemics, government regulations, court actions (such as restraining orders or injunctions), or other similar events beyond the Party’s control.

(C) Administrative Delay. Actions of the City or other governmental agency and beyond the control of the Owner that prevent, prohibit, or unreasonably delay the Owner’s ability to proceed with Development of the Project within the time required by this Development Agreement. Delays in processing and acting on applications for the Ministerial Actions, Ministerial Approval, Ministerial Permits, or other permits or approvals by the City or other governmental agencies that are described in **Exhibit G** to this Development Agreement shall be deemed to be unreasonable if they exceed the time periods set forth in **Exhibit G**. Delays in processing and acting on applications for the Ministerial Actions, Ministerial Approval, Ministerial Permits, or other permits or approvals by the City or other governmental agencies that are not described in **Exhibit G** shall be deemed to be unreasonable if they exceed the average time it normally takes the agency to process and act on similar applications by more than thirty (30) days.

(D) Litigation Delay. Pendency of a lawsuit, petition for writ of mandate, or other legal challenge by a third party to this Development Agreement, any of the Existing Development Approvals, or any of the Subsequent Development Approvals (“Third Party Challenge”). For purposes of this Subsection 22.1.1(D), a Third Party Challenge shall be deemed to be pending from the time it is filed until such time as (a) such Third Party Challenge has been dismissed with prejudice and any period for judicial appeal or other legal challenge in connection with the challenged approvals has expired with no such appeal or legal challenge having been filed; (b) such Third Party Challenge has been finally adjudicated to judgment upholding all challenged approvals and any period for judicial appeal or other legal challenge in connection with the challenged approvals has expired with no such appeal or legal challenge having been filed; or (c) such Third Party Challenge has been otherwise resolved through settlement, release, or similar agreement and accompanying dismissal with prejudice in a manner that allows no further appeal or legal challenge to the challenged approvals. In the event of a Third Party Challenge that results in the setting aside of any portion of this Development Agreement or one or more Existing Development Approvals necessary for Development of the Project, then excusable delay pursuant to this Subsection 22.1.1(D) shall extend until such time as Owner has proposed, and City has approved, modifications or corrective actions to reapprove the challenged Existing Development Approvals in a form that is mutually acceptable to the Parties, each in its sole and absolute discretion, and the time for administrative appeal, judicial appeal, or other legal challenge relating to such corrective actions and/or reapproval has expired with no such appeal or challenge having been filed.

22.1.2 Notice. If City or Owner seeks excuse from performance pursuant to this Section 22.1, it shall provide written notice of such delay to the other Party within thirty (30) days after the Party reasonably becomes aware of the commencement of such delay. If the delay or Default, whether material or immaterial, is beyond the control of the Party seeking excuse from performance, it shall be excused, and extension of time for such cause shall be granted in writing for the period of the Excusable Delay, or longer as may be mutually agreed upon in writing. Any disagreement between the Parties with respect to whether this Section 22.1 applies to a particular delay or Default is subject to the filing by either Party of an action for judicial review of the matter, including requests for declaratory and/or injunctive relief.

22.1.3 Certain Fee Payment Obligations Not Subject to Excusable Delay. Notwithstanding Subsections 22.1.1 and 22.1.2, above, except as otherwise expressly provided in Subsection 22.1.4, below, Owner expressly acknowledges and agrees that it is obligated to pay the nonrefundable guaranteed Development Fees and Community Benefit Fees described in Subsections 10.3.3(A)-(E), 10.4.2, 10.5.1, and 10.5.2 of this Development Agreement, and **Exhibit D**, Milestones One, Two, Four, Six, and Eight, at the times specified in said provisions and **Exhibit D**, and that the excusable delay provisions of this Section 22.1 shall not apply to or operate to extend the time by which Owner is obligated to pay said Development Fees and Community Benefit Fees.

22.1.4 Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay. Notwithstanding Subsection 22.1.3, above, subject to the provisions of this Subsection 22.1.4, Owner may defer payment of those Public Park In-lieu Fees that would otherwise be due to City pursuant to Subsections 10.3.3 (A), (B), (C), and/or (D) and **Exhibit D** Milestones One, Four, and/or Six during the pendency of any Litigation Delay pursuant to

Subsection 22.1.1(D). Within ten (10) business days after the date the period of Litigation Delay ends, and provided that this Development Agreement is not terminated pursuant to Subsection 2.3 or cancelled pursuant to Subsections 22.3.2 or 22.3.3 hereof, Owner shall remit all deferred Public Park In-lieu Fees to City. By means of example, if the period of Litigation Delay ends on a date that is one year from the Development Agreement Date (and this Development Agreement is not terminated or cancelled), Owner will remit to City the first Public Park In-lieu Fee payment of Two Million Dollars (\$2,000,000) corresponding with Milestone One within ten (10) business days; however, if the Development Agreement is terminated pursuant to Subsection 2.3 or cancelled pursuant to Subsection 22.3.2 or 22.3.3 hereof, Owner shall not be required to remit said payment to the City. This Subsection 22.1.4 shall not be interpreted or construed to extend or relieve Owner of the obligation to pay Public Park In-lieu Fees due at the time of issuance of a vertical building permit for a Residential Building.

22.2 Construction of Development Agreement. The language in all parts of this Development Agreement shall in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of constructions. This Development Agreement shall be governed by the laws of the State of California. The Parties understand and agree that this Development Agreement is not intended to constitute, nor shall it be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of City, and in particular, City's police powers. In this regard, the Parties understand and agree that this Development Agreement shall not be deemed to constitute the surrender or abnegation of City's governmental powers over the Property.

22.3 Severability; Court Finding Materially Impairing Consideration; Cancellation For Protracted Litigation Delay or Significant CEQA-Related Costs.

22.3.1 Severability. If any provision of this Development Agreement shall be adjudged to be invalid, void or unenforceable, such provision shall in no way affect, impair or invalidate any other provision hereof, unless such judgment affects a material part of this Development Agreement, and the Parties hereby agree that they would have entered into the remaining portions of this Development Agreement not adjudged to be invalid, void or illegal. In the event that all or any portion of this Development Agreement is found to be unenforceable, this Development Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and, subject to Section 17 and Subsection 22.3.2, below, the Parties further agree that in such event they shall take all steps necessary to comply with such public hearings and/or notice requirements as may be necessary in order to make valid this Development Agreement or that portion which is found to be unenforceable.

22.3.2 Court Finding Materially Impairing Consideration. Notwithstanding any other provisions of this Development Agreement, in the event (i) any material provision of this Development Agreement, any of the Existing Development Approvals approved prior to the Development Agreement Date, and/or any of the Existing Land Use Regulations are found by a court to be unenforceable, void, or voidable, (ii) such court finding materially impairs the bargained-for consideration to be received by either Party under this Development Agreement, including, but not limited to, by preventing Owner from Developing the Project in accordance with the Existing Land Use Regulations and the Existing Development Approvals approved prior to the

Development Agreement Date or by reducing or eliminating any of the public benefits, fees, public improvements or services, or dedications to be received by City pursuant to this Development Agreement, and (iii) any provision found to be unenforceable, void or voidable cannot be made valid by the undertaking of additional environmental review pursuant to CEQA, the holding of additional public hearings, and/or compliance with additional notice requirements, then the Parties agree that they will meet and confer in good faith to attempt to agree, each in its sole and absolute discretion, to modifications and/or other corrective actions consistent with state law; provided, however, that if the Parties are unable to agree to mutually acceptable modifications and/or corrective action within ninety (90) days of the court's finding, then, upon the written request of either Party, Owner and City agree they shall take all steps necessary to mutually cancel this Development Agreement in accordance with the provisions of Section 17 hereof.

22.3.3 Cancellation for Protracted Third-Party Litigation or Significant CEQA-Related Costs. Owner acknowledges that the pendency of any Third Party Challenge shall not give rise to an immediate right to seek cancellation of this Development Agreement. However, Owner shall have the right to initiate cancellation of this Development Agreement pursuant Section 17, and City shall take all necessary steps to mutually cancel this Development Agreement, if either of the following occur: (i) the period of Litigation Delay lasts longer than four (4) consecutive years; or (ii) Owner is required to provide additional mitigation, improvements, or services that have a cost to Owner equal to or in excess of Five Million Dollars (\$5,000,000) as a result of additional environmental review pursuant to CEQA that is undertaken as a result of a successful Third Party Challenge.

22.4 Cumulative Remedies. Subject to express limitations on remedies elsewhere in this Development Agreement, including but not limited to Sections 5.4.1(H), 18.8 and 19.3, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of anyone or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

22.5 Indemnification. Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify and hold City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees harmless from any liability for damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from the construction activities of Owner or Owner's contractors, subcontractors, agents, or employees which relate to the Project whether such activities be by Owner, or by any of Owner's contractors, subcontractors, or by anyone or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Additionally, Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify, and hold harmless City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature whatsoever arising out of City's approval of or its performance under this Development Agreement and/or the Existing Development

Approvals, Subsequent Development Approvals and/or Major Project Modifications. City may in its discretion participate in the defense of any such legal action. The provisions of this Subsection shall not be binding on Owner to the extent the liability arises out of the gross negligence or willful misconduct of City, or its elective and appointive councils, boards, commissions, officers, officials, agents, representatives or employees. Owner's indemnity obligations set forth in this Development Agreement shall survive termination of this Development Agreement.

22.6 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement and/or the Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications, the Parties hereby agree to cooperate fully with each other in defending said action and the validity of each provision of this Development Agreement; however, it is expressly understood and agreed to by Owner that Owner shall be solely liable for all legal expenses and costs incurred in defending any such action. The Parties mutually agree that staff time spent by City employees in relation to any such action does not constitute legal expenses or costs payable by Owner. City shall have the right to approve or select legal counsel to defend against any such legal action. Owner shall pay any attorneys' fees awarded against City or Owner, or both, resulting from any such legal action. Owner shall be entitled to any award of attorneys' fees arising out of any such legal action.

22.7 Public Agency Coordination. City and Owner shall cooperate and use reasonable efforts in coordinating the implementation of the Existing Development Approvals, Subsequent Development Approvals, and/or Major Project Modifications with other public agencies, if any, having jurisdiction over the Property or the Project.

22.8 Initiative Measures. Both City and Owner intend that this Development Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, referendum, statute, ordinance or other limitation (whether relating to the rate, timing or sequencing of the Development or construction of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use approved, issued or granted within City, or portions of City, and which Agreement shall apply to the Project to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation is inconsistent or in conflict with this Development Agreement. Should an initiative, measure, moratorium, referendum, statute, ordinance, or other limitation be enacted by the citizens of City which would preclude construction of all or any part of the Project, and to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Development Agreement, Owner shall have no recourse against City pursuant to the Development Agreement, but shall retain all other rights, claims and causes of action under this Development Agreement not so invalidated and any and all other rights, claims and causes of action at law or in equity which Owner may have independent of this Development Agreement with respect to the Project. The foregoing shall not be deemed to limit Owner's right to appeal any such determination that such initiative, measure, referendum, statute, ordinance or other limitation invalidates or prevails over all or any part of this Development Agreement. City agrees to cooperate with Owner in all reasonable manners in order to keep this Development Agreement in full force and effect, provided Owner shall reimburse City for its out-of-pocket expenses incurred directly in connection with

such cooperation and City shall not be obligated to institute a lawsuit or other court proceedings in this connection.

22.9 Attorneys' Fees. In the event of any dispute between the Parties involving the covenants or conditions contained in this Development Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

22.10 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall not be construed as a waiver of any succeeding breach of nonperformance of the same or other covenants and conditions hereof.

22.11 Authority to Execute. The person executing this Development Agreement on behalf of Owner represents and warrants that he/she has the authority to execute this Development Agreement on behalf of his/her partnership and represents and warrants that he/she has the authority to bind Owner to the performance of Owner's obligations hereunder.

22.12 Notice.

22.12.1 To Owner. Any notice required or permitted to be given by City to Owner under or pursuant to this Development Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of Owner or mailed with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed; to Owner as follows:

MGP Fund X Laguna Hills, LLC
4365 Executive Drive, Suite 1400
San Diego, California 92121
Attn: Scott McPherson, Managing Partner

With copies to: Perkins Coie LLP
505 Howard Street Suite 1000
San Francisco, CA 94105
Attn: Matthew Gray

or such changed address as Owner shall designate in writing to City.

22.12.2 To City. Any notice required or permitted to be given to City under or pursuant to this Development Agreement shall be made and given in writing, if by mail addressed to:

City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, California 92653

With copies to: Gregory E. Simonian
 City Attorney - City of Laguna Hills
 Woodruff, Spradlin & Smart
 555 Anton Boulevard, Suite 1200
 Costa Mesa, California 92626

or such changed address as City shall designate in writing to Owner. Alternatively, notices to City may also be personally delivered to the City Clerk, at the Laguna Hills City Hall, 24035 El Toro Road, Laguna Hills, California 92653, together with copies marked for the City Manager and the City Attorney or, if so addressed and mailed, with postage thereon fully prepaid, registered or certified mail, return receipt requested, to the City Council in care of the City Clerk at the above address with copies likewise so mailed to the City Manager and the City Attorney, respectively and also in care of the City Clerk at the same address. The provisions of this Section shall be deemed permissive only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

22.13 Captions. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Development Agreement.

22.14 Consent. Except as otherwise provided herein, any consent required by the Parties in carrying out the terms of this Development Agreement shall not unreasonably be withheld.

22.15 Further Actions and Instruments. Each of the Parties shall cooperate with and reasonably provide to the other to the extent contemplated hereunder in the performance of all obligations under this Development Agreement and the satisfaction of the conditions of this Development Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

22.16 Subsequent Amendment to Authorizing Statute. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute in effect as of the Development Agreement Date. Accordingly, to the extent that subsequent amendments to the Development Agreement Statute would affect the provisions of this Development Agreement, such amendments shall not be applicable to this Development Agreement unless necessary for this Development Agreement to be enforceable or unless this Development Agreement is modified pursuant to the provisions set forth in this Development Agreement and California Government Code Section 65868 as in effect on the Development Agreement Date.

22.17 Governing Law. This Development Agreement, including, without limitation, its existence, validity, construction and operation, and the rights of each of the Parties shall be determined in accordance with the laws of the State of California.

22.18 Effect on Title. Owner and City agree that this Development Agreement shall not continue as an encumbrance against any portion of the Property as to which this Development Agreement has terminated.

22.19 Mortgagee Protection. Entering into or a breach of this Development Agreement shall not defeat, render invalid, diminish, or impair the lien of Mortgagees having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Development Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu thereof.

22.20 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If the City Clerk timely receives notice from a Mortgagee requesting a copy of any Notice of Default given to Owner under the terms of this Development Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the Notice of Default to Owner. The Mortgagee shall have the right, but not the obligation, for a period up to sixty (60) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy the Default unless a further extension of time to cure is granted in writing by City. If the Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the Default or noncompliance within thirty (30) days after obtaining possession. If any such Default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default or non-compliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

22.21 Bankruptcy. Notwithstanding the foregoing provisions of Section 22.20 of this Development Agreement, if any Mortgagee is prohibited from commencing or pursuing and prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving City, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

22.22 Disaffirmance.

22.22.1 New Development Agreement upon Most Senior Mortgagee's Request. City agrees that in the event of termination of this Development Agreement by reason of any Default by City, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Owner or its property, City, if requested by any Mortgagee, shall enter into a new Development Agreement for the Project with the most senior Mortgagee requesting such new agreement, for the remainder of the Term, effective as of the date of such termination, upon the terms, provisions, covenants and agreements as herein contained to the extent and subject to the law then in effect, and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(a) The Mortgagee shall make written request upon City for the new Development Agreement for the Project within thirty (30) days after the date of termination;

(b) The Mortgagee shall pay to City at the time of the execution and delivery of the new Development Agreement for the Project expenses, including reasonable attorneys' fees, to which City shall have been subjected by reason of Owner's Default; and

(c) The Mortgagee shall perform and observe all covenants herein contained on Owner's part to be performed, and shall further remedy any other conditions which Owner under the terminated agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the Mortgagee.

22.22.2 New Development Agreement Not Required. Nothing herein contained shall require any Mortgagee to enter into a new Development Agreement pursuant to Subsection 22.22.1 of this Development Agreement, nor to cure any Default of Owner referred to above.

22.23 No Third Party Beneficiaries. This Development Agreement and all provisions hereof is made and entered into for the sole protection and benefit of City, Owner and their successors and assigns. No other person shall have right of action based upon any provision in this Development Agreement.

22.24 Jurisdiction and Venue. Any action at law or in equity arising under this Development Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Development Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

22.25 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Development Agreement. No partnership, joint venture or other association of any kind is formed by this Development Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such private property. The Parties mutually acknowledge and agree that this Development Agreement does not confer upon or entitle Owner to any subsidy or reduction in fees from City pertaining to Owner's Development of the Project or the Parties' rights and obligations hereunder.

22.26 Restrictions. Owner shall place in any agreements to sell or convey any interest in the Property or any portion thereof, provisions making the terms of this Development Agreement binding on any successors in interest of Owner and express provision for Owner or City, acting separately or jointly, to enforce the provisions of this Development Agreement and to recover attorneys' fees and costs for such enforcement.

22.27 Recitals. The recitals in this Development Agreement constitute part of this Development Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Development Agreement.

22.28 Recording. The City Clerk shall cause a copy of this Development Agreement to be executed by City and recorded in the Official Records of Orange County no later than ten (10) days after the Development Agreement Date.

22.29 Entire Agreement. This Development Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Development Agreement, and this Development Agreement supersedes all previous negotiations, discussions and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

22.30 Successors and Assigns. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement inure to all successors in interest and assigns of the Parties to the Development Agreement.

22.31 Exhibits. All exhibits, including attachments thereto, are incorporated in this Development Agreement in their entirety by this reference and shall be enforceable by the Parties, except as otherwise expressly provided in this Development Agreement.

22.32 Waiver of Right to Protest. Execution of this Development Agreement is made by Owner without protest. Owner knowingly and willingly waives any rights it may have under Government Code Section 66020 or any other provision of law to protest the imposition of any fees, dedications, reservations, or other exactions which are specifically imposed on the Project by this Development Agreement.

[Signatures appear on the following page]

IN WITNESS WHEREOF, City and Owner have executed this Development Agreement as of the date and year first above written.

“CITY”

CITY OF LAGUNA HILLS, a California
municipal corporation

By: _____
KENNETH H. ROSENFELD,
Interim City Manager

ATTEST:

MELISSA AU-YEUNG,
City Clerk

APPROVED AS TO FORM:

STRADLING YOCCA CARLSON &
RAUTH,
Thomas P. Clark Jr.

“OWNER”

MGP FUND X LAGUNA HILLS, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

All signatures to be acknowledged by a Public Notary

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

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

WITNESS my hand and official seal.

Notary Public

(seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

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

WITNESS my hand and official seal.

Notary Public

(seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

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

WITNESS my hand and official seal.

Notary Public

(seal)

EXHIBIT A
PROPERTY DESCRIPTION AND DEPICTION

Attachment: Proposed Ordinance and Development Agreement (2775 : Second Reading & Adoption of Ordinance - Village at Laguna Hills

LEGAL DESCRIPTION

Real property in the City of Laguna Hills, County of Orange, State of California, described as follows:

PARCEL 1: (APNS: 621-221-02, 621-221-03, 621-221-04, 621-221-05, 621-221-06, 621-221-07, 621-221-08, 621-221-09, 621-221-10, 621-221-11, 621-221-12, 621-221-13 AND 621-221-14)

LOTS 1 THROUGH 11 AND LOTS A AND B OF TRACT NO. 18115, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 978, PAGES 1 THROUGH 25 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION GRANTED TO THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, BY GRANT DEED RECORDED SEPTEMBER 23, 2020 AS INSTRUMENT NO. 2020000519057 OF OFFICIAL RECORDS.

EXCEPTING ½ OF ALL GAS, OIL, HYDROCARBONS, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSES WHATSOEVER, AS RESERVED BY FIRST WESTERN BANK AND TRUST COMPANY, A CORPORATION, WHO ACQUIRED TITLE AS FIRST NATIONAL BANK IN SANTA ANA, A CORPORATION, IN THE DEED RECORDED DECEMBER 04, 1961 IN BOOK 5931, PAGE 586 OF OFFICIAL RECORDS AND RE-RECORDED DECEMBER 11, 1961 IN BOOK 5939, PAGE 534, OF OFFICIAL RECORDS.

PARCEL 2: (APN: 621-051-39)

PARCEL "A" OF LOT LINE ADJUSTMENT LLA 3-16-3493, RECORDED AUGUST 04, 2016 AS INSTRUMENT NO. 2016000360834, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION DEEDED TO THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, BY GRANT DEED RECORDED SEPTEMBER 23, 2020 AS INSTRUMENT NO. 2020000519056 OF OFFICIAL RECORDS.

PARCEL 3: (APNS: 621-051-38 AND 621-051-41)

PARCEL D OF LOT LINE ADJUSTMENT LLA 3-16-3493, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED AUGUST 04, 2016 AS INSTRUMENT NO. 2016000360834, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION DEEDED TO THE STATE OF CALIFORNIA AS PER GRANT DEED RECORDED SEPTEMBER 23, 2020 AS INSTRUMENT NO. 2020000519038, OF OFFICIAL RECORDS.

PARCEL 4: (APN: 621-141-058)

LOT 2 OF TRACT NO. 6106, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 232, PAGES 6 THROUGH 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID LOT 2 LYING SOUTHEASTERLY AND EASTERLY OF THAT CERTAIN LINE DESCRIBED IN "CONSTRUCTION", "OPERATION AND RECIPROCAL EASEMENTS AGREEMENT" ALSO CALLED "REA" EXECUTED BY ROSSMOOR CORPORATION, A CALIFORNIA CORPORATION AND OTHERS, RECORDED FEBRUARY 29, 1972 IN BOOK 10018, PAGE 325 OF OFFICIAL RECORDS, SAID LINE BEING DESCRIBED AS FOLLOWS; "THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH 45° 00' 00" EAST 90.81 FEET TO A TANGENT CURVE CONCAVE, NORTHWESTERLY AND HAVING A RADIUS OF 20.00 FEET; THEREON NORTHEASTERLY 14.86 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 42° 34' 35" TO A TANGENT LINE; THENCE NORTH 02° 25' 25" EAST 153.15 FEET; THENCE NORTH 08° 56' 03" WEST 35.54 FEET RADIALLY TO A POINT ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1260.00 FEET, AND CURVE BEING CONCENTRIC WITH A SAID CURVE SHOWN ON MAP OF LOT 2 OF TRACT NO. 5061, AS SHOWN ON A MAP RECORDED IN BOOK 183, PAGE 4 OF MISCELLANEOUS MAPS OF ORANGE COUNTY, AS HAVING A RADIUS OF 1252.00 FEET AND BEING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF IMPROVEMENTS OF EL TORO ROAD."

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF LAGUNA HILLS, A CALIFORNIA MUNICIPAL CORPORATION, MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED AUGUST 18, 2006 AS INSTRUMENT NO. 2006000554765 OF OFFICIAL RECORDS.

EXCEPTING ½ OF ALL GAS, OIL, HYDROCARBON, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSE WHATSOEVER, AS RESERVED BY FIRST WESTERN BANK AND TRUST COMPANY, A CORPORATION, WHO ACQUIRED TITLE AS FIRST NATIONAL BANK IN SANTA ANA, A CORPORATION, IN THE DEED RECORDED DECEMBER 04, 1961 IN BOOK 5931, PAGE 586 OF OFFICIAL RECORDS AND RE-RECORDED DECEMBER 11, 1961 IN BOOK 5939, PAGE 534 OF OFFICIAL RECORDS.


 PATRICK A. MCMICHAEL, L.S. 6187

3-16-2021
 DATE



- EXCEPTION PARCEL 1 PER
DEED REC'D 9-23-2020 AS
INSTR. NO. 2020000519057, O.R.

— EXCEPTION PARCEL 3
PER DEED REC'D 9-23-2020 AS
INSTR. NO. 2020000519038, O.R.

EXCEPTION PARCEL 2
PER DEED REC'D 9-23-2020 AS
INSTR. NO. 2020000519056, O.R.

—*PARCEL 2*

LLA 3-16 -3493

DOC. NO. 2016 00036 08 34

– *PARCEL 3*

PARCEL D

PARCEL 1

1

2

LOT A—CALLE DE LA LOUISA

—(PRIVATE STREET)

CALLE DE LOS
CABALLEROS

PASEO DE LA
VALENCIA

EL TORO ROAD

TRACT

LOT B
PRIVATE ST.

**CALLE DE
LA PLATA**

5620 FRIARS ROAD J. 18459
SAN DIEGO, CA 92110
619-291-0707
(FAX) 619-291-4165

RICKTM
ENGINEERING COMPANY

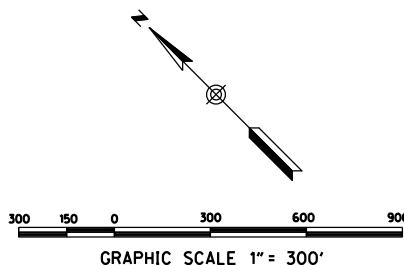


EXHIBIT B

DEVELOPMENT FEES

Public Park In-lieu Fees

Amount of Fee. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to the Project, regardless of whether Owner proposes a subdivision map for each Residential Building. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code.

Nonrefundable Guaranteed Fees. As material consideration for City's entering into this Development Agreement, the Owner expressly agrees that, except as provided in Subsection 10.5.8 and Section 17.4 of this Development Agreement, notwithstanding any provision of Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or other provisions of law, Eighteen Million One Hundred Sixty Nine Thousand Thirty Two Dollars (\$18,169,032), which represents an amount equal to the Public Park In-lieu Fees attributable to the first one thousand one hundred sixty two (1,162) residential units anticipated to be Developed by Owner, shall be nonrefundable, and must be paid to City even if no or less than one thousand one hundred sixty two (1,162) residential units are actually constructed. Owner agrees to pay these nonrefundable fees at the times set forth in Section 10.3.3 and **Exhibits B and D** of this Development Agreement. To the extent any portion of said fees are paid prior to the issuance of a vertical building permit for the Residential Building containing any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E) of this Development Agreement, such portion shall constitute Community Benefit Fees when paid, subject to Section 10.5.4, but shall be credited and applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for the Residential Building containing said residential unit, provided a vertical building permit is issued for the Residential Building containing the residential unit during the Term of this Development Agreement and such building permit is not revoked and does not expire. No portion of the nonrefundable, guaranteed fees that are paid or owed pursuant to Section 10.3 of the Development Agreement shall be credited or applied to any residential units on the Property for which a vertical building permit is issued after the expiration or termination of this Development Agreement. Said payments shall be subject to Section 10.5.4 of this Development Agreement, and Owner expressly agrees that these payments shall be nonrefundable, and that the City may retain and expend that portion, if any, of such nonrefundable fees that are paid by Owner to City, which are attributable to residential units which are not actually constructed, or which City would otherwise be required to refund to Owner or other record owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, Section 10.3.2 of the Development Agreement shall survive termination of this Development Agreement and remain

enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

Timing of Payment of Public Park In-lieu Fees and/or Community Benefit Fees that may be deemed Credits Against Public Park In-lieu Fees. Notwithstanding any provision of Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or other law, the Parties expressly agree that the Public Park In-lieu Fees attributable to the residential units constructed, or anticipated to be constructed, as part of the Project, shall be paid in the amounts and at the times specified below:

(A) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(B) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues a vertical building permit for Retail Buildings, or any new Office Buildings; or (ii) the date that is four (4) years after the Development Agreement Date (**Exhibit D**, Milestone Four). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(C) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues the first certificate of occupancy for any Retail Buildings, or any Office Buildings; or (ii) the date that is seven (7) years after this Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(D) Owner shall pay City Six Million Five Hundred Seventy-One Thousand Three Hundred Forty Four Dollars (\$6,571,344) in increments at the following times: (i) Eight Thousand One Hundred Seventy Three Dollars (\$8,173)¹ per unit for each of the first 804 residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is seven (7) years after this Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided

¹ This amount is calculated as follows: $[(\$15,636 \text{ per unit} \times 804 \text{ units}) - (\$6,000,000)] / 804 \text{ units}$.

in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the amount of the Public Park In-Lieu Fees applicable to the first 804 residential units that are required to be paid pursuant to Subsection 10.3.3(D) of this Development Agreement have been reduced to reflect the three payments of Two Million Dollars (\$2,000,000) required pursuant to Subsections 10.3.3 (A)-(C) of the Development Agreement.

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636) per for each of the next 358 units² residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Nine). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(F) Owner shall pay City Fifteen Thousand Six Hundred Thirty-Six Dollars (\$15,636) per unit for each additional residential unit Owner Develops as part of the Project after the 1,162nd residential unit, prior to the issuance of a vertical building permit for the Residential Building containing the residential unit.

The Parties expressly acknowledge and agree that the Public Park In-lieu Fee payment obligations set forth in Section 10.3 of this Development Agreement may be assumed, in whole or in part, by a residential developer or other person or entity that purchases a portion of the Property on which a Residential Building is designated to be Developed, and agrees to assume such payment obligations in accordance with to the provisions of Section 21 of this Development Agreement (Assignment).

Public Art / Public Art In-Lieu Fees

Owner shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of the Development Agreement ("Owner's Public Art Obligation"). Pursuant to the Specific Plan, the minimum aggregate value of Owner's Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which shall be based on the valuation as determined by the City's Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project. The Parties agree that (a) Six Hundred Fifty Thousand Dollars (\$650,000) of Owner's Public Art Obligation shall be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of the Development Agreement, and (b) that portion of Owner's Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Property, as approved by the City, and may not be satisfied through contribution to the City's Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in the "Public Art" provisions

² This amount applies to the 805th residential unit through the 1,162nd residential unit.

of Section V, at pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The procedures, timing, and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in **Exhibit H** to the Development Agreement.

Credit. The City acknowledges and agrees that Owner paid a Public Art In-lieu Fee to the City the amount of Three Hundred Thousand Dollars (\$300,000) for improvements authorized by the 2016 Five Lagunas Entitlements that were ultimately not constructed. Accordingly, the City agrees it will credit this payment towards Owner's Public Art Obligation for the Project.

Nonrefundable Advance. Notwithstanding any provision of the Specific Plan, the Mitigation Fee Act, or other provisions of State law, the Parties expressly agree that Owner shall pay City a nonrefundable Public Art In-lieu Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), in advance, on or before the date that is ninety (90) days after the Development Agreement Date. Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement. The City shall credit this payment against Owner's Public Art Obligation for the Project. However, said payment shall be subject to the provisions of Section 10.5.3 of this Development Agreement and Owner expressly agrees that this payment shall be nonrefundable to Owner, and that the City may retain and expend such payment, even if Owner's Public Art Obligation for the Project is less than Three Hundred Fifty Thousand Dollars (\$350,000). Owner acknowledges and agrees that the Three Hundred Thousand Dollar (\$300,000) credit provided for in Subsection 10.4.1 of the Development Agreement shall not be applied to reduce Owner's obligation to pay the nonrefundable guaranteed fee required by Subsection 10.4.2 of the Development Agreement. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, Section 10.4.2 of this Development Agreement shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

Traffic Impact Mitigation Fees

The Project, as initially approved pursuant to the Existing Development Approvals, does not trigger payment of the traffic impact mitigation fee in accordance with Chapter 9-102 of the Laguna Hills Municipal Code. If, however, there are future amendments or modifications to the Project, prior to issuance of any building permits, the Owner shall, pursuant to Chapter 9-102, pay a traffic impact mitigation fee, if applicable.

EXHIBIT C
PROJECT SITE PLAN (AT FULL BUILD-OUT)

Attachment: Proposed Ordinance and Development Agreement (2775 : Second Reading & Adoption of Ordinance - Village at Laguna Hills

Exhibit C

SITE PLAN
GROUND LEVEL

LEGEND

- Retail / Restaurant / Health Club / Cinema
- Residential
- Office
- Hotel
- Structured Parking

PHASE SUMMARY*

Overall Site Area	±2,935,730 SF / ±67.8 Acres
District Area	±756,175 SF / ±17.4 Acres
Retail / Restaurant / Health Club / Cinema	250,000 SF
District Area	±97,300 SF / ±2.2 Acres
Hotel	100-150 Rooms
District Area	±796,175 SF / ±18.2 Acres
Office	465,000 SF
District Area	±1,286,080 SF / ±30.0 Acres
Residential / Mixed-Use	1,500 Units
Parking Required	5,824 Stalls
Parking Provided	5,939 Stalls

* See full breakdown on Project & Parking Summaries, Sheets SD1.01 & SD1.02.

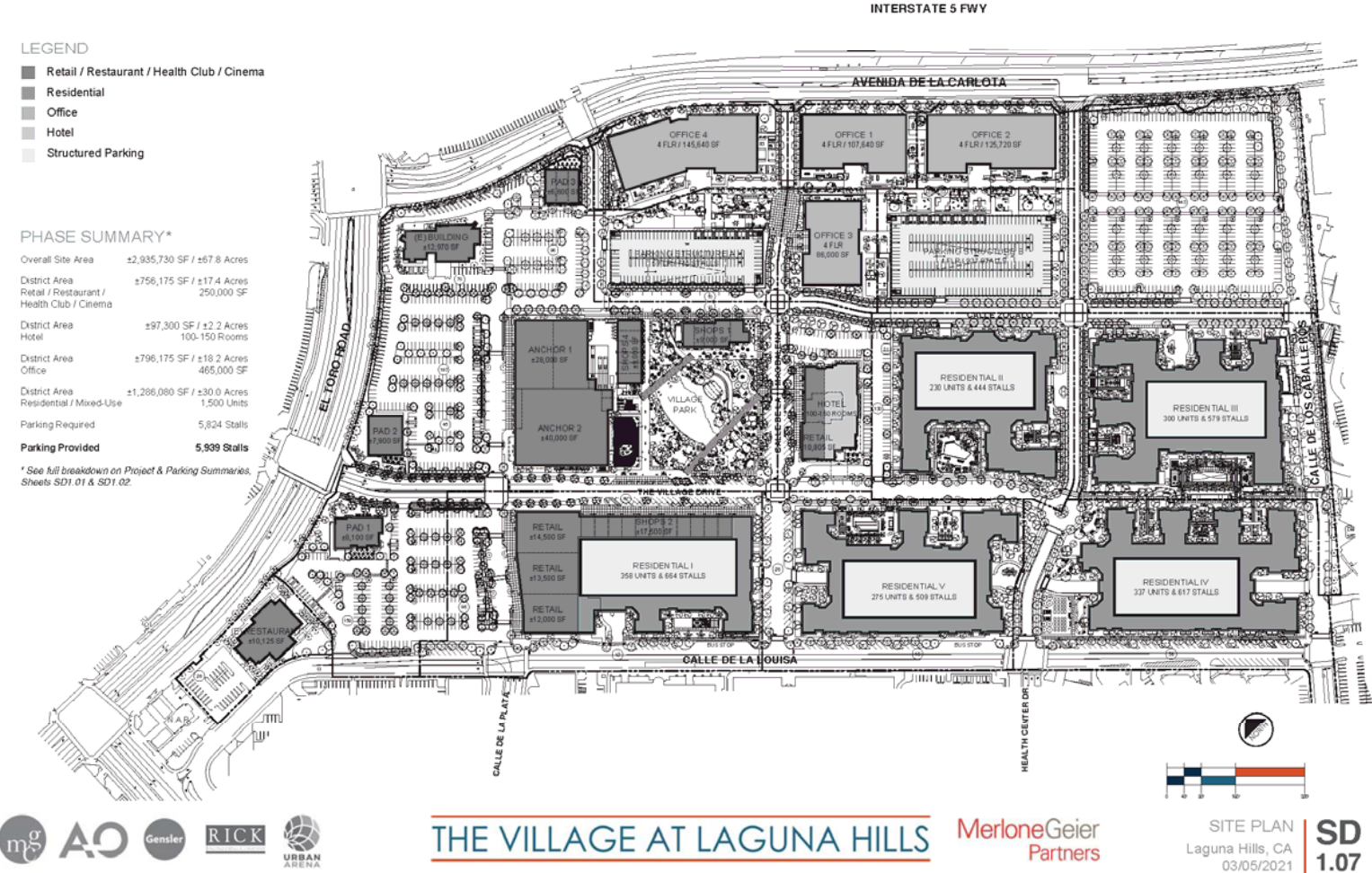


Exhibit C

SITE PLAN
UPPER FLOOR(S)

LEGEND

- Retail / Restaurant / Health Club / Cinema
- Residential
- Office
- Hotel
- Structured Parking

PHASE SUMMARY*

Overall Site Area	±2,935,730 SF / ±67.8 Acres
District Area	±756,175 SF / ±17.4 Acres
Retail / Restaurant / Health Club / Cinema	250,000 SF
District Area	±97,300 SF / ±2.2 Acres
Hotel	100-150 Rooms
District Area	±796,175 SF / ±18.2 Acres
Office	465,000 SF
District Area	±1,286,080 SF / ±30.0 Acres
Residential / Mixed-Use	1,500 Units
Parking Required	5,824 Stalls
Parking Provided	5,939 Stalls

* See full breakdown on Project & Parking Summaries, Sheets SD1.01 & SD1.02

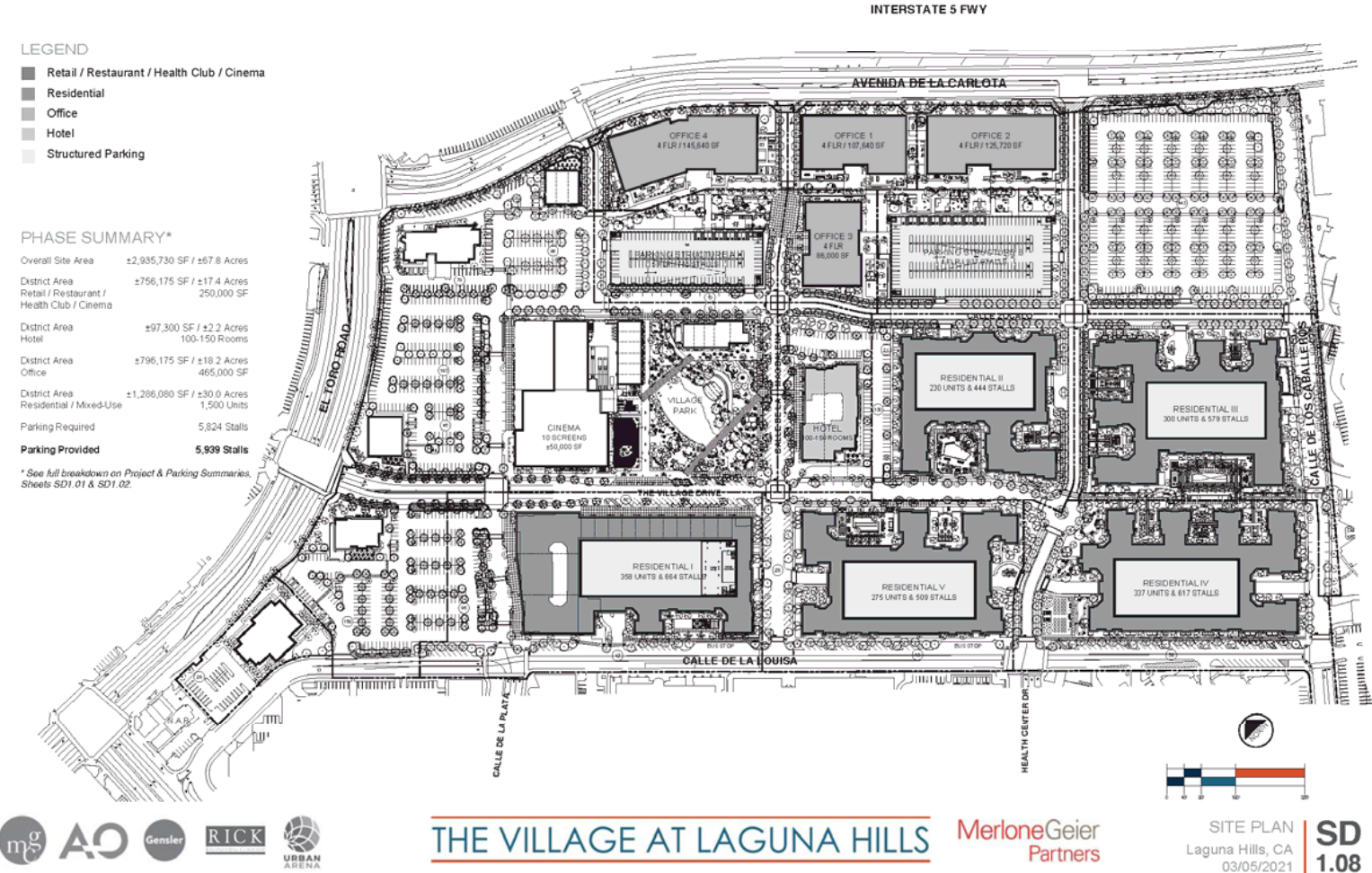


Exhibit C

EXHIBIT D

DEVELOPMENT AGREEMENT MILESTONES

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone One	90 Days From Development Agreement Date	Owner shall have submitted the following Fees to the City: • Public Art In-lieu Fee Advance Payment of \$350,000 (§10.4.2) • 1st Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(A))¹ • 1st Nonrefundable Community Benefit Fee Payment of \$1,113,533 (§10.5.1(A))	No
Milestone Two	15 Months from Development Agreement Date	Owner shall have submitted the following Fees to the City: • 2nd Nonrefundable Community Benefit Fee Payment of \$1,113,533 (§10.5.1(B))	No
Milestone Three	18 Months from Development Agreement Date	Owner shall have submitted a complete application for a Final Map for those parcels on which the Village Park, the Hotel, Retail Buildings containing at least one hundred forty thousand (140,000) square feet of space, and at least two (2) Residential Buildings for Phase One shall be Developed (§5.4.1(A))	Yes

Exhibit D-1

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Four	4 Years (48 Months) from Development Agreement Date	Owner shall have submitted the following Fees to the City: • 2nd Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(B))¹	No
Milestone Five	4.5 Years (54 Months) from Development Agreement Date	Owner shall have submitted a complete application for a building permit for vertical construction of at least one Phase One building (§5.4.1(B))	Yes
Milestone Six	7 Years from Development Agreement Date	Owner shall have Completed Construction of all required Phase One Components (§5.4.1(C)) Owner shall have submitted the following Fees to the City: • 3rd Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(C))¹ • Entire Remaining Balance, if any, of \$6,571,344 in Nonrefundable Public Park In-lieu Fees attributable to first 804 residential units (§10.3.3(D))¹ • In the event Owner has not Completed Construction of the Hotel, an additional Community Benefit Fee of \$500,000 (§10.5.2)	Yes No

¹ Owner's obligation to make this nonrefundable guaranteed fee payment is not subject to Excusable Delay; however, Owner may defer payment of this fee during the pendency of Litigation Delay pursuant to Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay) of the Development Agreement.

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Seven	5 Years from Date of City's issuance of the final certificate of occupancy for the Retail Buildings and Residential Buildings required to Developed as part of Phase One pursuant to §§ 5.4.1(C) (ii), (iv), and (v)	Owner shall have recorded a Final Map approved by the City for those parcels on which the Retail Buildings and Residential Buildings for Phase Two required to be completed pursuant to Section 5.4.2(B) shall be Developed (§5.4.2(A))	Yes
		Owner shall have obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two (§5.4.2(A))	Yes
Milestone Eight	15 Years from Development Agreement Date (End of Initial Term)	Owner shall have submitted the following Fees to the City: Entire Remaining Balance, if any, of \$5,597,688 in Nonrefundable Public Park In-lieu Fees attributable to the 805th residential unit through the 1,162nd residential unit (§10.3.3(E))	No

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Nine	20 Years from Development Agreement Date (End of Extended Term) ²	Owner shall have Completed Construction of all required Phase Two Components (§5.4.2(B))	Yes
		Owner shall have Commenced Construction of any Retail Building, Office Building, Parking Structure, and/or Residential Building it did not Develop as part of Phase One or Phase Two but that it intends to Develop in Subsequent Phases (§5.4.3(D))	Yes

In addition to those Milestones identified in the above table, Owner is required pursuant to Section 10.5.1(C) to pay City Two Million Five Hundred Thousand Dollars (\$2,500,000) in five (5) installments of Five Hundred Thousand Dollars (\$500,000) each to be paid to City on the first, second, third, fourth, and fifth anniversaries of the Development Agreement Date. Owner is also required, pursuant to Section 10.5.7, to pay the City the sum of Two Million Dollars (\$2,000,000) as a condition precedent to the issuance of building permits for Residential Building IV.

² Pursuant to Section 2.2. of the Development Agreement, the initial 15-year Term shall be automatically extended for an additional five (5) years if, prior to expiration of the initial Term, Owner has Completed Construction of all required portions of Phase One of the Project set forth in Section 5.4.1(C) and has obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two set forth in Section 5.4.2(B). If the Term has not been extended 5 years pursuant to Section 2.2 of the Development Agreement, the obligations set forth in Milestone Nine must be completed by Milestone Eight.

EXHIBIT E

ALL REQUIRED PUBLIC IMPROVEMENTS

1. Provision of Bus Stops on Calle de la Louisa. Prior to the construction of street improvements on Calle de la Louisa, Owner shall work with the Orange County Transportation Authority (OCTA) and provide bus stops along Calle de la Louisa, as requested by OCTA or City. Bus stop locations for OCTA facilities shall be constructed in accordance with the OCTA standards. Owner shall provide bus stop furniture to the reasonable satisfaction of the City's Community Development Director and Public Services Director to include, but not be limited to, benches, trash receptacles and shade opportunities that shall be maintained by the Owner.
2. Construction of Perimeter Entrance Feature at Southwest Corner of El Toro Road and Avenida de la Carlota. Prior to the issuance of the first building shell final or certificate of occupancy for new buildings in the El Toro Pad District, the Owner shall design and construct a Perimeter Entry Feature for the southwest corner of El Toro Road and Avenida de la Carlota and on the second entry drive southbound on Avenida de la Carlota as shown on Figures 21 and 25 of the Specific Plan. Ledge stone used for the project shall be Bear Canyon ledge stone, or equivalent. Ledge stone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and reasonable approval of the City's Community Development Director and Public Services Director.
3. Alignment of Intersection of Health Center Drive at Calle de la Louisa. The intersection of Health Center Drive at Calle de la Louisa shall be modified to directly align the centerline of Health Center Drive on either side of Calle de la Louisa, taking into account the existing median island on the westerly side of the intersection, and include one westerly bound left turn lane and one westerly bound through/right turn lane, each with a minimum 100' lane length, not including transitions, to the reasonable satisfaction of the City's Public Services Director.
4. Payment for Debris Gates and Full Trash Capture Devices. Prior to the issuance of the first grading permit, Owner shall pay the City the full cost to purchase and install new debris gates and full capture trash screens to fit into existing catch basins, for all existing catch basin inlets serving Avenida de la Carlota and El Toro Road along the frontage of the Project, as determined by the reasonable discretion of the City's Public Services Director, to include the following:
 - a. Catch Basin #97 located on the southerly side of El Toro Road approximately 152' westerly of the centerline of Avenida de la Carlota.
 - b. Catch Basin #61 located on the westerly side of Avenida de la Carlota approximately 709' southerly of the centerline of Plaza Lane / Project Driveway (private street intersection).
 - c. Catch Basin #178 located on the westerly side of Avenida de la Carlota approximately 448' northerly of the centerline of Oakbrook Village (private street intersection).

5. Installation of New Traffic Signal at Intersection of Avenida de la Carlota and Health Center Drive. Prior to the issuance of the third certificate of occupancy for any combination of three Residential and/or Office Buildings (i.e., three Residential Buildings, two Residential Buildings and one Office Building, three Office Buildings, etc.), Owner shall prepare a current traffic signal warrant analysis following the procedures in the Caltrans Traffic Manual for the proposed new traffic signal at the intersection of Avenida de la Carlota and the extension of Health Center Drive (Intersection 35 referenced in the Traffic Impact Analysis dated September 1, 2020, in Section 6.0 Site Access) and submit it for review and approval by the City's Director of Public Services. If the traffic signal has not yet met warrants, Owner shall repeat the Traffic Signal Warrant Analysis upon the issuance of the certificate of occupancy for each additional Residential or Office Building. If the traffic signal is deemed to be warranted, within six months of said warrant analysis approval, Owner shall prepare the design of the traffic signal by a State of California licensed / registered civil engineer or traffic engineer and submit the plans to the City's Director of Public Services for review and approval. Within six months of the approval of said traffic signal design, the Applicant shall construct and install said traffic signal and all ancillary improvements and equipment to the reasonable satisfaction of the City's Director of Public Services. The design of the traffic signal shall be to the standards of the City of Laguna Hills and Caltrans Standard Plans and Specifications and shall include, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the City's Public Services Director. Owner shall provide the City the full cost to purchase the traffic signal controller, video detection equipment and emergency vehicle preemption equipment in advance of Owner's proposed construction. The schedule for the installation of said signal shall be subject to the reasonable discretion of the City's Public Services Director. Prior to the completion of construction of the Traffic Signal, if needed, Owner shall dedicate a traffic signal maintenance easement to the City for any traffic signal equipment located on the Property.

6. Payment for Installation of New Traffic Signal at Intersection of Paseo de Valencia at Called de los Caballeros. Prior to the issuance of the final certificate of occupancy for the fourth Residential Building, Owner shall cause a traffic signal warrant analysis to be performed by a State of California licensed / registered civil engineer or traffic engineer to determine if the intersection of Paseo de Valencia at Calle de los Caballeros should be converted to a fully operational intersection and be provided with a traffic signal. If said warrant analysis does not meet at least one warrant by this initial analysis, the warrant analysis shall be repeated prior to the issuance of the final certificate of occupancy for the final Residential Building and be submitted to the City's Public Services Director for review. If the traffic signal is now warranted, the City will reasonably evaluate if alternative traffic controls, other than a traffic signal, can be implemented to address the traffic conditions. However, if as reasonably determined by the City's Public Services Director the traffic signal is appropriate to address the traffic conditions, Owner shall contribute a pro-rata share of funding for the full cost of the design and construction of said signal and related ancillary improvements and equipment, including, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City

selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the City's Public Services Director. Prior to the issuance of any further certificates of occupancy, Owner shall deposit with the City an amount equal to the Project's pro-rata share of traffic contribution to the intersection of the cost of such design and construction, as reasonably determined by the City's Public Services Director. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of written request by City. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment is less than the amount of the deposit, City shall refund Owner the difference within thirty (30) days after completion of the construction and installation of the signal and all related improvements and equipment, as evidenced by a notice of completion issued by the City.

7. Payment for Vehicular Video Detection Equipment for Retrofit of Avenida de la Carlota. As reasonably determined by the City's Public Services Director, Owner shall be responsible for funding, in advance, the full cost of the purchase and installation by City of specified vehicular video detection equipment for retrofit of the Avenida de la Carlota at Plaza Lane / Project Driveway traffic signal in accordance with City standards. Owner shall provide the City the full cost to purchase and install the equipment, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
8. Payment for Replacement of Existing Illuminated Street Name Signs. As reasonably determined by the City's Public Services Director, Owner shall fund, in advance, the full cost of the replacement of the existing illuminated street name signs on existing traffic signals to match the new street name designations serving access to the Property. Such illuminated street name signs shall be replaced with LED illuminated street name signs as selected by City. Owner shall provide the City the full cost to purchase and install the signs, as determined in the reasonable discretion of the City's Public Services Director, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
9. Payment for Replacement of City Wayfinding Signage. Owner shall be responsible for funding, in advance, the full cost of replacement of any City Wayfinding signage to be modified from "Laguna Hills Mall" to "Village at Laguna Hills", or any other City approved Project name, at any location at which the name change is required. Owner shall deposit with the City an amount equal to the full cost to manufacture and install all such signs, as reasonably determined by the City's Public Services Director. In the event the full documented cost to manufacture and install said signs exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of a written request by City. In the event the full documented cost to manufacture and install said signs is less than the amount of the deposit, City shall refund Owner the difference within thirty (30) days after installation of the last such sign. Owner's deposit shall be made prior to the issuance of the first certificate of occupancy for any building located within the El Toro Pad District.

10. Construction of Enhanced Parkway Improvements and Dedication of Landscape/Pedestrian Access Easement Along Avenida de la Carlota, From El Toro Road to Plaza Lane. Prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District, or one year from the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, as reasonably determined by the City's Public Services Director, whichever occurs first, Owner shall construct the enhanced parkway along Avenida de la Carlota, from El Toro Road to Plaza Lane / Project Driveway, consistent with the Specific Plan, to the City's standards and specifications. The construction of these improvements shall include, as needed, the construction of retaining walls and pedestrian barriers at the top of the retaining wall and the modification, relocation and/or addition of Southern California Edison (SCE) street lighting, including the payment of fees to SCE. The construction of these improvements shall maintain the current Orange County Transportation Authority (OCTA) bus stop within the limits of this work. Owner shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way by an instrument in a form acceptable to the City's Public Services Director and City Attorney. The electrical meter and water meters serving the landscape areas described herein shall be separated from any other Project landscaping. The enhanced parkway improvements shall be designed and constructed to the reasonable satisfaction of the City's Community Development Director and Public Services Director and shall be maintained for the life of the Project by Owner in a first class condition similar to the condition on the completion of the original construction and/or installation, reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the Specific Plan area, as reasonably determined by the City's Public Services Director.
11. Construction of Enhanced Parkway Improvements and Dedication of Landscape/Pedestrian Access Easement Along Avenida de la Carlota, From Plaza Lane to Southern Project Boundary. Prior to (a) the issuance of the first Office Building certificate of occupancy, or (b) one year of the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, or (c) the completion of the required components of Phase One, whichever occurs first, as reasonably determined by the City's Public Services Director, Owner shall construct the enhanced parkway along the westerly side of Avenida de la Carlota from Plaza Lane / Project Driveway to the southern Project boundary, consisting of a new five (5) foot, six (6) inch wide landscaped area adjacent to the curb and a new six (6) foot wide sidewalk area adjacent to the landscaped area, including the modification, relocation and/or addition of Southern California Edison (SCE) street lighting to the reasonable satisfaction of the City's Public Services Director, including the payment of fees to SCE, within the public right of way, to the City's standards and specifications. Owner shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way, by an instrument in a form acceptable to the City's Public Services Director and City Attorney. The electrical meter and water meters serving the landscaping areas described herein shall be separate from any other Project improvements. The enhanced parkway improvements shall be designed and constructed to the reasonable satisfaction of the City's Community Development Director and Public Services Director and shall be maintained for the life of the Project by Owner in a first class condition similar to the condition on the completion of the original construction and/or installation,

reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the Specific Plan area, as reasonably determined by the City's Public Services Director. In consideration of the existing driveway to/from Avenida de la Carlota (located approximately 300 feet from the south property line) within the Southern Office District being utilized for interim access to the Project, the enhanced parkway improvements impacting the driveway can be deferred until said driveway is removed from service. In addition, the enhanced parkway improvements at the intersection of Avenida de la Carlota and Calle de los Caballeros can be deferred until such time as the intersection is improved as required by any Project condition of approval requiring the construction of the Site Improvements in the Southern Residential District.

12. Construction / Reconstruction of Project Entrances Along Avenida de la Carlotta. All of the existing and new Project entrances to the Property along Avenida De La Carlota shall be reconstructed/constructed such that they are at 90 degrees to the centerline of Avenida de la Carlota and shall be brought up to current ADA ramp and sidewalk standards to the reasonable satisfaction of the City's Public Services Director, utilizing Armor Tile blue cast-in-place detectable warning surfaces at ramps.
13. Construction of Asphalt Concrete Overlay on Avenida de la Carlota, From El Toro Road to Southerly Project Boundary. Within one-year of the completion of the Avenida de la Carlota enhanced parkway improvements described in Paragraphs 10 and 11, above, Owner shall design and construct a 0.15 foot asphalt concrete overlay over the entire width of Avenida de la Carlota, from El Toro Road to the southerly Property boundary. Said design shall include removal and replacement of deteriorated pavement, crack sealing, cold-planing, the pavement overlay, striping and advance traffic signal loop detector replacements as designed by a State of California registered / licensed civil engineer to the reasonable satisfaction of the City's Public Services Director. Owner may, at its option, fund the full cost necessary for the City to perform this work. The terms for payment to City for performance of the work shall be within the reasonable discretion of the City's Public Services Director. Upon completion of the asphalt concrete overlay described herein, no further utility excavations or storm drain modifications shall be allowed within Avenida de la Carlota for a period of five years. Notwithstanding this five-year limitation on excavations, if there is no alternative to a critically necessary excavation as reasonably determined by the City's Director of Public Services, Owner shall construct and implement enhanced pavement repairs to restore the like new condition of the pavement following completion of the excavation. The enhanced pavement repairs shall, at a minimum, consist of the cold plane of 0.17 foot asphalt concrete for a total distance of 100 feet, 50 feet beyond either side of the excavation location, from curb to the closest full lane width of the excavation location to the reasonable satisfaction of the City's Director of Public Services.
14. Upgrade of Adjacent Public Sidewalks, Ramps, and Related Facilities to Current ADA Standards. For every grading permit requested, prior to the issuance of said permit, Owner shall provide an Americans with Disabilities Act (ADA) accessibility review for compliance with all applicable state and federal accessibility statutes, regulations and standards to the reasonable satisfaction of the City's Public Services Director. In addition, the accessibility review shall depict compliance with California Disabled Accessibility requirements as

required by Chapter 11 of the California Building Code (as may be amended, or the applicable California Building Code in effect at the time of a request for building permit application). The accessibility review shall include all existing and future public and private sidewalks, walkways, pathways, access ramps hand rails and all other ADA regulated facilities for the area of the Property for which a grading permit is requested. The public streets to be included in this review are the southerly side of El Toro Road and the westerly side of Avenida de la Carlota coincident with all the Project boundaries. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted as approved by the City's Public Services Director and Community Development Director. Owner shall install, construct or reconstruct to the City's standards and reasonable satisfaction of the City's Public Services Director any existing public and private facilities identified in the accessibility review that are not in compliance with ADA standards, prior to the issuance of any certificate of occupancy. In complying with this condition, Owner may prepare a "CASp Masterplan" subject to the review and approval of the City's Community Development Director and Public Services Director. The Directors shall refer to the CASp Masterplan to determine the extent of existing improvements to be protected in place during construction that should be modified to join with new ADA improvements. Accessibility improvements which are the subject of a grading or building permit shall be constructed and installed prior to grading plan close out, issuance of a building shell final, or certificate of occupancy for a tenant improvement (depending on the type of permit requested by Owner).

15. Reconstruction of El Toro Road Bus Stop. Prior to the issuance of the first certificate of occupancy for the third Residential Building or the first certificate of occupancy for the first Office Building, Owner shall reconstruct the OCTA El Toro Road Bus Stop, on the southerly side of El Toro Road easterly of Paseo de Valencia, to accommodate future projected ridership needs based on full Project buildout, to the reasonable satisfaction of the Public Services Director and OCTA, inclusive of street furniture, benches, waste receptacles, bicycle racks, shade structure, lighting and landscaping.
16. Funding and/or Construction of Other Public Improvements Required by Existing Land Use Regulations and Existing Development Approvals. Owner shall fund and/or construct any and all other public improvements required to be funded or constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

EXHIBIT F
VILLAGE AT LAGUNA HILLS
AFFORDABLE HOUSING IMPLEMENTATION PLAN

Attachment: Proposed Ordinance and Development Agreement (2775 : Second Reading & Adoption of Ordinance - Village at Laguna Hills

VILLAGE AT LAGUNA HILLS **AFFORDABLE HOUSING IMPLEMENTATION PLAN**

The Village at Laguna Hills Affordable Housing Implementation (“AHIP”) is the affordable housing implementation plan prepared in accordance with the Development Agreement entered into between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC pertaining to the Village at Laguna Hills mixed use project (the “Project”). The AHIP set forth in this **Exhibit F** sets forth requirements for the development, management, and maintenance of two hundred (200) on-site affordable rental units as part of the Project.

1. Definitions. Capitalized terms used in this AHIP shall have the meanings set forth below. Any capitalized term used in this AHIP that is not defined herein shall have the meaning ascribed to it in Section I of the Development Agreement.

A. Adjusted for Family Size Appropriate for the Unit. “Adjusted for Family Size Appropriate for the Unit” means adjusted for a household of one person in the case of a studio unit, two persons in the case of one-bedroom unit, three persons in the case of a two-bedroom unit, and four persons in the case of a three-bedroom unit.

B. Affordability Period. “Affordability Period” means a term of fifty-five (55) years from the date the final certificate of occupancy is issued for a Residential Building containing Affordable Units.

C. Affordable Rent for Lower Income Households. “Affordable Rent for Lower Income Households” means a monthly Rent that does not exceed (a) for those Lower Income Households with a gross income that exceeds sixty percent (60%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, one-twelfth of thirty percent (30%) of the annual gross income of the household; or (b) for other Lower Income Households, one-twelfth of thirty percent (30%) times sixty percent (60%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit.

D. Affordable Rent for Moderate Income Households. “Affordable Rent for Moderate Income Households” means a monthly Rent that does not exceed (a) for those Moderate Income Households with a gross income that exceeds one hundred ten percent (110%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, one-twelfth of thirty percent (30%) of the annual gross income of the household; or (b) for other Moderate Income Households, one-twelfth of thirty percent (30%) times one hundred ten percent (110%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit.

E. Affordable Units. “Affordable Units” means the two hundred (200) units of multi-family residential rental housing located within the Residential Buildings the occupancy of which is restricted to Lower Income Households and Moderate Income Households.

F. Area Median Income. “Area Median Income” or “AMI” means the median income for Orange County, California, adjusted for the actual number of persons in the applicable household, as determined by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time

by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

G. City. “City” means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

H. City Manager. “City Manager” means the City Manager of the City of Laguna Hills or his or her designee.

I. City Resident. “City Resident” means an individual whose domicile was located within the City of Laguna Hills for the twelve (12) month period preceding his or her application for occupancy of an Affordable Unit.

J. Lower Income Households. “Lower Income Households” has the meaning set forth in California Health and Safety Code Section 50079.5.

K. Lower Income Units. “Lower Income Units” means Affordable Units which are reserved for occupancy by and rental to Lower Income Households at an Affordable Rent for Lower Income Households.

L. Market Rate Units. “Market Rate Units” means the multi-family residential rental housing units located within the Residential Buildings that are not Affordable Units.

M. Moderate Income Units. “Moderate Income Units” means the Affordable Units which are reserved for occupancy by and rental to Moderate Income Households at an Affordable Rent for Moderate Income Households.

N. Moderate Income Households. “Moderate Income Households” means persons and families whose income does not exceed one hundred twenty percent (120%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, and as further adjusted in accordance with California Health and Safety Code Section 50093.

O. Owner. “Owner” shall have the meaning set forth in Section 1.36 of the Development Agreement. In the event Owner’s obligations set forth in this AHIP with respect to a Parcel on which a Residential Building is, or is planned to be, developed are assumed by another person or entity pursuant to an assignment under Section 21 of the Development Agreement, with respect to such Parcel, “Owner” shall refer to the person or entity that has expressly assumed the obligations set forth in this AHIP.

P. Parcel. “Parcel” means a legal lot on which a Residential Building is, or is proposed to be, developed as part of the Project.

Q. Project. “Project” shall have the meaning set forth in Section 1.42 of the Development Agreement.

R. Regulatory Agreement. “Regulatory Agreement” means the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against each Parcel containing Affordable Units pursuant to this AHIP.

S. Rent. “Rent” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone, internet, television or digital access services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and real property facilities associated therewith by a public or private entity other than Owner.

T. Residential Buildings. “Residential Buildings” shall have the meaning set forth in Section 1.46 of the Development Agreement. A “Residential Building” means one of the Residential Buildings.

U. Senior. “Senior” means an individual that is fifty-five (55) years of age or older.

V. Veteran. “Veteran” means an individual that is a United States armed forces veteran.

2. Planning Principles for Affordable Units.

A. Number of Affordable Units. Two hundred (200) of all residential units within the Residential Buildings developed by Owner as part of the Project shall be Affordable Units. No less than one hundred (100) of the two hundred (200) Affordable Units shall be Lower Income Units. Those Affordable Units that are not Lower Income Units shall be Moderate Income Units.

B. Distribution of Affordable Units. Except as otherwise expressly provided in this AHIP, all two hundred (200) Affordable Units shall be located within Residential Buildings I, II, III, and V, and shall be constructed concurrently with the Market Rate Units in each Residential Building. The number of Affordable Units within each Residential Building shall be evenly divided between Lower Income Units and Moderate Income Units. Unless otherwise approved by the City Manager, in his or her sole discretion, the distribution of the Affordable Units within Residential Buildings I, II, III, and V shall be as set forth in Table 1, below.

If, for any reason, Owner Commences Construction of Residential Building IV before it Commences Construction of any of Residential Buildings I, II, III, and/or V, the City Manager, in his or her sole discretion, may require as a condition of approval to a vertical building permit for Residential Building IV that some or all of those Affordable Units designated in Table 1 for those Residential Buildings that Owner has not yet Commenced Construction of be developed within Residential Building IV, instead.

TABLE 1

	Residential Building I	Residential Building II	Residential Building III	Residential Building V	Total
Total Housing Units (as Entitled)	358	230	300	275	1163
Total Affordable Units	62	40	50	48	200
Lower Income Units	31	20	25	24	100
Moderate Income Units	31	20	25	24	100

C. Unit Size Mix, Design, and Location For Affordable Units. The Affordable Units located within a Residential Building shall consist of a mix of studio units, one bedroom units, two bedroom units, and three bedroom units that is in approximate proportion to the total number of studio units, one bedroom units, two bedroom units, and three bedroom units developed within that Residential Building, subject to the review and approval of the City Manager, in his or her reasonable discretion. The Affordable Units within a Residential Building shall be “floating” units that are not permanently designated; however, at no time shall all the Affordable Units in a Residential Building be congregated to a certain section of the Residential Building. All Affordable Units shall be of similar design and appearance as Market Rate Units.

D. Deviations Subject to City Manager Approval. In his or her sole discretion, the City Manager may approve deviations from the number of Affordable Units set forth Table 1 for a Residential Building and/or the unit size mix described in Subsection 2(C), above, provided the City receives reasonable assurance that all two hundred (200) required Affordable Units will be timely developed. In conjunction with any such approval, the City Manager may impose conditions on future Subsequent Development Approvals; require Owner to enter into a separate agreement, record a deed restriction, and/or provide a bond or other monetary security, and/or require such other forms of reasonable assurance as he or she deems necessary in his or her sole discretion.

3. Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.

A. Form and Timing of Regulatory Agreements. Prior to issuance of a vertical building permit for a Residential Building required to include Affordable Units, Owner shall enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”) with the City in substantially the same form as Attachment 1 to this AHIP, or in a similar form approved by the City Manager and City Attorney, and record said Agreement against the Parcel. The number, affordability level, unit size mix, and location requirements for the Affordable Units within a Residential Building shall be set forth in the Regulatory Agreement.

B. Delegation of Authority to City Manager. The City Manager is authorized to approve and execute each Regulatory Agreement and any amendments thereto on behalf of the City. City shall maintain authority of each Regulatory Agreement and the authority to implement each Regulatory Agreement through the City Manager. The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of each Regulatory Agreement on behalf of City.

C. Affordability Restrictions for Lower Income Units. Throughout the Affordability Period, all Lower Income Units within a Residential Building shall be leased to Lower Income Households at an Affordable Rent for Lower Income Households in accordance with the terms of the Regulatory Agreement for that Residential Building.

D. Affordability Restrictions for Moderate Income Units. Throughout the Affordability Period, all Moderate Income Units in a Residential Building shall be leased to Moderate Income Households at an Affordable Rent for Moderate Income Households in accordance with the terms of the Regulatory Agreement for that Residential Building.

E. Occupancy Limits. Each Regulatory Agreement shall contain a provision providing that the maximum occupancy for each of the Affordable Units shall not exceed two persons per bedroom, plus one person.

F. Annual Income Verification and Certification. Each Regulatory Agreement shall include uniform provisions requiring the Owner to annually obtain written certifications from, and to verify that, each tenant household occupying an Affordable Unit meets the applicable income and eligibility requirements established for the Affordable Unit.

4. Marketing of Affordable Units. Owner shall market the Affordable Units in each Residential Building to Seniors, Veterans (including Veterans of the City adopted 3rd Battalion, 5th Marines), and City Residents in accordance with the "Marketing and Management Plan" approved by the City pursuant to the Regulatory Agreement for the Residential Building.

5. Priority for Leasing Affordable Units. Throughout the Affordability Period, to the extent permitted by law, within the pool of eligible applicants that qualify as Lower Income Households or Moderate Income Households, as applicable, priority for the leasing of each Affordable Unit shall be given in the following order:

(a) first priority shall be given to qualified households with a member who is both (i) a Senior or a Veteran and (ii) who is a City Resident;

(b) if there are no qualified applicants who meet the foregoing criteria, second priority shall be given to qualified households with a member who is a City Resident that is neither a Senior nor a Veteran;

(c) if there are no qualified applicants who meet the either of the foregoing criteria, third priority shall be given to qualified households with a member who is a Senior and/or a Veteran (including a Veteran of the City adopted 3rd Battalion, 5th Marines), regardless of residency;

(d) if there are no qualified applicants who meet any of the foregoing criteria, the Affordable Unit shall be made available to members of the general public that are qualified Lower Income Households or Moderate Income Households, as applicable.

6. Marketing and Management Plan. The Regulatory Agreement for each Residential Building shall contain uniform provisions regarding property management and management responsibilities. The marketing, leasing, and management of all Affordable Units in a Residential Building shall be in compliance with a “Marketing and Management Plan” for the Residential Building approved by the City, which shall address in detail, without limitation, the following matters:

- i. how Owner plans to market the Affordable Units to prospective Lower Income Households and Moderate Income Households, including a plan for marketing and leasing the Affordable Units to Seniors, Veterans, and City Residents;
- ii. procedures for the selection of tenants, including a description of how Owner plans to certify the eligibility of Lower Income Households and Moderate Income Households, verify the Senior, Veteran, and/or residency status of applicants, and implement the required tenant selection priority provisions;
- iii. procedures for annually verifying income and recertifying the eligibility of tenants of the Affordable Units;
- iv. procedures for ensuring that the required number and unit size mix of Affordable Units is maintained and that the “floating” Affordable Units do not become congregated to a certain section of the Residential Building;
- v. Owner’s procedures for complying with its monitoring and recordkeeping obligations;
- vi. the standard form(s) of rental agreement(s) Owner proposes to enter into with Lower Income Households and Moderate Income Households;
- vii. Owner’s property management duties;
- viii. Owner’s plan to manage and maintain the Parcel and the Affordable Units;
- ix. the identity of the professional property management company, if any, to be contracted with to provide property management services at the Residential Building / Parcel and a description of the management team;
- x. all written management policies with respect to the Affordable Units; and
- xi. a security system and crime prevention program.

The Marketing and Management Plan for a Residential Building must be approved by the City Manager prior to the issuance of a certificate of occupancy for the Residential Building. Any proposed amendment or change to the Marketing and Management Plan during the Affordability Period must be submitted to the City and approved by the City Manager. Owner shall reimburse City for all actual legal and third-party consulting costs incurred by City in reviewing the initial Marketing and Management Plan and any amendments thereto. The Regulatory Agreement for each Residential Building shall contain uniform provisions implementing these requirements.

7. **Reporting and Monitoring of Compliance.**

A. **Annual Compliance Report.** Each Regulatory Agreement shall contain provisions requiring the Owner to submit an annual compliance report containing specified information to the City in a form reasonably satisfactory to City and to annually certify that the Affordable Units are in compliance with the requirements of the Regulatory Agreement.

B. **Recordkeeping Requirements; Access to Information; Inspections.** The Owner shall maintain Affordable Unit tenant leases, income certifications, and other books, documents, and records related to the rental or leasing of the Affordable Units and operation of each Residential Building / Parcel for a period of not less than five (5) years after creation of each such record. In connection with monitoring compliance with each Regulatory Agreement, upon at least three (3) business days' prior written notice, City shall be entitled to inspect any such books, documents, or records and to conduct an independent audit or inspection of such records at a location that is reasonably acceptable to the City Manager. Within forth-eight (48) hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to a Parcel and the right to examine the housing units in a Residential Building and to interview tenants and employees, for the purpose of verifying compliance with each Regulatory Agreement. Each Regulatory Agreement shall contain uniform provisions implementing these requirements and obligating Owner to cooperate with City in making each Parcel and such books, documents, and records available for such inspections or audits.

C. **Annual Monitoring Fee.** Each Regulatory Agreement shall contain a provision requiring Owner to pay an annual monitoring and administration fee to the City to reimburse City for the estimated reasonable costs incurred by the City in monitoring Owner's compliance with, and otherwise administering, the Regulatory Agreement, including, but not limited to, City's review of annual compliance reports and conduct of inspections and/or audits. The amount of such fee shall be the same per Affordable Unit for each Residential Building and shall not exceed such estimated reasonable costs, as determined by the City Manager in his or her reasonable discretion. The City Manager is expressly authorized to establish and adjust the amount of said fee from time to time, as appropriate. City shall provide the basis for calculation of such fee to Owner promptly upon request.

8. **Maintenance Standards for Affordable Units.** Owner shall maintain or cause to be maintained the Affordable Units and the interior or exterior of each Residential Building and Parcel containing Affordable Units in a decent, safe and sanitary manner, and in accordance with the standard of maintenance of first class multifamily rental apartment complexes within Orange County. Owner shall provide adequate security measures for the Parcel and the Residential Building, including without limitation, the installation of adequate lighting and deadbolt locks. Uniform provisions governing Owner's maintenance obligations and the City's rights in the event Owner fails to adhere to its maintenance obligations shall be set forth in the Regulatory Agreement for each Parcel / Residential Building.

ATTACHMENT 1

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
FORM**

Attachment: Proposed Ordinance and Development Agreement (2775 : Second Reading & Adoption of Ordinance - Village at Laguna Hills

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

BY AND BETWEEN

**THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing
under the Constitution and laws of the State of California**

AND

_____, a _____

(Village at Laguna Hills Project
Residential Building __)

Attachment: Proposed Ordinance and Development Agreement (2775 : Second Reading & Adoption of Ordinance - Village at Laguna Hills

AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “Agreement”) is entered into for reference purposes as of _____ (the “Effective Date”), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California (“City”) and _____, a _____ (“Owner”). City and Owner are individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. Owner is the owner of that certain real property located in the City of Laguna Hills, generally located at [ADDRESS], Laguna Hills, California, as more particularly described in the legal description attached hereto as Exhibit A and incorporated herein (“Site”).

B. On [DATE], the Laguna Hills City Council adopted Resolution No. _____ conditionally approving Case No. USE-010-2019 for the Village at Laguna Hills mixed use project, which, in part, authorized the development of a residential building containing _____ () total apartment units (the “Residential Building”) on the Site, subject to certain conditions of approval (the “VLH Development Approvals”).

C. On [DATE], the Laguna Hills City Council adopted Ordinance No. _____ approving that certain Development Agreement between the City and MGP FUND X Laguna Hills, LLC, for the Village at Laguna Hills mixed use project (the “Development Agreement”). The Development Agreement became effective on [DATE] and was recorded on [DATE] in the official records of Orange County, California, as Document No. _____. Development of the Site is subject to the terms and provisions of the Development Agreement.

D. As material consideration for the long term assurances, vested rights, and other City obligations provided by the Development Agreement and as a material inducement to City to enter into the Development Agreement, Owner’s predecessor in interest offered and agreed to provide certain public benefits to the City as specified in the Development Agreement, including the development of _____ () Affordable Units on the Site pursuant to the terms of the Affordable Housing Implementation Plan (“AHIP”) attached to and incorporated into the Development Agreement. The AHIP provides for the owner of the Site to enter into and record this Agreement prior to issuance of a vertical building permit for the Residential Building.

E. On [DATE], the Laguna Hills City Council approved Final Tract Map No. _____, which established the Site as a separate legal parcel.

F. Owner subsequently acquired the Site and assumed certain rights and obligations under the Development Agreement with respect to the Site.

G. Owner intends to construct the Residential Building, associated parking facilities, common areas, sidewalks, landscaping, lighting, signage, amenities, and other improvements on the Site in accordance with the VLH Development Approvals, the Development Agreement, and the AHIP. Owner is providing the Affordable Units and entering into this Agreement to comply with Section 7.2 of the Development Agreement and the provisions of the AHIP.

H. To ensure the continued affordability of the Affordable Units for the Term of this Agreement, this Agreement shall be executed and recorded against the Site prior to issuance of any vertical building permit for the Residential Building.

I. The purpose of this Agreement is to restrict the occupancy and rents of _____ () of the Affordable Units for the benefit of Lower Income Households and to restrict the occupancy and rents of _____ () of the Affordable Units for the benefit of Moderate Income Households as required by the Development Agreement and the AHIP. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full Term of this Agreement.

AGREEMENT

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits:

“Adjusted for Family Size Appropriate for the Unit” means adjusted for a household of one person in the case of a studio unit, two persons in the case of one-bedroom unit, three persons in the case of a two-bedroom unit, and four persons in the case of a three-bedroom unit.

“Affordable Housing Implementation Plan” or “AHIP” means the Affordable Housing Implementation Plan attached as Exhibit F to the Development Agreement.

“Affordable Rent for Lower Income Households” means a monthly Rent that does not exceed (a) for those Lower Income Households with a gross income that exceeds sixty percent (60%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, one-twelfth of thirty percent (30%) of the annual gross income of the household; or (b) for other Lower Income Households, one-twelfth of thirty percent (30%) times sixty percent (60%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit.

“Affordable Rent for Moderate Income Households” means a monthly Rent that does not exceed (a) for those Moderate Income Households with a gross income that exceeds one hundred ten percent (110%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, one-twelfth of thirty percent (30%) of the annual gross income of the household; or (b) for other Moderate Income Households, one-twelfth of thirty percent (30%) times one hundred ten percent (110%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit.

“Affordable Units” means the Lower Income Units and the Moderate Income Units.

“Area Median Income” or “AMI” means the median income for Orange County, California, adjusted for the actual number of persons in the applicable household, as determined by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“City” means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

“City Manager” means the City Manager of the City of Laguna Hills or his or her designee.

“City Resident” means an individual whose domicile was located within the City of Laguna Hills for the twelve (12) month period preceding his or her application for occupancy of an Affordable Unit.

“Development Agreement” is defined in Recital C.

“Housing Units” means the _____ () total residential rental apartment units to be constructed by Owner on the Site.

“Lower Income Households” has the meaning set forth in California Health and Safety Code Section 50079.5.

“Lower Income Units” means the _____ () Housing Units which are required to be made available for, rented to, and occupied by Lower Income Households at an Affordable Rent for Lower Income Households pursuant to the provisions of this Agreement.

“Market Rate Units” means the Housing Units located within the Residential Building that are not Affordable Units.

“Moderate Income Households” means persons and families whose income does not exceed one hundred twenty percent (120%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, and as further adjusted in accordance with California Health and Safety Code Section 50093.

“Moderate Income Units” means the _____ () Housing Units which are required to be made available for, rented to, and occupied by Moderate Income Households at an Affordable Rent for Moderate Income Households pursuant to the provisions of this Agreement.

“Owner” means _____, a _____, or its successor or assignee.

“Project” means the Residential Building, parking facilities, common areas, sidewalks, landscaping, lighting, signage, amenities, and other improvements constructed and maintained on the Site.

“Rent” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone, internet, television or digital access services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and real property facilities associated therewith by a public or private entity other than Owner.

“Residential Building” is defined in Recital B.

“Senior” means an individual that is fifty-five (55) years of age or older.

“Site” is defined in Recital A.

“Tenant Household” means a household occupying an Affordable Unit.

“Term” means the term of effectiveness of this Agreement, which shall continue for fifty-five (55) years from the date the final certificate of occupancy is issued for the Project.

“Veteran” means an individual that is a United States armed forces veteran.

“VLH Development Approvals” is defined in Recital B.

2. **Covenants of Owner.** Owner hereby covenants and agrees, for itself and its successors and assigns, that the Affordable Units shall be used solely in compliance with the VLH Development Approvals, the Development Agreement, the AHIP, and this Agreement, as each may be amended from time to time. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the requirements of this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with the requirements of this Agreement without the express written consent of the City.

3. **Construction of Affordable Units.** The Affordable Units shall be constructed and completed concurrently with the Market Rate Units on the Site.

4. **Affordability Restrictions for Lower Income Units.**

(A) Throughout the entire Term of this Agreement, Owner hereby agrees to make available, restrict occupancy to, and rent _____ () of the Housing Units to Lower Income Households (each a “Lower Income Unit”) at an Affordable Rent for Lower Income Households in accordance with this Section. The Lower Income Units shall be “floating” units that are not permanently designated; however, at no time shall all the Lower Income Units be congregated to a certain section of the Site. All Lower Income Units shall be of similar design and appearance as Market Rate Units. The _____ () Lower Income Units shall at all times consist of a mix of studio units, one-bedroom units, two-bedroom units, and three-bedroom units in the following proportion; provided, however, that the Owner may substitute a unit with more bedrooms for an unit with fewer bedrooms:

_____ () three-bedroom units;
 _____ () two-bedroom units;
 _____ () one-bedroom units; and
 _____ () studio units.

(B) A Tenant Household who qualifies as a Lower Income Household at the time he/she/it first occupies a Lower Income Unit shall be deemed to continue to be so qualified until such time as a recertification of such Tenant Household's income in accordance with Section 8 below demonstrates that such Tenant Household no longer qualifies as a Lower Income Household. Moreover, a unit previously occupied by a Lower Income Household and then vacated shall be considered occupied by such Lower Income Household for a temporary period until reoccupied, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days.

(C) At such time as a Tenant Household occupying a Lower Income Unit ceases to qualify as a Lower Income Household, the unit occupied by such Tenant Household shall cease to be a Lower Income Unit. Owner shall replace each such Lower Income Unit by designating the next available unit with an equal or greater number of bedrooms and any necessary units thereafter as a Lower Income Unit. For purposes of this Agreement, such designated unit will be considered a Lower Income Unit if it is held vacant and available for occupancy by a Lower Income Household and, upon occupancy, the income eligibility of the Tenant Household as a Lower Income Household is verified and the Tenant Household pays an Affordable Rent for Lower Income Households. In the event a unit ceases to be a Lower Income Unit pursuant to this paragraph, and there are no available units with an equal or greater number of bedrooms, then upon the expiration of the Tenant Household's lease and following sixty (60) days' notice, and if so permitted by local and state law, such Tenant Household shall be required to vacate the unit and Owner shall rent the unit to a Lower Income Household to restore the affordability and unit size mix required by this Agreement.

(D) In the event a Tenant Household occupying a Lower Income Unit initially qualifies as a Lower Income Household but the income of such Tenant Household increases, such increase shall not be deemed to result in a violation of the restrictions of this Agreement concerning limitations upon income of occupants, provided that the occupancy by such Tenant Household is for a reasonable time of not to exceed one year (measured from the time the income of the Tenant Household ceases to qualify him/her/it as a Lower Income Household), at which time the Housing Unit shall cease to be a Lower Income Unit and the provisions of Subsection 4(C), above, shall apply.

5. Affordability Restrictions for Moderate Income Units.

A. Throughout the entire Term of this Agreement, Owner hereby agrees to make available, restrict occupancy to, and rent _____ () of the Housing Units to Moderate Income Households (each a "Moderate Income Unit") at an Affordable Rent for Moderate Income Households in accordance with this Section. The Moderate Income Units shall be "floating" units that are not permanently designated; however, at no time shall all the Moderate Income Units be

congregated to a certain section of the Site. All Moderate Income Units shall be of similar design and appearance as Market Rate Units. The _____ () Moderate Income Units shall at all times consist of a mix of studio units, one-bedroom units, two-bedroom units, and three-bedroom units in the following proportion; provided, however, that the Owner may substitute a unit with more bedrooms for an unit with fewer bedrooms:

_____ () three-bedroom units;
 _____ () two-bedroom units;
 _____ () one-bedroom units; and
 _____ () studio units.

(B) A Tenant Household who qualifies as a Moderate Income Household at the time he/she/it first occupies a Moderate Income Unit shall be deemed to continue to be so qualified until such time as a recertification of such Tenant Household's income in accordance with Section 8 below demonstrates that such Tenant Household no longer qualifies as a Moderate Income Household. Moreover, a unit previously occupied by a Moderate Income Household and then vacated shall be considered occupied by such Moderate Income Household for a temporary period until reoccupied, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days.

(C) At such time as a Tenant occupying a Moderate Income Unit ceases to qualify as a Moderate Income Household, the unit occupied by such Tenant Household shall cease to be a Moderate Income Unit. Owner shall replace each such Moderate Income Unit by designating the next available unit with an equal or greater number of bedrooms and any necessary units thereafter as a Moderate Income Unit. For purposes of this Agreement, such designated unit will be considered a Moderate Income Unit if it is held vacant and available for occupancy by a Moderate Income Household and, upon occupancy, the income eligibility of the Tenant Household as a Moderate Income Household is verified and the Tenant Household pays an Affordable Rent for Moderate Income Households. In the event a unit ceases to be a Moderate Income Unit pursuant to this paragraph, and there are no available units with an equal or greater number of bedrooms, then upon the expiration of the Tenant Household's lease and following sixty (60) days' notice, and if so permitted by local and state law, such Tenant Household shall be required to vacate the unit and Owner shall rent the unit to a Moderate Income Household to restore the affordability and unit size mix required by this Agreement.

(D) In the event a Tenant Household occupying a Moderate Income Unit initially qualifies as a Moderate Income Household but the income of such Tenant Household increases, such increase shall not be deemed to result in a violation of the restrictions of this Agreement concerning limitations upon income of occupants, provided that the occupancy by such Tenant Household is for a reasonable time of not to exceed one year (measured from the time the income of the Tenant Household ceases to qualify him/her/it as a Moderate Income Household), at which time the Housing Unit shall cease to be a Moderate Income Unit and the provisions of Subsection 5(C), above, shall apply.

6. **Occupancy Limits.** The maximum occupancy for each of the Affordable Units shall not exceed two persons per bedroom, plus one person.

7. **Selection of Tenants and Priority for Leasing of Affordable Units.** Owner shall be responsible for the selection of Tenant Households for the Affordable Units in compliance with lawful and reasonable criteria, applicable state and federal housing laws, the leasing priority set forth in this Section 7, and other requirements of this Agreement. Throughout the Term of this Agreement, to the extent permitted by law, within the pool of eligible applicants that qualify as Lower Income Households or Moderate Income Households, as applicable, priority for the leasing of each Affordable Unit shall be given in the following order: (a) first priority shall be given to qualified households with a member who is both (i) a Senior or a Veteran and (ii) who is a City Resident; (b) if there are no qualified applicants who meet the foregoing criteria, second priority shall be given to qualified households with a member who is a City Resident that is neither a Senior nor a Veteran; (c) if there are no qualified applicants who meet either of the foregoing criteria, third priority shall be given to qualified households with a member who is a Senior and/or a Veteran (including a Veteran of the City adopted 3rd Battalion, 5th Marines), regardless of residency; (d) if there are no qualified applicants who meet any of the foregoing criteria, the Affordable Unit shall be made available to members of the general public that are qualified Lower Income Households or Moderate Income Households, as applicable.

8. **Income Verification and Certification.** For each Affordable Unit, prior to the initial occupancy, and annually thereafter throughout the Term of this Agreement, Owner or Owner's Property Manager shall obtain from each Tenant Household a written certification in such format and with such supporting documentation as City may reasonably require demonstrating that such Tenant Household meets the applicable income and eligibility requirements established for the Affordable Unit. Such written certification shall include, without limitation, (i) the identity and age of each member of the Tenant Household; and (ii) a computation of the total combined, gross, pre-tax income of all adult occupants of the Tenant Household, as calculated pursuant to California Code of Regulations, Title 25, Section 6914, or such other applicable standard approved by City. Owner shall verify, or shall cause its Property Manager to verify, the income certification of the Tenant Household. Owner shall retain such certifications for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make originals available for City inspection.

9. **Annual Report.** By not later than March 31 of each year during the Term of this Agreement, Owner shall submit an annual compliance report ("Annual Report") to City in a form reasonably satisfactory to City, together with Owner's certification that the Affordable Units are in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Affordable Unit: (i) address and/or unit number; (ii) number of bedrooms; (iii) status as a Lower Income Unit or a Moderate Income Unit; (iv) current rent and other charges; (v) initial occupancy date of the unit by the Tenant Household; (vi) dates of any vacancies during the previous year; (vii) number of people in the Tenant Household residing in the unit; (viii) total gross household income of the Tenant Household; (ix) documentation of source of household income; and (x) the information required by Section 8, above. Owner shall include with the Annual Report an income recertification for each Tenant Household, documentation verifying Tenant Household eligibility, and such additional information as City

may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by the City.

10. Recordkeeping Requirements; Access to Information; Inspections. Owner shall maintain Affordable Unit tenant leases, income certifications, and other books, documents, and records related to the rental or leasing of the Affordable Units and operation of the Site for a period of not less than five (5) years after creation of each such record. In connection with monitoring compliance with this Agreement, upon at least three (3) business days' prior written notice, City shall be entitled to inspect any such books, documents, or records and to conduct an independent audit or inspection of such records at a location that is reasonably acceptable to the City Manager. Within forth-eight (48) hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to the Site and the right to examine the Housing Units and to interview tenants and employees, for the purpose of verifying compliance with this Agreement. Owner agrees to cooperate with City in making the Site and such books, documents, and records available for such inspections or audits.

11. Marketing; Property Management; Maintenance.

A. Marketing of Affordable Units. Owner shall market the Affordable Units to City Residents, Seniors and Veterans (including Veterans of the City adopted 3rd Battalion, 5th Marines) in accordance with the Marketing and Management Plan approved by the City.

B. Management Responsibilities. Owner shall be responsible for all management functions with respect to the Project and the Affordable Units, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for construction, rehabilitation, management, repair, maintenance or marketing of the Project or the Affordable Units.

C. Property Manager. Owner shall provide the City with the name and qualifications of any professional property management company or other organization retained by Owner to manage the Affordable Units (including leasing, property management, maintenance and repair services, and reporting obligations) and ensure that Owner's obligations under this Agreement are satisfied ("Property Manager"). Entering into an agreement with a Property Manager shall not relieve Owner of its duties and obligations pursuant to this Agreement. Any such Property Manager shall have the requisite skill and qualifications to implement the Marketing and Management Plan approved by the City. If the City determines that the performance of the Property Manager is deficient based upon the standards set forth in the approved Marketing and Management Plan and in this Agreement, City shall provide notice of such deficiencies and Owner shall use its best efforts to correct such deficiencies. In the event such deficiencies have not been cured within the time set forth in Section 18 hereof, City shall have the right to require Owner to immediately remove and replace the Property Manager with another property manager or property management company which is reasonably acceptable to the City Manager, which is not related to or affiliated with Owner, and which has not less than five (5) years' experience in property management, including significant experience managing housing facilities of the size, quality and scope of the Project.

D. Maintenance. Owner shall maintain or cause to be maintained the interior and exterior of the Project and the Site in a decent, safe and sanitary manner, and in accordance with the standard of maintenance of first class multifamily rental apartment complexes within Orange County. Owner shall provide adequate security measures for the Project, including without limitation, the installation of adequate lighting and deadbolt locks. If at any time Owner fails to maintain the Project or the Site in accordance with this Agreement and such condition is not corrected within five (5) days after written notice from City with respect to graffiti, debris, and waste material, or thirty (30) days after written notice from City with respect to general maintenance, landscaping and building improvements, then City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Project or the Site and perform all acts and work necessary to protect, maintain, and preserve the Project and the Site, and to attach a lien upon the Site, or to assess the Site and/or bill Owner, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Owner to City upon demand.

E. Marketing and Management Plan. Prior to the issuance of a certificate of occupancy for the Residential Building, Owner shall prepare and submit for City review and approval a plan for marketing and managing the Affordable Units (the “Marketing and Management Plan” or “Plan”). The Plan shall address in detail, without limitation, the following matters:

- i. how Owner plans to market the Affordable Units to prospective Lower Income Households and Moderate Income Households in accordance with fair housing laws and this Agreement, including a plan for marketing and leasing the Affordable Units to City Residents, Seniors, and Veterans;
- ii. procedures for the selection of Tenant Households in accordance with this Agreement, including a description of how Owner plans to certify the eligibility of Lower Income Households and Moderate Income Households, verify the City Resident, Senior, and/or Veteran status of applicants, and implement the tenant selection priority provisions set forth in Section 7, above;
- iii. procedures for annually verifying income and recertifying the eligibility of Tenant Households;
- iv. procedures for ensuring that the required number and unit size mix of Affordable Units is maintained and that the “floating” Affordable Units do not become congregated to a certain section of the Residential Building;
- v. Owner’s procedures for complying with its monitoring and recordkeeping obligations;
- vi. the standard form(s) of rental agreement(s) Owner proposes to enter into with Lower Income Households and Moderate Income Households;
- vii. Owner’s property management duties;
- viii. Owner’s plan to manage and maintain the Project and the Affordable Units;
- ix. the identity of the Property Manager, if any, to be contracted with to provide property management services at the Project and a description of the management team;
- x. all written management policies with respect to the Affordable Units; and
- xi. a security system and crime prevention program.

The Marketing and Management Plan shall be approved by the City Manager prior to the issuance of a certificate of occupancy for the Residential Building. Any proposed amendment or change to the Marketing and Management Plan during the Term of this Agreement shall be submitted to the City and approved by the City Manager. If the City Manager fails to respond to the submittal or resubmittal of an initial or amended Management Plan within forty-five (45) days, such Plan or amended Plan shall be deemed approved. The marketing, leasing, and management of the Affordable Units shall be in compliance with the Marketing and Management Plan, or amended Marketing and Management Plan, as approved by the City Manager.

Owner shall reimburse City for all actual legal and third-party consulting costs incurred by City in reviewing the initial Marketing and Management Plan and any amendments thereto. Concurrent with its submittal of the initial Marketing and Management Plan and any subsequent amendment, Owner shall provide a deposit to the City in an amount sufficient to cover the estimated costs of the City's review, as determined by the City Manager in his or her reasonable discretion. Upon completion of review of the Plan or an amendment to the Plan by the City, the City shall provide Owner with an invoice containing an accounting of the actual legal and third-party consulting costs incurred by the City and the amount(s) of all deposits provided by Owner. If the actual legal and third-party consulting costs incurred by the City for such review are less than the amount of the deposit(s) made by Owner, City shall reimburse Owner for the difference at the time it provides the invoice. If the actual legal and third-party consulting costs incurred by the City for such review exceed the amount of the deposit(s) made by Owner, Owner shall pay City the difference within thirty (30) days of receipt of the invoice from the City.

12. Annual Monitoring Fee. Concurrent with submittal of each Annual Report, Owner agrees to pay an annual monitoring and administration fee to the City in an amount established from time to time by the City Manager to reimburse City for the estimated reasonable costs incurred by the City in monitoring Owner's compliance with, and otherwise administering, this Agreement, including, but not limited to, City's review of Annual Reports and conduct of inspections and/or audits of the Site and/or records as provided in this Agreement. The amount of such fee shall not exceed such estimated reasonable costs, as determined by the City Manager in his or her reasonable discretion, taking into account actual documented reasonable costs in prior year(s), shall be proportional to the number of Affordable Units on the Site, and shall be the same amount per Affordable Unit charged to the owners of other residential buildings developed pursuant to the VLH Development Approvals. City shall provide the basis for calculation of such fee to Owner promptly upon request.

13. Use of the Site. All uses conducted on the Site, including, without limitation, all activities undertaken by Owner pursuant to this Agreement shall conform to all applicable provisions of the Laguna Hills Municipal Code and other applicable federal, state, and local laws, rules, and regulations. The Site shall at all times during the term of this Agreement be used as a residential apartment project and none of the Housing Units shall at any time be utilized on a transient basis, nor shall the Housing Units or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, emergency shelter, supportive housing facility, transitional housing facility, hospital, nursing home, sanitarium or rest home, short-term or vacation rental, or be converted to condominium or cooperative ownership or tenancy. All of the community facilities and any social programs provided to the residents of the Housing Units

shall be available at all times on an equal, non-discriminatory basis to residents of all Housing Units.

14. Duration of Affordability Restrictions and Requirements. The Affordable Units and the Site shall be subject to the requirements of this Agreement throughout the entire Term of this Agreement.

15. Indemnity. To the fullest extent permitted by law, Owner shall, at its expense, defend (with counsel acceptable to City and subject to approval by Owner), indemnify, and hold harmless City, and its officers, agents, employees, attorneys and representatives from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, expert witness fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatsoever nature arising out of or in connection with Owner's ownership, construction, operation, management, marketing, leasing, or operation of the Site and/or the Affordable Units, Owner's evaluation and determination of a Tenant Household's gross income, or Owner's failure to perform any obligations as and when required by this Agreement, except for such liability arising from the gross negligence or willful misconduct of City. The provisions of this Section 15 shall survive the expiration or earlier termination of this Agreement.

16. Agreement to be Recorded; Covenants Run with the Land; Priority. This Agreement shall be recorded, prior to the issuance of a vertical building permit for the Residential Building, in the Official Records of Orange County, California, as senior, non-subordinate covenants and as an encumbrance running with the land for the full Term of this Agreement. In no event shall this Agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the improvements on the Site, or any other lien or encumbrance whatsoever for the entire Term of this Agreement. Nor shall this Agreement be made junior or subordinate to any extension, amendment, or modification of any lien or encumbrance recorded against the Site prior to the date hereof. Prior to recordation of this Agreement, Owner shall provide City with evidence satisfactory to the City that all deeds of trust, liens, encumbrances, or other documents recorded against the Site since [EFFECTIVE DATE OF DEVELOPMENT AGREEMENT], if any, have been or will be subordinated to this Agreement, at Owner's sole cost and expense.

17. Mortgage Protection. No breach or default under this Agreement shall defeat, terminate, extinguish, render invalid or otherwise affect the lien of any junior mortgage or deed of trust encumbering the Site or any part thereof or interest therein; provided, however, that any successor in interest to the Site shall be bound by this Agreement, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

18. Default. An event of default occurs under this Agreement when: (a) there is a breach of any condition, covenant or promise set forth herein; (b) written notice thereof has been given to the defaulting Party; and (c) such breach has not been cured within thirty (30) days after such notice was given to the defaulting Party or, if such breach cannot reasonably be cured within such thirty (30) day period, the defaulting Party fails to commence to cure the breach and/or fails thereafter to diligently proceed to complete such cure. A waiver by either Party of any such breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

19. Remedies. The occurrence of an event of default hereunder shall give the non-defaulting Party the right to proceed with any and all remedies available at law or equity. Such remedies may include an action for damages, an action or proceeding for specific performance, and/or an action or proceeding for injunctive relief. Such actions or proceedings may require the defaulting Party to pay damages, to perform its obligations and covenants under this Agreement, and to enjoin or cease and desist from acts which may be unlawful or in violation of the provisions of this Agreement.

20. Additional Remedies for Certain Defaults; Remedy For Excessive Rent Charge.

(A) It shall constitute a default for the Owner to charge or accept for any Lower Income Unit rent amounts in excess of an Affordable Rent for Lower Income Households or to charge or accept for any Moderate Income Unit rent amounts in excess of an Affordable Rent for Moderate Income Households. In the event that the Owner charges or receives such higher rental amounts, in addition to any other legal or equitable remedy that the City shall have for such default, the Owner shall be required to pay to the City an amount equal to the difference between the rent that should have been charged and the amount of the rent received from the Tenant Household, plus interest compounded at the maximum rate allowable for judgments.

(B) It shall also constitute a default for the Owner to fail to rent any of the required Lower Income Units to a Lower Income Household, to knowingly (or without investigation as required herein) initially rent any Lower Income Unit to a tenant who is not a Lower Income Household, to fail to rent any of the required Moderate Income Units to a Moderate Income Household, or to knowingly (or without investigation as required herein) initially rent any Moderate Income Unit to a tenant who is not a Moderate Income Household. In the event the Owner violates this provision, in addition to any other remedy at law or equity that the City shall have for such default, the Owner, for each separate violation, shall be required to pay to the City an amount equal to the total rent the Owner received from such ineligible tenant, plus interest compounded at the maximum rate allowable for judgments.

21. Attorneys' Fees and Costs. In addition to any other remedies provided hereunder or available pursuant to law, if either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing Party.

22. Rights and Remedies Cumulative. The rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

23. Time of Essence. Time is expressly made of the essence with respect to the performance by City and Owner of each and every obligation and condition of this Agreement.

24. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to

enforce or interpret this Agreement shall be filed and heard in the Superior Court of Orange County, California or in the Federal District Court for the Central District of California.

25. Headings; Construction; Statutory References. The headings of sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Laguna Hills shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

26. Third Party Beneficiaries. No persons or entities other than the Parties and their successors and assigns shall have any right of action under this Agreement.

27. City Approvals and Actions. Whenever any approval, notice, direction, consent or request by City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager.

28. Successor and Assigns. This Agreement shall run with the land, and all of the terms, conditions, restrictions, and covenants contained in this Agreement shall be binding upon Owner, City, their permitted successors and assigns, and all successors in interest to all or any portion of the Site or the Project. Whenever the terms "Owner" or "City" are used in this Agreement, such terms shall include any other successors and assigns as herein provided. Not later than thirty (30) days prior to a transfer of any interest in the Site or the Project or any interest in Owner, Owner shall provide written notice to the City of such transfer.

29. Notices. Any approval, disapproval, demand, document or other notice which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) mailing in the United States first-class mail, postage prepaid, or (iv) by email, with confirmation of receipt to the intended recipient, addressed to the address of the Party as set forth below, or at any other address as that Party may later designate by notice:

If to the City: City of Laguna Hills
24035 El Toro Road
Laguna Hills, California 92653
Attn: City Manager
Email: _____

If to the Owner: _____

Attn: _____
Email: _____

30. Amendment. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party. Each alteration, change, or modification to this Agreement shall be recorded against the Site in the Official Records of Orange County, California. The City Manager is authorized to enter into amendments of this Agreement on behalf of the City.

31. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

32. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

33. Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees or agents of City, and Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of the City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

34. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, City and Owner have executed this Development Agreement as of the date and year first above written.

“CITY”

CITY OF LAGUNA HILLS, a California
municipal corporation

By: _____,
City Manager

ATTEST:

_____,
City Clerk

APPROVED AS TO FORM:

_____,
City Attorney

“OWNER”

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

All signatures to be acknowledged by a Public Notary

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

Packet Pg. 153

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

Packet Pg. 154

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

Packet Pg. 155

EXHIBIT A
LEGAL DESCRIPTION OF SITE

Attachment: Proposed Ordinance and Development Agreement (2775 : Second Reading & Adoption of Ordinance - Village at Laguna Hills

EXHIBIT G**REASONABLE APPROVAL PROCESSING TIMES****[Pursuant to Subsection 22.1.1(C) (Administrative Delay)]**

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
City Staff Review of Each Complete Phased Final Subdivision Map Submittal (Including City Plan Check of Map, Closure Calcs, and Title Report)	First Check: 20 Working Days Second Check: 15 Working Days Third and Subsequent Checks: 10 Working Days
County Review and Approval of Each Phased Final Subdivision Map	120 Days (Cumulative) **Includes the cumulative time for County staff review of all submittals and re-submittals of a Phased Final Map. Does not include periods of time Owner is making corrections between submittals.
City Council Consideration / Approval of Each Phased Final Subdivision Map (Following Approval by County and payment of fees)	30 days after approval of Phased Final Map by County, payment of fees, and Owner's execution of City Subdivision Improvement Agreement (if applicable), or at next regularly scheduled City Council meeting if more than 30 days after all of the above. **City approval of a Phased Final Map is contingent upon the Final Map being in compliance with all applicable conditions of approval and/or Owner's execution of a Subdivision Improvement Agreement and provision of acceptable security acceptable to City.

Exhibit G-1

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
Public Property Encroachment Permit (Including City Plan Check of Improvement Plans)	First Check: 15 Working Days Second Check: 10 Working Day Third and Subsequent Checks: 5 Working Days Issuance of Permit: 5 Working Days after approval of plans and payment of fees
On-Site Grading Permits / On-Site Improvements (Including City Plan Check of Rough and/or Precise Grading Plans, Hydrology Study, WQMP, SSWMP, Improvement Plans, Hydraulic Analysis, Storm Drain Plans, etc.)	First Check: 20 Working Days Second Check: 15 Working Day Third and Subsequent Checks: 10 Working Days Issuance of Permit: 5 Working Days after approval of plans and payment of fees
City Engineer Review of Surveyor's Pad Elevation Certificate and the Geotechnical Engineer's Final Soils Certification	First Check: 5 Working Days Second Check: 5 Working Day Third and Subsequent Checks: 5 Working Days Authorization to Work: 5 Working Days after approval of plans, payment of fees, and satisfactory completion of Rough Grading
City Plan Check Completion (Per Plan Type) --Building Plan Check --Construction and Staging Plan Review --Lighting and Photometric Plan Review --Waste Management Plan Review --Outdoor Dining / Patio Plan Review	First Submittal: 20 Working Days Second Submittal: 15 Working Days Third and Subsequent Submittals: 10 Working Days

Exhibit G-2

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
City Building Permit Issuance	5 Working Days **City issuance of building permits is contingent upon (1) Owner's compliance with all applicable Project conditions of approval that are prerequisites to building permit issuance and (2) the prior approval of all other entities required to approve requested permits, including, but not limited to, Orange County Fire Authority, Orange County Health Care Agency, El Toro Water District, Saddleback Valley Unified School District (payment of fees only), State of California (elevators), Southern California Edison, and Southern California Gas Company.
Landscape Plan Compliance Review (LHMC Chapters 9-46 and 9-47)	First Submittal: 20 Working Days Second Submittal: 20 Working Days Third and Subsequent Submittals: 10 Working Days
Waste Reduction and Recycling Plan Review (LHMC Chapter 5-48)	First Submittal: 20 Working Days Second Submittal: 20 Working Days Third and Subsequent Submittals: 10 Working Days

Exhibit G-3

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
All Other Governmental Agency Permits/Approvals (i.e., approvals by governmental agencies other than City) ** County of Orange review of Phased Final Subdivision Maps addressed separately, above. **Other Governmental Agencies may include, but not be limited to, Orange County Fire Authority, Orange County Health Care Agency, El Toro Water District, Saddleback Valley Unified School District (payment of fees only), and the State of California (elevators). **Administrative Delay does not apply to review or approvals of utility companies or other agencies that are not governmental agencies, including, but not limited to, Southern California Edison, Southern California Gas Company, AT&T, etc.	90 Days (Cumulative) **Includes the cumulative time for Agency review following submission of an initial complete application to the Agency for which a permit or ministerial approval is requested. Does not include periods of time Owner is making corrections between submittals.

Exhibit G-4

EXHIBIT H

PROCEDURES AND REQUIREMENTS FOR PREPARATION, SUBMITTAL, REVIEW, APPROVAL, AND INSTALLATION OF PUBLIC ART

This **Exhibit H** sets forth the procedures and requirements for preparation, submittal, review, approval, and installation of Public Art for the Village at Laguna Hills Project (the “**Project**”) in accordance with Section 7.4 of the Development Agreement. The Project an integrated mixed-use development on approximately 68 acres consisting of multiple components, including Public Art installations, which Owner contemplates developing in multiple phases over the Term of the Development Agreement. This **Exhibit H** is intended to establish procedures and requirements to ensure that the Public Art required in conjunction with the Project is installed in an integrated, thought-out, and cohesive manner consistent with the goals, objectives, and standards of the Specific Plan’s “Public Art” provisions.

I. Owner’s Public Art Obligation

A. **Owner’s Public Art Obligation.** Section 7.4 of the Development Agreement provides that Owner shall furnish Public Art in connection with the Project and/or pay a Public Art In-lieu Fee with a combined minimum aggregate value of one-half percent (0.5%) of the total aggregate construction costs of the Project (“**Owner’s Public Art Obligation**”). For this purpose, construction costs are based on the valuation as determined by the City’s Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of all of the Project components. City will determine the portion of Owner’s Public Art Obligation attributable to each discreet Project component at the time City receives an application for permits for construction such Project component by multiplying the construction cost of such Project component, as determined by City, by one-half percent (0.5%) (“**Component Public Art Obligation**”). The sum at any point in time of the Component Public Art Obligation for each building permit that has been approved and/or applied for is referred to herein as “**Owner’s Accrued Public Art Obligation.**”

B. **In-Lieu Payment Contribution.** Pursuant to Section 7.4 of the Development Agreement, the Parties have agreed that Six Hundred Fifty Thousand Dollars (\$650,000) of Owner’s Public Art Obligation will be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of the Development Agreement (collectively, “**Owner’s In-Lieu Payment Contribution**”). Owner and City agree that Owner’s In-Lieu Payment Contribution correlates to a total aggregate construction cost of One Hundred Thirty Million Dollars (\$130,000,000) [$\$650,000 / 0.5\% = \$130,000,000$].

C. **Actual Art Obligation.** Pursuant to Section 7.4 of the Development Agreement, the Parties have agreed that that portion of Owner’s Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the actual provision of Public Art on the Property (“**Owner’s Actual Art Obligation**”). Unless otherwise proposed by Owner and included as a requirement within the Conceptual Project Art Program approved pursuant to Section

Exhibit H-1

II, Owner and City agree that Owner's Actual Art Obligation will not be triggered until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000). Consistent with the Specific Plan, expenses that may be attributed to Owner's Actual Art Obligation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs. That portion of Owner's Accrued Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) is referred to herein as "**Owner's Accrued Actual Art Obligation.**"

II. Conceptual Project Art Program

A. Conceptual Project Art Program Required. Before the first building permit for any building in the Project is issued, Owner shall prepare, submit, and obtain City approval of a concept Public Art program for the entire Project (the "**Conceptual Project Art Program**"). All Public Art that is thereafter constructed and installed on the Property must be consistent with the approved Conceptual Project Art Program.

B. Conceptual Project Art Program Components. The Conceptual Project Art Program shall include the following components:

1. Goals and Objectives. A description of the goals and objectives of the Conceptual Project Art Program.
2. Theme. A description of the proposed theme of the Public Art to be installed on the Property.
3. Standards. Standards governing type, media, materials, size, scope, and content of Public Art to be installed on the Property. All standards should be consistent with the Specific Plan provisions for Public Art. Owner shall consider the following when developing proposed standards for Public Art installations:
 - a. Relevance of the artwork to the City, its values, culture, and people;
 - b. Suitability of the artwork for outdoor display, including its maintenance and conservation requirements.
 - c. Relationship of the artwork to the site, especially how it serves to activate or enhance public space.
 - d. Appropriateness of the scale of the artwork.
 - e. Community standards of decency;
 - f. Construction and material standards for Public Art set forth in the "Public Art" provisions of Section V of the Specific Plan. Pursuant to the Specific Plan, permissible types of Public Art include, but are not limited to, sculptures,

Exhibit H-2

paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources. The Specific Plan also requires that artwork be constructed of durable, long-lasting materials that can withstand outdoor display and require low maintenance. Recommended materials include bronze, stainless steel, high-grade aluminum or hard stones. In addition, the Specific Plan states that artworks incorporating water features must be designed so that the artwork can stand on its own should the water cease to function properly.

4. Location. A description and depiction of the locations where Public Art is anticipated to be installed and standards for locating Public Art. Consistent with the Specific Plan, Public Art installations (i) should be located in places that are open and easily accessible to the public; (ii) should be prominently placed within the Property; (iii) should be oriented toward the pedestrian experience of the Project and/or located within the Village Park; and (iv) should not be sited near monument signs, walls, benches, or utility boxes, since these structures may block viewing the art and diminish the aesthetic value of the artwork.

5. Criteria for Selection of Artists. A description of how artists commissioned to create or fabricate original art for the Project shall be selected and the criteria that shall be used to select artists. Pursuant to the Specific Plan, artists selected must have experience in design concepts, fabrication, installation and long-term durability of large-scale outdoor artworks, and be approved by the City's Planning Agency prior to selection. Owner may, but is not required, to include a list of proposed artists and their qualifications as part of the Conceptual Project Art Program.

6. Drawings and Illustrations. Owner is encouraged to include concept drawings, illustrations, and/or visual examples depicting the type, nature, size, scale, and location of the types of Public Art envisioned by the Conceptual Project Art Program. At Owner's option, Owner may include illustrations of specific proposed Public Art installations.

7. Phasing Plan. A phasing plan for the funding and installation of Public Art.

a. The phasing plan shall provide for the funding and installation of Public Art on the Property within timeframes consistent with the anticipated phasing of the Project components and infrastructure and shall establish outside dates within the Term of the Development Agreement by which Public Art installations at specified locations or areas of the Property shall be completed. At a minimum, the phasing plan shall ensure that Public Art with a minimum value equal to or exceeding the amount of Owner's Accrued Actual Art Obligation attributable to the Project components Owner is required to Develop in Phase One shall be installed prior to the date Owner is required to Complete Construction of such required Phase One components pursuant to Subsection 5.4.1 of the Development Agreement.

b. If the phasing plan contemplates that funds will be accumulated within a Public Art Fund established pursuant to Section V to facilitate the

Exhibit H-3

financing and planning of larger, Project-serving Public Art installations, it shall address the anticipated amounts needed to fund such Public Art installations, the anticipated timing of completion of such Public Art installations, and any applicable requirements or limitations with respect to deposits to or withdrawals from the Public Art Fund for such Public Art installations.

c. The phasing plan shall address how Owner's In-Lieu Payment Contribution shall be applied to satisfy Owner's Public Art Obligation in relation to the sequence of issuance of building permits for construction of Project components. Unless otherwise proposed by Owner and included as a requirement within the approved Conceptual Project Art Program, Owner is not required to install any Public Art until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000). Notwithstanding the foregoing, at Owner's option, the phasing plan may require the installation of Public Art in conjunction with the construction of Project components before the estimated total aggregate construction cost of the Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000).

d. At Owner's option, the phasing plan may include requirements for the funding and/or installation of Public Art in conjunction with the development of specific parcels of the Property and/or components of the Project, which shall be binding on and enforceable against future transferees, assignees, and developers.

7. Maintenance Standards. Proposed minimum maintenance standards for Public Art that is installed on the Property.

8. O&M Funding and Implementation. A description of the mechanism through which operation and maintenance of Public Art installed on the Property shall be funded and implemented for the life of the Project.

C. Review and Approval by Planning Agency. The Conceptual Project Art Program shall be subject to review by the City's Planning Agency for conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of Owner's submitted Conceptual Project Art Program is subject to the discretionary approval of the City's Planning Agency, subject to applicable limits of state and federal law.

D. Amendments. The Conceptual Project Art Program may be amended from time to time with the approval of the City's Planning Agency.

III. Final Art Submittals

A. Final Art Submittal Required. Before fabricating and installing any piece of Public Art, Owner must prepare, submit, and obtain City approval of final plans and specifications for such Public Art ("**Final Art Submittal**").

Exhibit H-4

B. Required Content of Final Art Submittals. Each Final Art Submittal shall describe and demonstrate how the proposed Public Art is consistent with the approved Conceptual Project Art Program and the Specific Plan and shall include, without limitation, detailed plans and specifications, schematics, and descriptions of the type, size, medium/material, location, content, and value of the proposed Public Art, a description of the proposed artist(s), a proposed timeline for installation of the Public Art, and a complete application for any Subsequent Development Approvals required for installation of the Public Art. More than one Public Art installation may be combined in a single Final Art Submittal.

C. Review and Approval by Planning Agency. The design, artist, type, size, medium, location, content, estimated value, and timeline for installation of each Public Art installation shall be subject to review the City's Planning Agency for consistency with the Conceptual Project Art Program and conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of each Final Art Submittal is subject to the discretionary approval of the City's Planning Agency, subject to the applicable limits of state and federal law; provided, however, that Planning Agency may not deny or impose conditions on a proposed Final Art Submittal based on aspects of the proposed Public Art that conform to the Conceptual Project Art Program approved by the Planning Agency.

IV. Installation of Approved Public Art

A. Obligation. Owner shall install approved Public Art within the timeframes set forth in the Conceptual Project Art Program phasing plan and each Final Art Submittal approved by the City's Planning Agency.

B. Time Extensions. Time extensions not exceeding six (6) months may be approved by the City Manager, in his or her reasonable discretion. Time extensions exceeding six (6) months shall require approval of the Planning Agency, in its reasonable discretion.

C. Excusable Delay. The timeframes in which Owner is required to install Public Art shall be subject to extension for periods equal to the duration of any excusable delay pursuant to Section 22.1 of the Development Agreement.

D. Withholding of Permits for Noncompliance. In addition to any other remedies available to City, Owner's failure to complete installation of Public Art within required timeframes shall entitle City to withhold future building permits or certificates of occupancy for the Project until Public Art of a value equal or exceeding the amount of Owner's Accrued Actual Art Obligation has been installed.

V. Public Art Fund

A. Establishment of Public Art Fund. Rather than installing a separate Public Art installation in conjunction with the construction of each building to satisfy Owner's Actual Art Obligation, Owner may accumulate funds in a fund held in trust by the City (the "Public Art

Fund”) to facilitate the financing and planning of larger, Project-serving Public Art installations as provided in the approved Conceptual Project Art Program.

B. Effect of Deposits into Public Art Fund. Subject to any applicable requirements or limitations set forth in the approved Conceptual Project Art Program, deposits by Owner into the Public Art Fund in an amount equal to one-half percent (0.5%) of the estimated construction cost of any discreet Project component, as determined by City, shall permit Owner to obtain building permits and/or certificates of occupancy for such Project component prior to approval of Final Art Submittals for, and/or installation of, specified Public Art installations. Such deposits into the Public Art Fund shall not be deemed to satisfy or excuse Owner’s obligation under the Development Agreement to install actual Public Art.

C. Withdrawals from Public Art Fund. Following approval by the City’s Planning Agency of a Final Art Submittal for a Public Art installation intended to be financed with funds held in the Public Art Fund, Owner may withdraw funds from the Public Art Fund in an amount up to the estimated value of the Public Art installation, as determined by the Planning Agency in conjunction with approval of the Final Art Submittal. Consistent with the Specific Plan, allowable expenses attributable to the value of a Public Art installation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs.

D. Forfeiture in the Event of Expiration, Termination, or Cancellation of Development Agreement. In the event the Development Agreement expires or is terminated or cancelled pursuant to the terms of the Development Agreement, and Owner’s Accrued Actual Art Obligation has not been satisfied by the date of such expiration, termination or cancellation, that portion of the funds, if any, held in the Public Art Fund equal to the difference between Owner’s Accrued Actual Art Obligation and the value of Public Art that has actually been installed shall be forfeited to the City and deposited into City’s Public Art In-Lieu Fund.

VI. Project Building and Occupancy Permits

A. Building Permits. In order to be entitled to issuance of a building permit for any discreet Project component, Owner must demonstrate that the combination of (1) the value of specific Public Art installations already approved by the City’s Planning Agency, and (2) the amount deposited by Owner into a Public Art Fund to fund larger, Project-serving Public Art installations pursuant to the approved Conceptual Project Art Program, equals or exceeds the amount of Owner’s Accrued Public Art Obligation.

B. Certificates of Occupancy. In order to be entitled to issuance of a final certificate of occupancy for any building, Owner must demonstrate that it is in compliance with the timeframes for installation of Public Art set forth in the Conceptual Project Art Program phasing plan and all approved Final Art Submittals.

Exhibit H-6



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 8, 2022

TO: Mayor/Chair and Council/Agency Members

FROM: Larry Longenecker
Community Development Director

ISSUE: Village at Laguna Hills Continued Joint Meeting

RECOMMENDATION: That the City Council and Planning Agency take the following actions:

- 1) Resume the Joint City Council and Planning Agency Meeting;
- 2) That the Planning Agency and City Council:
 - a) Independently consider the City of Laguna Hills General Plan Program Environmental Impact Report (PEIR) (State Clearinghouse No. 20080811100) as previously addended for the Five Lagunas Project along with the Fifth Addendum to the PEIR;
 - b) Adopt a Resolution entitled: "A Joint Resolution of the Planning Agency and the City Council of the City of Laguna Hills, California, adopting the Fifth Addendum to the 2009 General Plan Program Environmental Impact Report as previously addended for the Five Lagunas Project and a Mitigation Monitoring and Reporting Program for the Village at Laguna Hills Project pursuant to the California Environmental Quality Act";
- 3) Adopt a Resolution entitled: "A Joint Resolution of the Planning Agency and City Council of the City of Laguna Hills, California, approving Site Development Permit, Master Sign Program, Conditional Use Permit, Vesting Tentative Tract Map, Development Agreement, Precise Plan No. USE-0010-2019, a request by MGP Fund X Laguna Hills, LLC, to modify the previously approved Five Lagunas Project to continue to redevelop the former Laguna Hills Mall site located at 24155 Laguna

Hills Mall, and making certain findings in connection therewith”;

4) That the City Council introduce for first reading, read by title only, and waive further reading of an Ordinance entitled: “An Ordinance of the City Council of the City of Laguna Hills, California, approving and adopting a Development Agreement between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC for the Village at Laguna Hills Project.”

5) That the City Council dissolve the advisory ad hoc committee established on September 28, 2021, for the single-purpose of directing further development agreement negotiations for the Village at Laguna Hills Project.

SUMMARY:

On April 27, 2021, the City Council/Planning Agency conducted a joint public hearing (the Hearing) to consider approval of the Village at Laguna Hills (the Project). No action was taken on the Project at that Hearing; the City Council voted to keep the public hearing open and to continue the item to June 24, 2021. At the Hearing on June 24, the City Council/Planning Agency received additional public comment and voted to continue the Hearing to June 29, 2021. At the June 29 meeting, the City Council directed that the City retain the services of a qualified professional negotiator to engage in further development agreement negotiations with the Project applicant. The City Council/Planning Agency also voted to close the public hearing, which has remained closed since that date. The City Council/Planning Agency then continued the joint meeting to December 14, 2021.

On September 14, 2021, the City Council entered into a Retainer Agreement with the law firm of Stradling Yocca Carlson & Rauth for Mr. Thomas Clark to serve as the City’s authorized development agreement negotiator in connection with the Project. On September 28, 2021, the City Council formed an ad hoc committee to direct Mr. Clark during development agreement negotiations.

Because it was premature for the City Council/Planning Agency to further discuss or act on the proposed Project while mutually cooperative and productive development agreement negotiations were ongoing, the continued hearing/meeting scheduled for December 14, 2021, was canceled by mutual agreement of the parties and continued to February 8, 2022, and again to March 8, 2022.

As detailed in the Recommendation section of this report (above), Staff recommends approval of the Project application USE-0010-2019.

If determined needed, an alternative action is available to the City Council/Planning Agency consisting of the adoption of a resolution of denial, as detailed later in this report.

BACKGROUND:

Meeting Chronology

On April 27, 2021, the City Council/Planning Agency conducted a joint public hearing (the Hearing) to consider approval of resolutions and conduct the first reading of an ordinance approving and adopting a proposed Development Agreement pertaining to the redevelopment of the former Laguna Hills Mall as the Village at Laguna Hills (the Project). The Project is a modification to the previously approved Five Lagunas project. No action was taken on the Project at that Hearing; the City Council voted to keep the public hearing open and to continue the item to June 24, 2021. At the Hearing on June 24, the City Council/Planning Agency received additional public comment, and voted to continue the Hearing to June 29, 2021.

On June 29, 2021, the City Council/Planning Agency held the continued joint public hearing regarding the Project. The public hearing concluded and was closed at the June 29 meeting. The public hearing for the Project remains closed. After closing the public hearing, the City Council deliberated the project and voted to direct the Interim City Manager to continue negotiating the terms of the proposed Development Agreement with the applicant/developer, MGP Fund X Laguna Hills, LLC (MGP), consistent with the City Council/Planning Agency Member comments and feedback given at the meeting, and that the City retain the services of a qualified professional negotiator to engage in further development agreement negotiations with the applicant/developer. The City Council/Planning Agency also voted to continue the joint meeting to December 14, 2021.

As detailed in the following section of this report, the City Council subsequently retained special counsel to assist in negotiation of the proposed Development Agreement and, thereafter, appointed an ad hoc subcommittee of two City Council members to work with special counsel in doing so. Discussions between City staff, special counsel, the ad hoc committee, and MGP regarding proposed terms and conditions of the required Development Agreement progressed, but additional time was needed to conclude the

negotiations and to prepare a revised proposed Development Agreement for the City Council's consideration. Because it was premature for the City Council/Planning Agency to further discuss or act on the proposed Project while mutually cooperative and productive development agreement negotiations were ongoing, the continued hearing/meeting scheduled for December 14, 2021, was canceled by mutual agreement and continued to February 8, 2022, and again to March 8, 2022.

All hearing materials from the following City Council/Planning Agency meetings are incorporated herein and are included in Attachments a through e, respectively, by hyperlink to the City's website: April 27, 2021; June 24, 2021, June 29, 2021; December 14, 2021 (meeting cancelled); and February 8, 2022 (meeting cancelled).

Development Agreement Negotiations

At the special meeting for the Project on June 29, 2021, the City Council/Planning Agency directed that the City commence a competitive procurement process to obtain the services of a qualified professional development agreement negotiator for purposes of engaging in further development agreement negotiations with the Project applicant/developer MGP. On September 1, 2021, the City Council reviewed proposals and interviewed two qualified candidate firms: Stradling Yocca Carlson & Rauth, and Armbruster Goldsmith & Delvac. The City Council selected Stradling Yocca Carlson & Rauth, represented by Mr. Thomas Clark, and on September 14, 2021, entered into a Retainer Agreement for Mr. Clark to serve as the City's authorized development agreement negotiator in connection with the Project.

On September 28, 2021, the City Council established an ad hoc advisory committee, comprised of two City Council members (less than a quorum), Mayor Wheeler and Mayor Pro Tempore Heft, for the sole purpose of directing Mr. Clark during further development agreement negotiations with the applicant regarding the Project.

At the direction of the ad hoc committee, Mr. Clark further negotiated the Development Agreement with the applicant/developer to include additional Community Benefit Fees, as detailed in the attached redline of the Development Agreement (Attachment i) and Development Agreement outline summary (Attachment j) prepared by Mr. Clark. Mr. Clark will be available at the March 8, 2022, meeting to review the proposed changes to the Development Agreement.

Added Condition of Approval

A condition of approval has been added to the proposed resolution approving the project (Condition 7A, Attachment g). The new condition requires review and comment by the Community Development Director for all final architectural treatments, exterior materials, and colors, prior to submittal of building permits for any of the project buildings, for confirmation that the project submittal conforms to the existing development approvals and that the quality of finishes is complementary to the local aesthetic.

Refined Plan Set

The applicant has submitted a refined plan set. It is important to note there are no changes proposed to the Project proposal. Rather, the applicant reorganized the Project Summary on Sheet SD1.01, making it easier to understand and using coloring for each land use category that coincides with the “Master Plan, Full Build” Plan on Sheets SD1.03 and SD1.03B. In addition, the Phasing Plan (Sheets SD1.04 through SD1.08) was removed to avoid confusion or conflict with the project conditions of approval, the Development Agreement phasing requirements and the District Sequencing Plan sheets provided in the Civil section of the Project plans.

Updated Resolutions

Staff has updated the proposed resolutions associated with the Project to reflect the continued meeting dates. These are included as Attachments f and g.

Updated Ordinance

Staff has provided an updated proposed ordinance (Attachment h) adopting the project Development Agreement, as discussed earlier in this report.

Public Comments

Since the June 29, 2021, continued public hearing, the City has received seven written public comments. These are included as Attachment n.

CEQA FINDINGS:

See the proposed resolution (Attachment f) adopting the Fifth Addendum to the 2009 to the General Plan Program Environmental Impact Report.

FISCAL IMPACT:

See the April 27, 2021, staff report (Attachment a).

ALTERNATIVE:

The City Council/Planning Agency could, alternatively, vote to adopt a resolution denying the Development Agreement. A proposed resolution of denial is provided as Attachment k.

ATTACHMENTS:

- Attachment a - April 27, 2021 Staff Report, Attachments
- Attachment b - June 24, 2021 Staff Report, Attachments
- Attachment c - June 29, 2021 Staff Report, Attachments
- Attachment d - December 14, 2021 (Cancelled) Staff Report, Attachments
- Attachment e - February 8, 2022 (Cancelled) Staff Report
- Attachment f - Resolution Approving the Fifth Addendum
- Attachment g - Resolution Approving USE-0010-2019
- Attachment h - Ordinance Approving and Adopting the Development Agreement
- Attachment i - Development Agreement in Redline Version
- Attachment j - Development Agreement Outline Summary
- Attachment k - Resolution Denying the Development Agreement
- Attachment l - Project Plans (Link)
- Attachment m - Master Sign Program (Link)
- Attachment n - Comment Letters Received After 3PM June 29, 2021
- Attachment o - Hotel Feasibility Study, HVS, dated December 13, 2021
- Attachment p - Addendum to Hotel Feasibility Study, HVS, dated December 14, 2021

The Village at Laguna Hills

Attachment a

Attachments from April 27, 2021 Public Hearing Agenda Package

Due to file size limitations, the Attachments from the April 27, 2021 Joint Public Hearing of the Planning Agency and City Council for the Village at Laguna Hills Project can be viewed and downloaded at:

<https://www.lagunahillsca.gov/176/Planning-Projects-New-Developments>



The Village at Laguna Hills

Attachment b

Attachments from June 24, 2021 Public Hearing Agenda Package

Due to file size limitations, the Attachments from the June 24, 2021 Continued Joint Public Hearing of the Planning Agency and City Council for the Village at Laguna Hills Project can be viewed and downloaded at:

<https://www.lagunahillsca.gov/176/Planning-Projects-New-Developments>



The Village at Laguna Hills

Attachment c

Attachments from June 29, 2021 Public Hearing Agenda Package

Due to file size limitations, the Attachments from the June 29, 2021 Continued Joint Public Hearing of the Planning Agency and City Council for the Village at Laguna Hills Project can be viewed and downloaded at:

<https://www.lagunahillsca.gov/176/Planning-Projects-New-Developments>



The Village at Laguna Hills

Attachment d

Attachments from December 14, 2021 (cancelled) Public Hearing Agenda Package

Due to file size limitations, the Attachments from the December 14, 2021 Cancelled Joint Public Hearing of the Planning Agency and City Council for the Village at Laguna Hills Project can be viewed and downloaded at:

<https://www.lagunahillsca.gov/176/Planning-Projects-New-Developments>



The Village at Laguna Hills

Attachment e

Staff Report from February 8, 2022 (cancelled) Public Hearing Agenda Package

Due to file size limitations, the Staff Report from the February 8, 2022 Cancelled Joint Public Hearing of the Planning Agency and City Council for the Village at Laguna Hills Project can be viewed and downloaded at:

<https://www.lagunahillsca.gov/176/Planning-Projects-New-Developments>



RESOLUTION NO. _____

A JOINT RESOLUTION OF THE PLANNING AGENCY AND THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING THE FIFTH ADDENDUM TO THE 2009 GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT AS PREVIOUSLY ADDED FOR THE FIVE LAGUNAS PROJECT AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE VILLAGE AT LAGUNA HILLS PROJECT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The Planning Agency and the City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, MGP Fund X Laguna Hills, LLC ("Developer") initiated an application with the City of Laguna Hills ("City") for approval of land use entitlements in order to continue to redevelop the existing approximately 68-acre former Laguna Hills Mall site generally located along the southerly side of El Toro Road and the westerly side of Avenida de la Carlota in the City of Laguna Hills (the "Property") through the continued demolition and removal of the Laguna Hills Mall structure and the construction of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park) and related amenities, (the "Project"); and,

WHEREAS, the City Council serves as, and is, the Planning Agency of the City pursuant to Government Code Section 65100; and,

WHEREAS, in June 2009, in connection with an update to the General Plan ("Update"), the City prepared a Program Environmental Impact Report entitled "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"). On July 14, 2009, the City Council certified the PEIR and adopted a Statement of Findings of Fact, a Statement of Overriding Considerations and Mitigation Monitoring Program. The City filed a Notice of Determination on July 15, 2009; and,

WHEREAS, on April 12, 2011, the City Council adopted an Addendum to the PEIR ("First Addendum") prepared in connection with the adoption of an amendment to the Urban Village Specific Plan ("Specific Plan Amendment"); and,

WHEREAS, on November 12, 2012, the City Council adopted an Addendum to the PEIR ("Second Addendum") prepared in connection with approval of the Oakbrook Village Shopping Center Redevelopment Project; and,

WHEREAS, on March 22, 2016, the City Council adopted an Addendum to the PEIR ("Third Addendum") prepared in connection with approval of Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 for the Property, which authorized redevelopment of the existing Laguna Hills Mall with a mixed-use retail and residential project named as the "Five Lagunas Project"; and,

WHEREAS, on April 10, 2018, the City Council adopted an Addendum to the PEIR ("Fourth Addendum") prepared in connection with approval of modifications to the Oakbrook Village Shopping Center Redevelopment Project; and,

WHEREAS, the Village at Laguna Hills Project is a modification of the Five Lagunas Project previously approved in 2016; and,

WHEREAS, the continued redevelopment of Laguna Hills Mall through modification of the 2016 Five Lagunas Project is subject to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and California Code of Regulations, Title 14, Sections 15000 *et seq.* ("CEQA"); and,

WHEREAS, the City of Laguna Hills, as lead agency, has evaluated the Project's potential environmental impacts and has determined that the Project will not: (1) result in any new significant impacts or a substantial increase in the severity of previously identified significant impacts as compared to the environmental impacts of the Five Lagunas Project that were examined in the Third Addendum; or (2) require any new mitigation measures or alternatives. The applicable mitigation measures identified in the Third Addendum for the Five Lagunas Project are incorporated into the design of the Project or are imposed either as mitigation measures or as conditions of approval for the Project, or both, as appropriate. The City, therefore, has prepared a Fifth Addendum to the PEIR for the Project (the "Fifth Addendum") pursuant to Public Resources Code Sections 21166 and CEQA Guidelines Sections 15162 and 15164; and,

WHEREAS, on April 2, 2021, the City caused public notice to be given of the City Council's intention to consider adoption of the Fifth Addendum for the Project, and on April 27, 2021, the City Council held a public hearing on adoption of the Fifth Addendum, and continued the public hearing to June 24, 2021, and again continued the public hearing to June 29, 2021, and again continued the public hearing to December 14, 2021, with that meeting being cancelled and the item continued to February 8, 2022, with that meeting being cancelled and the item continued to March 8, 2022; and,

WHEREAS, the City Council has considered the Fifth Addendum along with the PEIR as previously addended for the Five Lagunas Project in the Third Addendum pursuant to CEQA Guidelines Section 15164(d).

NOW, THEREFORE, THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DO RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council has independently considered the Fifth Addendum, along with the PEIR as previously addended for the Five Lagunas Project, and finds that no further environmental documentation is permitted or required because: (i) there are no substantial changes in the Project requiring major revisions of the PEIR as previously addended due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the Project is being undertaken which will require major revisions of the PEIR as previously addended for the Five Lagunas Project due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and (iii) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR was addended for the Five Lagunas Project, showing that: (a) the Project will have one or more significant effects not discussed in the PEIR as previously addended for the Five Lagunas Project; (b) significant effects previously examined will be substantially more severe than shown in the PEIR as previously addended for the Five Lagunas Project; (c) mitigation measures or alternatives previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the PEIR as previously addended for the Five Lagunas Project would substantially reduce one or more significant effects on the environment, but those mitigation measures or alternatives have not been adopted. (Public Resources Code § 21166 and CEQA Guidelines §§ 15162 and 15164.)

SECTION 2. The Fifth Addendum attached hereto as Exhibit "A" is hereby adopted.

SECTION 3. The City Council finds that the above recitations are true and correct and constitute the findings of the City Council and Planning Agency in this case.

SECTION 4. The Community Development Director is hereby directed and authorized to cause a Notice of Determination to be filed and posted pursuant to Public Resources Code Section 21152(a) and CEQA Guidelines Section 15094(a) within five (5) days after the adoption of the ordinance approving the Development Agreement for the Project.

SECTION 5. This Resolution shall take effect upon adoption by the City Council of an Ordinance approving the proposed Development Agreement for the Project.

PASSED, APPROVED, AND ADOPTED this 8th day of March, 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No.
PA2022- adopted by the Planning Agency and City Council of the City of Laguna Hills,
California, at a Regular Meeting thereof held on the 8th day of March, 2022, by the
following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

RESOLUTION NO. PA2022-

A JOINT RESOLUTION OF THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT, MASTER SIGN PROGRAM, CONDITIONAL USE PERMIT, VESTING TENTATIVE TRACT MAP, DEVELOPMENT AGREEMENT, PRECISE PLAN NO. USE-0010-2019, A REQUEST BY MGP FUND X LAGUNA HILLS, LLC TO MODIFY THE PREVIOUSLY APPROVED FIVE LAGUNAS PROJECT TO CONTINUE TO REDEVELOP THE FORMER LAGUNA HILLS MALL SITE LOCATED AT 24155 LAGUNA HILLS MALL, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

The Planning Agency and the City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, MGP Fund X Laguna Hills, LLC ("Applicant") has filed an application for approval of land use entitlements in order to continue to redevelop the existing approximately 68-acre former Laguna Hills Mall property located at 24155 Laguna Hills Mall ("Project Site"). The irregularly-shaped Project Site is immediately west of I-5 and Avenida de la Carlota, south of El Toro Road, east of Calle de la Louisa, and north of Calle de los Caballeros and the Oakbrook Village Shopping Center; and

WHEREAS, on November 26, 2002, the City Council of the City of Laguna Hills adopted the Urban Village Specific Plan ("UVSP"). The development area covered by the UVSP ("UVSP area") consists of 240 acres bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and Interstate 5 (I-5) on the east. The UVSP regulates development within the Village Commercial area (which encompasses the UVSP area) of Laguna Hills. The purpose of the UVSP is to develop a community core in which a variety of public, regional commercial, recreational, and high-density residential uses work in concert to create an "urban village." The UVSP provides for a continuing mix of land uses, including retail, residential, hotel, medical offices, and general offices. The allowed development intensity in the Urban Village is regulated based on vehicle trip generation limits, not land use type or size of the project, and the UVSP provides for flexibility in development options and the mix of land uses, provided established anticipated aggregate vehicle trip limits generated by new development are not exceeded. The City implements this aspect of the UVSP through a vehicle trip budget debiting process, pursuant to which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the UVSP area (the "Trip Budget Allocation"). Pursuant to the UVSP, applicants for new development projects are authorized to develop to the maximum intensity of their plans

upon verification that the vehicle trip generation impacts created by the new development will not exceed the remaining Trip Budget Allocation. Proposed developments in the UVSP area that seek to incorporate a mix of uses also require approval of a precise plan of development, which regulates the exact mix of uses within a development site in order to allow the community to assess potential impacts from the project and to provide a balance of uses and purposes that promote community image, reduce undesirable environmental consequences, and improve the fiscal abilities of the City to meet locally-expressed needs; and

WHEREAS, in July 2009, the City Council adopted the 2009 Comprehensive General Plan Update ("Update"). The Update identified the UVSP area for expansion/revitalization and increased commercial and residential development. In connection with approving the Update, the City prepared a Program Environmental Impact Report entitled "City of Laguna Hills General Plan Program Environmental Impact Report, June 2009, State Clearinghouse No. 20080811100" ("PEIR"). On July 14, 2009, the City Council certified the PEIR, adopted a Statement of Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring Program; and

WHEREAS, in April 2011, the City Council adopted the Urban Village Specific Plan Amendment ("UVSP Amendment") in order to implement the Update. The UVSP Amendment updated the UVSP to reflect the development intensification approved in the Update; modify the Trip Budget Allocation to 1,243 additional AM Peak Hour Trips and 2,272 additional PM Peak Hour Trips consistent with the Update; modify the development standards in the UVSP in order to integrate and improve internal consistency between the existing commercial and residential development standards; incorporate the mixed-use application process and development standards already contained in the City's Development Code; and update the Public Art section of the UVSP to clarify the management of the funds collected. On April 12, 2011, the City Council adopted an Addendum to the PEIR prepared in connection with adoption of the UVSP Amendment (the "First Addendum"); and

WHEREAS, in November, 2012, the Planning Agency and City Council approved the Oakbrook Village Shopping Center Redevelopment Project, which proposed the redevelopment of a portion of the Oakbrook Village shopping center that is south of the Project Site (and also within the UVSP) with a multi-phase mixed use project consisting of residential units, renovated and expanded retail uses, public open space, pedestrian pathways, and private and public infrastructure improvements, and adopted an Addendum to the PEIR prepared in connection with the approval ("Second Addendum"); and

WHEREAS, in March 2016, the Planning Agency and City Council approved Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 for the Project Site, which authorized redevelopment of the existing Laguna Hills Mall and Project Site with a mixed-use retail and residential project branded "Five Lagunas." The Five Lagunas Project included a plan to convert a portion of the existing enclosed mall space

into a pedestrian-oriented, open-air experience with connectivity to surrounding commercial and residential uses; demolition and reconstruction of portions of the existing mall structure, with other portions of the mall remaining in place and undergoing extensive renovations with updated design; construction of a number of additional uses around the central mall building, consisting of additional retail offerings and dining locations; and high-density multifamily dwelling units within three apartment-style buildings, one of which also included ground floor retail uses. On March 22, 2016, the Planning Agency and City Council adopted an Addendum to the PEIR prepared in connection with approval of the Five Lagunas Project (the “Third Addendum”); and

WHEREAS, in 2018, the Planning Agency and City Council approved a modification to the Oakbrook Village Shopping Center Redevelopment Project to permit the construction of additional commercial/retail buildings and adopted an Addendum to the PEIR prepared in connection with the approval (the “Fourth Addendum”); and

WHEREAS, the Applicant now desires to modify the 2016 Five Lagunas Project through implementation of land use entitlements and a development agreement in order to continue to redevelop Project Site through the continued demolition and removal of the remaining portions of the Laguna Hills Mall structure and the construction of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park), and related amenities, rebranded as “The Village at Laguna Hills” (“Project”). The application (USE-0010-2019) includes the following discretionary permits: a Site Development Permit for new development, a Master Sign Program for various on-site signs, a Conditional Use Permit for a new health club facility and a hotel, a Conditional Use Permit to allow shared parking, a Vesting Tentative Tract Map to subdivide the Project Site into 16 lots, and a Precise Plan for mixed use development of the Project Site. The Applicant has also voluntarily applied for and requested the City enter into a statutory Development Agreement in conjunction with its application for approval of the foregoing discretionary permits, and the Planning Agency and City Council have considered approval of these permits and the related conditions of approval in conjunction with the proposed Development Agreement. The Village at Laguna Hills Project envisions a mixed-use urban village that includes a combination of high-density residential, retail, office, lodging, entertainment, and open space and recreation uses. Project implementation involves the following development activities: demolition of the existing and remaining mall building, a few free-standing building pads, and various hardscape improvements (e.g., paved parking areas, walkways); development of approximately 225,000 square feet of new retail building space to accommodate retail, services, restaurants, a health club, and a 50,000 square-foot, 1,200-seat theater; development of five multi-story residential buildings (one mixed-use retail/ residential building and four residential buildings) containing a total of 1,500 dwelling units and associated structured parking wrapped into the buildings; development of four, four-story commercial office buildings totaling approximately 465,000 square feet; development of a 100- to 150-room, five-story boutique hotel with ground-level retail space; development of a centralized Village Park; development of numerous vehicular access, circulation and parking improvements, including new driveways (signalized and non-signalized), private streets

and drive aisles, parking lots/areas, and parking spaces (perpendicular and parallel) along key streets; reconfiguration and enhancement of existing parking areas to remain; development of various site improvements that include the renovation of existing landscape areas and installation of new landscaping and pedestrian walkways and paths throughout the Project Site; removal, replacement and/or construction of utility systems (water, sewer, storm drain, and other public utilities) necessary to support the Project; and installation of signage, including free-standing, building, poll-mounted, regulatory, street identification, and numerous directional, wayfinding, and advertising signs. The Project is more fully described in the document entitled "Addendum to the City of Laguna Hills General Plan Update EIR Village at Laguna Hills Project March 2021 ("Fifth Addendum"), which is incorporated by this reference; and

WHEREAS, the Village at Laguna Hills Project is a modification of the Five Lagunas Project previously approved in 2016; and

WHEREAS, the continued redevelopment of the Project Site through modification of the 2016 Five Lagunas Project is subject to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and California Code of Regulations, Title 14, Sections 15000 *et seq.* ("CEQA"); and

WHEREAS, the City of Laguna Hills, as lead agency, has evaluated the Project's potential environmental impacts and concluded that the Project will not result in any new significant effects or a substantial increase in the severity of previously identified significant impacts compared to the Five Lagunas Project. The applicable mitigation measures identified in the Third Addendum for the Five Lagunas Project are incorporated into the design of the Project or are imposed either as mitigation measures or as conditions of approval for the Project, or both, as appropriate. The City, therefore, has concluded that no further environmental review is required pursuant to Public Resources Code Sections 21166 and California Code of Regulations, Title 14, Sections 15162 and 15164; and

WHEREAS, a duly noticed public hearing regarding the Project was held on April 27, 2021, which was continued to June 24, 2021, and continued again to June 29, 2021, and continued again to December 14, 2021, with that meeting cancelled and the item continued to February 8, 2022, with that meeting cancelled and the item continued to March 8, 2022; and

WHEREAS, concurrently with adoption of this Resolution, the Planning Agency and City Council jointly adopted Resolution No. ____ making findings regarding the Project's potential environmental impacts and compliance with CEQA pursuant to Public Resources Code Section 21116 and California Code of Regulations, Title 14, Sections 15162 and 15164, and adopting the Fifth Addendum; and

WHEREAS, concurrently with adoption of this Resolution, the City Council, introduced and conducted the first reading of an Ordinance approving the proposed Development Agreement between the City of Laguna Hills and MGP FUND X LAGUNA HILLS, LLC for the Project.

NOW, THEREFORE, THE PLANNING AGENCY AND CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DO RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. That the required findings by the City for approval of USE-0010-2019 have been met and made as follows:

Site Development Permit

1. The site design complies with standards of the Development Code in that:

The Project is located within the Village Commercial zoning district and is subject to the provisions of the UVSP. As conditioned, the Project will be in conformance with the development standards for properties within the Village Commercial zone and UVSP area, including density, building FAR, landscape requirements, parking requirements, setbacks, building height, and other development standards required.

2. The site is suitable for the proposed development in that:

The Project Site presently consists of a vacant regional mall (with more than half of the mall building demolished), several outlying buildings, surface parking and drive aisles, and various hardscape and landscape improvements. The Project proposes to redevelop the Project Site into a mixed-use urban village that includes a combination of high-density residential, retail, office, lodging, entertainment, and open space and recreation uses, and to incorporate a network of pedestrian and bike-friendly paths throughout to serve the community's needs. The Project is consistent with the land use concept, design guidelines, and development standards in the UVSP and creates a village identity as envisioned in the UVSP.

The Project represents an increment of the total development anticipated in the UVSP as called for in the Update. From an environmental standpoint, the Project is also suitable for the site in that it would not result in any new significant impacts or a substantial increase in the severity of previously identified impacts as compared to the Five Lagunas Project in any environmental area including: aesthetics, air quality, biological resources, geology and soils, greenhouse gas emissions, hydrology and water quality, noise, transportation and traffic, and utilities and service systems. Therefore, the Project will not result in any new significant impacts or a substantial increase in the severity of previously identified significant impacts to the neighborhoods surrounding the Project Site.

3. The Project is consistent with the City's General Plan and applicable design guidelines in that:

Within the General Plan Land Use Element, the Project Site is designated as "Village Commercial", which is envisioned as a master planned area (UVSP area) containing specific design standards and policies that enhance the pedestrian and vehicle circulation within a currently developed area. The intent of this designation is to establish a community core where commercial, civic, and high-density residential uses would be appropriate. The area should contain enhanced pedestrian areas that conveniently link commercial, residential, and civic activity areas. Typical uses include those associated with large regional malls, as well as a medical center, financial institutions, institutional and government uses, auto-related services, community facilities, professional offices, and high-density residential uses.

The Project implements the General Plan vision for the UVSP by providing for redevelopment of the existing, but vacant regional mall with a mixed-use project that will create a new urban village that will offer an array of entertainment, retail, restaurant, lodging, and residential uses and activity; a Village Park and multiple gathering spaces; and improved pedestrian and bicycle links that connect to and integrate the Civic Center, hospital area, adjacent Oakbrook Village shopping center, and Laguna Hills Transit Center.

The General Plan Land Use Element also identifies the UVSP area as a "future study area" for which intensification and redevelopment was expected to occur. The Project implements the General Plan vision for the area by providing for redevelopment of the Project Site with a mix of new land uses with various intensities, without exceeding the AM and PM peak hour vehicle trip budgets established by the UVSP.

Further, per the 2014-2021 General Plan Housing Element, the Project Site is identified as a potential housing development area with development intensity between 30 to 50 dwelling units per acre. As proposed, the Project's 1,500 residential units comply with the allowed development intensity and with the overall trip budget allocated to the UVSP area.

The proposed commercial, office, and hotel buildings illustrate a modern architectural style complementary to the proposed residential contemporary style. All proposed buildings will be of quality design, with strong and appropriately-scaled framework of architectural and landscape architectural elements and design that conform to the UVSP design guidelines. The massing of the buildings and landscaping within the Project Site will be designed to create a sense of unity. High-quality development features will be provided throughout the Project Site through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color) and streetscape elements (e.g., lighting, street furnishings, paving materials). Project development will enhance and

strengthen the character of the Project Site through landscaping, hardscape, and other improvements onsite and along the street edges.

The proposed Project is consistent with and help implement the following goals of the General Plan Land Use and Housing Elements:

- *Goal LU-1. Create diverse and vibrant activity centers and events that bring people together as a community.*
- *Goal LU-2. Ensure development is compatible and interdependent with neighboring uses*
- *Goal LU-3. Encourage infill development that involves the revitalization of property in an economically and environmentally sustainable manner.*
- *Goal LU-4. Place a high priority on design, architecture, and landscaping that reflect the community's identity and gracious lifestyle.*
- *Goal LU-6. Expand the variety of services, shopping, and entertainment opportunities in the community.*
- *Goal LU-7. Facilitate the creation and expansion of private sector businesses and associated local career choices for Laguna Hills residents.*
- *Goal H-2. Facilitate the development of a range of housing types, densities, and affordability levels to meet the diverse needs of the community for all economic levels and age groups and special needs groups.*

The proposed Project is also consistent with a number of policies set forth in the General Plan, including, but not limited to the following:

- Policy LU-1.1: Encourage new mixed-use developments in the Urban Village that complement and enhance Laguna Hills' existing community character.
- Policy LU-1.2: Encourage the compatible integration of residential and service retail uses in proximity to job centers.
- Policy LU-1.3: Promote intensified and revitalized land uses in the Urban Village within traffic, parking, and transit capabilities.
- Policy LU-1.4: Promote walkability throughout the community through enhanced pedestrian amenities, attractive streetscapes, plazas, and civic gathering spaces.
- Policy M-6.1: Reduce the amount of land devoted to parking, if feasible, by integrating multiple use and creative parking solutions that still provide adequate parking for all uses.
- Policy M-6.3: Develop flexible and creative solutions for parking in the Urban Village that respect its proximity to transit and park and ride, and its mix of uses.
- Policy M-6.4: Encourage parking in shared surface lots or parking structures to make the most efficient use of land.
- Policy M-6.5: Identify solutions to neighborhood- and activity-specific parking issues through implementation of a broad range of parking management tools and strategies.
- Policy H-2.1: Provide opportunities for higher density residential development, mixed use residential/commercial development, and transit-oriented development in appropriate areas of the City.

4. The site design and structural components are appropriate for the site and function of the proposed uses in that:

The proposed commercial, office, hotel and residential buildings will be of quality contemporary design with a strong and appropriately-scaled framework of architectural and landscape architectural elements and design. The new buildings have been placed in a manner that meet the development standards and design guidelines of the UVSP, while making the best use of available space and maintaining a cohesive 'flow' between old and new portions of the Project Site. The massing of the buildings and landscaping will be designed to create a sense of unity. The proposed office parking structures would be internal to the Project Site and incorporate architectural elements and design features that provide visually-appealing elements and reduce the overall massing and scale of the structures. High-quality development features will be provided throughout the project site through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color) and streetscape elements (e.g., lighting, paving materials). Project development will enhance and strengthen the character of the Project Site through the addition of landscaping, hardscape, a network of pedestrian pathways and bicycle lanes, and other improvements onsite and along the street edges.

Master Sign Program

1. That the design and application of the sign criteria required by the development code are satisfied by the proposed sign program.

The City's Development Code provides for deviations from the standard sign criteria subject to the approval of a Master Sign Program by the Planning Agency. The Project's Master Sign Program ("MSP") proposes a variety of signs and monuments that are unique and both enrich the visual quality of the development and interest to the pedestrian environment. The proposed sizes and locations of the signs reinforce the contemporary character of the Project and are appropriate for this type of development.

2. That the sign program provides a compatible and harmonious design between advertising, landscaping, and building design.

The MSP is a comprehensive signage program designed to complement the proposed redevelopment Project by promoting a compatible and harmonious design between advertising, landscaping, and building design. The sign program is an integral part of the Project site's architectural features and crafted to complement the new buildings and landscaping in a manner consistent with the UVSP.

Freestanding signs will be finished in materials that are consistent with the major project entry and secondary entry features along El Toro Road in the Urban Village area and will complement the buildings on site, and will be placed in landscaped

areas that will accent the signs. Wall signs make use of quality materials and construction and are proportional to the building façade to which they are attached. Therefore, the sign program provides a compatible and harmonious design between advertising, landscaping, and building design.

Conditional Use Permit (Health Club and Hotel)

1. The proposed use is consistent with the General Plan in that:

The General Plan Land Use Element designates the Project Site "Village Commercial" and the Project Site is located within the UVSP. The purpose of the Village Commercial land use designation is to develop a community core in which a variety of public, regional commercial, recreational, and high-density residential uses work in concert to create an urban village with uses interconnected through safe pedestrian pathways. A health club is consistent with the concept of an integrated urban village wherein residents and visitors engage in recreational activities and physical exercise. The health club promotes interaction among the various surrounding uses and provides an opportunity for residents and visitors to pursue fitness and other health-related activities in the same location where they shop, work, and/or live. A hotel is also consistent with the concept of an integrated urban village as it provides a means for guests to not only enjoy the amenities and services offered by the hotel, but also the array of entertainment, retail, restaurant uses throughout the Project Site. The hotel also provides an opportunity for its guests and workers to engage with Project residents and visitors and enjoy the open space and recreation uses offered in the Village Park.

2. The nature, condition and development of adjacent uses, buildings and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures in that:

The proposed health club and hotel would be integrated components of the Project meeting the needs of both the local residential and business communities, as well as the local need for lodging uses. The proposed site design integrates pedestrian pathways providing safe and convenient access to the health club and hotel and connectivity to the surrounding areas, contributing to the overall health, vitality, and sense of community. The health club and hotel, together with other proposed uses, will provide a strong community connection with emphasis on the creation of new community gathering areas and recreational and lodging opportunities that contribute to the quality of life for the residents of Laguna Hills and the region. The health club and hotel will be included within new buildings and will not have any adverse effect on, or be materially detrimental to, the adjacent uses, buildings, or structures.

3. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that:

The Project Site comprises 68 acres and overall Project development includes a combination of high-density residential, retail, office, lodging, entertainment, and

open space and recreation uses. All buildings and uses, including the health club and hotel, will comply with all design guidelines and land use and development standards (e.g., building setbacks and height) of the UVSP, applicable development standards of the City's Development Code. The health club and hotel will be well connected to surrounding retail, commercial, and residential uses through pedestrian pathways and parking facilities integrating with the existing and planned uses in the vicinity.

4. All required development standards prescribed by the Laguna Hills Development Code can be achieved in that:

The Project is located within the Village Commercial zoning district and is subject to the provisions of the UVSP. The health club and hotel will developed be consistent with the land use and development standards and design guidelines of the UVSP, and with the applicable development standards of the City's Development Code. Parking requirements will be satisfied pursuant to a shared parking approach authorized by Chapter 9-44 and Section V of the UVSP.

5. The conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare in that:

The health club and hotel will comply with the General Plan, the UVSP, and all relevant portions of the City's Development Code. The conditions imposed herein are intended to maintain continued functionality of the health club and hotel while ensuring compatibility with adjacent uses and the preservation of the public peace, safety, and welfare. Condition of Approval No. 37 requires the owner(s) of the Project Site to enter into and record a Covenant Agreement to ensure the Project Site, including the health club and hotel components, is adequately maintained and operated as an integrated development.

Parking Use Permit

1. The proposed joint parking permit is consistent with the intent and purpose of the development code in that:

The purpose and intent of the Development Code (Chapter 9-44) is to ensure that all land uses provide safe access and onsite circulation with adequate off-street parking and loading facilities. By establishing required parking ratios for different types of commercial uses, the Development Code intends to anticipate the amount of parking that will be needed to adequately serve proposed uses, thereby ensuring parking availability and relative ease of parking for patrons, which is consistent with goals of the General Plan. Although slightly fewer parking spaces are proposed to serve the commercial components of the Project than would otherwise be required under a strict application of the parking ratios listed in the Development Code, the Applicant has demonstrated through completion of a shared

parking analysis that adequate parking exists for all proposed uses on the site, thereby meeting the intent of the Development Code in establishing parking standards. A total of 3,126 commercial parking spaces are proposed. While strict application of the City parking code ratios would require 3,432 spaces for the proposed commercial uses, existing demand and future development are expected to result in an actual maximum peak demand of 2,814 spaces (occurring at 1:00 P.M.) under weekday conditions and 1,702 spaces (occurring at 1:00 P.M.) under weekend conditions, corresponding to a surplus of 312 and 1,424 spaces, respectively. Resident-dedicated parking spaces in excess of the number required under the Development Code will be provided in parking structures within each residential building.

2. The joint parking use permit provides a reasonable and enforceable means for all uses to share parking facilities in that:

Based on Section 9-44.050 of the Municipal Code, and as manifested in the shared parking analysis, the proposed Project includes 99,305 square feet of retail, 10,125 square feet of fine dining restaurants, 15,000 square feet of family restaurants, 35,570 square feet of fast-food restaurants, a 40,000 square foot health club, a 50,000 square foot cinema with 1,200 seats, a 150 room hotel, and 465,000 square feet of general office, which will be served by a 745 space five-level parking structure, a 937 space 4-level parking structure, and 1,444 parking spaces in numerous parking lots and along privately owned streets throughout the Project Site. In addition, the Project includes 2,813 residential parking spaces that will be in parking structures within each residential building to serve exclusively the 1,500 residential units proposed. The conditions of approval require the Applicant to implement a City approved Parking Management Plan to address potential parking issues prior to implementing shared parking. Further To ensure sufficient parking is maintained in the event of a change in the mix of non-residential uses on the Project Site, a condition has been included that authorizes the Community Development Director to require the preparation an updated shared parking analysis and implementation of any changes to the Project parking and circulation determined to be necessary.

3. The requirement for parking established by the joint parking use permit shall assure that parking demands for the participating uses are continually met:

The parking study conducted for the Project demonstrates that with the current proposed mix of uses, there is adequate parking for all uses, even at expected peak periods. To ensure sufficient parking is maintained in the event of a change in the mix of non-residential uses on the Project Site, a condition has been included that authorizes the Community Development Director to require the preparation an updated shared

parking analysis and implementation of any changes to the Project parking and circulation determined to be necessary. This will allow the Community Development Director to ensure consistency with the established joint use parking permit, thereby assuring that parking demands continue to be met for all uses on the subject site.

4. All the findings in support of a conditional use permit

(1) The proposed use is consistent with the General Plan in that:

The General Plan supports shared parking so as to make the most efficient use of available land by integrating multiple uses and creative parking solutions that provide adequate parking for all uses. Further, the General Plan encourages the use of innovative parking management solutions to avoid excessive parking requirements in areas that are highly walkable and well served by transit.

Per the shared parking analysis prepared by Linscott Law & Greenspan, the Applicant has demonstrated that adequate parking will be provided for all proposed commercial uses on the project site.

Supplementary to the use of shared parking, the development utilizes innovative parking solutions that incorporates a network of pedestrian and bike-friendly paths throughout to make efficient use of the site with access to surrounding areas. Additionally, the nearby City of Laguna Woods provides shuttle services for their residents to the project site and public transit bus service is provided in the project area by the Orange County Transportation Authority (OCTA).

(2) The nature, condition and development of adjacent uses, buildings and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures in that:

The shared parking is an integrated component of the project and has been designed to supplement and enhance the multiple commercial uses proposed for the site. Per the shared parking analysis, the Applicant has demonstrated that the proposed site can accommodate enough parking to serve the existing and proposed uses on the subject site. Therefore, the parking use permit will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

(3) The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that:

The Applicant has demonstrated that the proposed site can accommodate enough parking to serve the existing and proposed uses on the subject site. Furthermore, the parking will not only be sufficient in size, but will be improved in quality due to attractive pedestrian connections, paseos, pedestrian plazas, design, and landscaping. For instance, pedestrian enhancements along all streets, specifically the Village Drive, pedestrian connections to the MemorialCare Saddleback Medical Center and offices across Calle de la Louisa, and pedestrian connections to the abutting Oakbrook Village mixed-use center demonstrate the integration between uses and properties envisioned by the UVSP.

- (4) That all required development standards prescribed by this code can be achieved in that:

The project includes a total of 3,126 shared commercial parking spaces and 2,813 parking spaces strictly for residential uses. (The required residential parking will be gated off from the retail area and is not included in the shared parking request.) The Development Code sets forth parking ratios for individual uses. While the site would be slightly deficient in parking if each commercial use was considered by itself, the Code allows for shared use of parking facilities on sites containing multiple uses such as the proposed Project. Specifically, because more than 20 percent of the GLA within the Project Site results in restaurant, entertainment, or cinema use, the UVSP shared parking model must be applied in estimating the parking needs for the non-residential components of the Project. While strict application of the stand-alone parking ratios in the Development Code would require 3,432 parking spaces, the shared parking analysis determined that the future supply of 3,126 spaces for commercial uses will be adequate in meeting the Project's non-residential parking requirements. Further, the analysis determined that peak parking demand would result in a demand for 2,814 spaces (occurring at 1:00 P.M.) under weekday conditions and 1,702 spaces (occurring at 1:00 P.M.) under weekend conditions for non-residential, corresponding to a surplus of 312 and 1,424 spaces respectively.

- (5) The conditions and limitations placed upon the use are necessary to insure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare in that:

The conditions imposed on the parking use permit, including but not limited to Conditions 27, 28, and 29 are intended to maintain continued functionality of the parking use plan thereby insuring compatibility with adjacent uses and the preservation of public peace, safety, and welfare.

Vesting Tentative Tract Map

1. The proposed subdivision is consistent with the General Plan and Urban Village Specific Plan in that:

The General Plan identifies the Project Site as a "future study area," in which intensification and redevelopment were expected to occur, and the site is designated in the General Plan Housing Element as a potential site for housing opportunities. The Project implements the General Plan vision for the Future Study Area by redeveloping the existing site with a mix of new land uses with various intensities, without exceeding the AM and PM peak hour vehicle trip budgets established by the UVSP. Likewise, the Project is consistent with the UVSP in that a mixed-use development is identified as the preferred land use for the Project Site in the UVSP. A trip budget assessment was conducted, given the Project's location within the UVSP area. After debiting all development projects that have been approved since the June 2009 General Plan Update, the remaining UVSP trip budgets (as of September 2020) are 335 AM peak hour trips and 1,680 PM peak hour trips. Subtracting the net Project AM peak hours trips (119 AM peak hour trips) and adding the net Project PM peak hour trips (910 PM peak hour trips) from the available UVSP trip budgets yields a residual UVSP trip budget after implementation of the Project of 216 AM peak hour trips and 2,590 PM peak hour trips, which is more than enough AM and PM Peak Hour Trips to support the Project.

2. The design or improvement of the proposed subdivision is consistent with the General Plan and Urban Village Specific Plan in that:

The Project includes improvements such as a pedestrian-oriented Main Street promenade, pedestrian plazas and the Village Park, various pedestrian paseos and pathways, open space amenities, entry features and signage, public art, architectural design, and landscaping that are consistent with the UVSP land use and development standards and design guidelines. Given the Project's mixed-use urban village design—which includes a combination of high-density residential, retail, office, lodging, entertainment, and open space and recreation uses—the Project promotes smart growth and infill development, which are concepts that have been incorporated into the General Plan and UVSP.

3. The site is physically suitable for the type of development in that:

The Project Site comprises 68 acres, is relatively flat and bounded by two major arterial streets, a private, street, and a private driveway, and is physically suitable for the proposed mix of land uses. The Project Site presently consists of a vacant regional mall (with more than half of the mall building demolished) originally developed in 1973, several outlying buildings, surface parking and drive aisles, and various hardscape and landscape improvements. The site is currently underutilized and mostly vacant, and the buildings and overall site design do not reflect consumer demand for retail centers or the character of the surrounding uses and communities. These conditions provide the perfect opportunity for redevelopment of the Project

Site, which will enhance the community character, optimize City investments in infrastructure and community facilities, increase employment opportunities and tax revenues, ensure the long-term viability of the Project Site, and promote a more a pedestrian- and bicycle-friendly environment.

4. The site is physically suitable for the proposed density of development in that:

The Project includes the construction of 1,500 residential dwelling units on five lots (Lots 11 through 15/16). Lot 11 comprises 4.6 acres and 230 dwelling units, for a density of 50 dwelling units per acre (du/ac); Lot 12 comprises 6.0 acres and 300 dwelling units, for a density of 50 du/ac; Lot 13 comprises 6.76 acres and 337 dwelling units, for a density of 49.9 du/ac; Lot 14 comprises 5.51 acres and 275 dwelling units, for a density of 49.9 du/ac; and Lots 15 and 16 are comprised of 7.17 acres and 358 dwelling units, for a density of 49.9 du/ac. The proposed residential density meets the General Plan and the UVSP density standard of 30 to 50 DUs/AC. In addition to allowable density, the Project is regulated based on vehicle trip generation limits to ensure that the City's Mobility Element Level of Service (LOS) Standard "D" is not exceeded at any of the intersections within the area (with the exception of Congestion Management Plan [CMP] intersections for which LOS "E" is the minimum acceptable LOS) and that the Project does not exceed the overall AM and PM peak hour vehicle trips allowed within the UVSP area. With integration of the Project traffic-related improvements designed as a part of the Project—which include lane geometry, driveway reconfiguration, median modifications, and signalization—the Existing Plus Project and Year 2024 Cumulative Plus Project scenarios are not expected to cause significant traffic impacts at any of the 61 intersections or at any of the freeway mainline segments analyzed. Further, after debiting all development projects that have been approved since the June 2009 General Plan Update, the remaining UVSP trip budgets (as of September 2020) are 335 AM peak hour trips and 1,680 PM peak hour trips. Subtracting the net Project AM peak hours trips (119 AM peak hour trips) and adding the net Project PM peak hour trips (910 PM peak hour trips) from the available UVSP trip budgets yields a residual UVSP trip budget after implementation of the Project of 216 AM peak hour trips and 2,590 PM peak hour trips, which is more than enough AM and PM Peak Hour Trips to support the Project. Also, all utilities are available to serve the Project Site, and adequate street access is provided.

5. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat in that:

The Project Site presently consists of a vacant regional mall (with more than half of the mall building demolished), several outlying buildings, surface parking and drive aisles, and various hardscape and landscape improvements; there is no fish or wildlife habitat on, adjacent to, or within vicinity of the Project Site. The Project's potential environmental impacts were analyzed and it was determined that the Project will not result in any new significant impacts, or an increase in the severity of previously identified significant impacts compared to the Five Lagunas Project. No

natural biological resources or communities existed on or in the vicinity of the Project Site when the Five Lagunas Project was approved and no such resources exist at the present time since the site conditions have not changed.

6. The design of the subdivision or type of improvements is not likely to cause serious public health problems in that:

The Project improvements have been designed in accordance with all applicable codes and standards. The design of the proposed land division will not cause public health problems since the proposed parcels are similar to other commercial and residential parcels adjacent to the site that are similarly served by existing improved roads and utilities.

7. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision; or, if such easements exist, that alternate easements for access or for use will be provided and that these will be substantially equivalent to ones previously acquired by the public in that:

The project will impact existing water lines and easements used by the El Toro Water District (ETWD) in providing water to the general area. However, conditions of approval require the Applicant to design, relocate, and build these facilities to the satisfaction of ETWD to ensure adequate water service is provided to the Project Site as well as any other areas adjacent to the site that might utilize the existing facilities. Further, prior to the approval of the final map(s), the Applicant is required to design water lines and associated infrastructure in accordance with ETWD standards and specifications.

8. The design of the subdivision, to the extent feasible, does have allowance for future passive or natural heating and cooling opportunities in that:

The design and orientation of buildings to be constructed as part of the subdivision improvements provide the opportunity for passive and/or natural heating and cooling to be provided. For example, proposed buildings will have substantial vertical and horizontal separation between existing buildings in the area and proposed building onsite so that the installation of future solar improvements can occur. Also, buildings with sun-facing exposures are provided shade with canopies and overhangs. Dwelling unit structures that are part of the subdivision include opportunities for natural ventilation.

9. The design, density, and configuration of the subdivision strikes a balance between the effect of the subdivision on the housing needs of the region and of public service needs in that:

The Project will result in housing production well in excess of the City's 2014-2021 regional housing needs assessment allocation of two dwelling units. The type of housing stock proposed will increase the supply of studios, one-, two-, and three-

bedroom multi-family units for rent, a type of housing in limited availability within the community but in high demand in south Orange County. The Project provides a compact mixed-use housing development within an existing underutilized and mostly vacant retail shopping center that is already served by existing infrastructure and other public services. The Project location and design maximize the efficiency at which public agencies provide services to the area because of its high-density compact design. The design takes advantage of existing in-place public services and utilities that already serve the area.

10. The discharge of waste from the proposed subdivision into the existing sewer system will not result in violation of existing requirements prescribed by the California Regional Water Quality Control Board in that:

The conditions of approval for on- and off-site improvements will ensure permitted capacity of the public sewer system is not exceeded. Additionally, it has been determined that the Project will not result in new significant impacts or an increase in the severity of previously identified significant impacts related to utilities and service systems, including wastewater, as compared to the Five Lagunas Project.

Precise Plan

1. The plan and the uses proposed are consistent with the General Plan in that:

Within the General Plan, the site is designated as "Village Commercial" and is envisioned as a master planned area (USVP area) containing specific design standards and policies that enhance the pedestrian and vehicle circulation within a currently developed area. Typical uses in the Village Commercial land use designation include those associated with large regional malls, as well as a medical center, financial institutions, institutional and government uses, auto-related services, community facilities, professional offices, and residential uses.

The Project implements the General Plan vision for the UVSP by providing for redevelopment of the existing, but vacant regional mall with a mixed-use project that will create a new urban village that will offer an array of entertainment, retail, restaurant, lodging, and residential uses and activity; a Village Park and multiple gathering spaces; and improved pedestrian and bicycle links that connect to and integrate the Civic Center, hospital area, and Laguna Hills Transit Center.

The General Plan also identifies the Project Site as a "future study area" for which intensification and redevelopment was expected to occur. The Project implements the General Plan vision for the area by providing for redevelopment of the Project Site with a mix of new land uses with various intensities, without exceeding the AM and PM peak hour vehicle trip budgets established by the UVSP

Further, per the 2014-2021 General Plan Housing Element, the Project Site is identified as a potential housing development area with development intensity

between 30 to 50 dwelling units per acre. As proposed, the Project's 1,500 residential units comply with the allowed development intensity and with the overall trip budget allocated to the UVSP area.

2. The proposed plan is consistent with adopted development standards for the area in which proposed in that:

As conditioned, the Project meets all of the development standards of the UVSP including lot size, lot width, lot depth, lot coverage, density, building height, open space and amenities, landscape coverage, parking (with approval of a CUP), and signage (with approval of an MSP).

3. The plan promotes community image and enhances compatibility of uses in the plan area in that:

The proposed commercial, office, hotel and residential buildings will be of quality contemporary design with a strong and appropriately-scaled framework of architectural and landscape architectural elements and design. The new buildings have been placed in a manner that meet the development standards and design guidelines of the UVSP, while making the best use of available space and maintaining a cohesive 'flow' between old and new portions of the Project Site. The massing of the buildings and landscaping will be designed to create a sense of unity. The proposed office parking structures would be internal to the Project Site and incorporate architectural elements and design features that provide visually-appealing elements and reduce the overall massing and scale of the structures. High-quality development features will be provided throughout the project site through site design (e.g., building orientation, screening and placement of service areas), architecture (e.g., mass, scale and form, style, material and color) and streetscape elements (e.g., lighting, paving materials). Landscaping used in strategic places will help define the character of the edges, Main Street, paseos, parking lots, and adjacent roadways. Taken collectively, the architectural and landscape design features of the Project promote community image and enhance compatibility of uses in the plan area as envisioned in the UVSP.

4. The plan will reduce undesirable environmental consequences while improving economic needs of the area and community in that:

The Project is a mixed-use infill project that enhances community character, optimizes City investments in infrastructure and community facilities, supports increased transit use, promotes a more walkable environment within its portion of the UVSP, and implements General Plan and UVSP policies for the area. The Project includes a mix of retail, office, lodging, entertainment uses that will bring additional revenue and employment opportunities. The City prepared a fiscal impact analysis to estimate the increase in recurring revenues to the City once the Project is built out, which predicts that the Project will result in an additional \$1.3 Million per year in revenue to the City once the Project is fully operational. Additionally, as stated in the

General Plan, infill projects reduce vehicle trips and associated air pollution, increase housing diversity, and enhance retail viability. The project will add 1,500 dwelling units within close proximity to job centers, shopping opportunities, health facilities, and existing transit infrastructure.

5. The plan is sufficiently detailed to ensure design values and controls needed to achieve a balance and integration of uses in that:

The Project as reflected in the proposed precise development plan combines retail, residential, office, lodging, dining, entertainment, and open space and recreational uses that greatly increase the balance of land uses in the project area. By integrating these compatible uses in proximity to one another, the Project creates a place for residents of Laguna Hills to live, work, shop, and play. The key to successful mixed-use projects is creating pedestrian-friendly environments, with connections to neighboring uses through the use of trails, pathways, bikeways, and safe crosswalks. The Project achieves this through the provision of a centralized Village Park that helps integrate the proposed mix of uses by providing an open space and recreational area that serves all uses and users of the Project. Additionally, the project includes a number of pedestrian and bicycle facilities, including the Main Street promenade, office boardwalk, and a network of paseos and pathways that connects the various commercial, office and residential uses to each other and to several smaller public spaces integrated into the Project Site, as well as to offsite uses and areas such as the Civic Center to the north, hospital and medical offices to the west, Oakbrook Village and Villa Valencia to the south, and Avenida de la Carlota to the east.

SECTION 3. The facts and findings set forth in the staff report made a part of the record of the public hearing is hereby incorporated herein by this reference.

SECTION 4. Based upon the above findings, the Planning Agency and City Council of the City of Laguna Hills do hereby approve USE-0010-2019 subject to the following conditions:

GENERAL CONDITIONS

1. The following Conditions of Approval ("Conditions") shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to, each of the following: the project applicant, MGP FUND X LAGUNA HILLS, LLC., the owner(s) and tenant(s) of the property, and each of their respective successors and assigns.
2. Unless the context dictates otherwise, whenever the term "this Permit" is used in the following Conditions of Approval, it shall collectively refer to USE-0010-2019 (SDPM/MSP/CUP/PUP/TTM/PREC/DEVA) approved pursuant to this Resolution. Failure to abide by and faithfully comply with all conditions of approval shall constitute grounds for revocation and/or termination of the Site Development Permit, the Master Sign Program, the Conditional Use Permits, the Parking Use

Permit, the Vesting Tentative Tract Map, and/or the Precise Plan approved in conjunction with the Project, as applicable.

3. Unless the context dictates otherwise, whenever the term "Project" is used in the following Conditions of Approval, it shall collectively refer to the plans dated March 26, 2021 (Plan or Plans), studies and exhibits submitted to the City by the Applicant to depict the improvements to be constructed on the Applicant's property, consisting of approximately 68 acres located at 24155 Laguna Hills Mall (the "Subject Property") as part of the Project, as modified by these Conditions of Approval.
4. Notwithstanding Conditions 5 and 9, as a condition of approval of this Permit, to the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
5.
 - A. Pursuant to the Development Agreement, that certain Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 approved by the City on March 22, 2016, as amended ("The 2016 Five Lagunas Entitlements"), and all of Applicant's rights thereunder, whether vested or not, shall terminate and become null, void, and of no further force and effect at such time as all of the following have occurred: (i) the Development Agreement and the Ordinance adopting the Development Agreement have

each taken effect and are no longer subject to referendum; (ii) the times for appeal of the City's approval of this Permit and the Development Agreement have expired; (iii) all appeals, if any, by persons or entities other than Applicant of the City's approval of this Permit and the Development Agreement have been heard and denied; (iv) the times in which to bring a legal challenge to the City's approval of this Permit and/or the Development Agreement have expired; and (v) any litigation filed attacking the City's approval of this Permit, the Project, or this Development Agreement has been finally resolved such that this Permit remains in full force and effect and the time in which to appeal has expired.

- B. Applicant has voluntarily applied for and requested that the City enter into a statutory development agreement in conjunction with its application for approval of this Permit, and the City has therefore considered and approved this Permit and these Conditions in conjunction with the proposed Development Agreement for the "Village at Laguna Hills Mixed Use Project" between the City of Laguna Hills and MGP FUND X LAGUNA HILLS, LLC ("Development Agreement"). Applicant's rights to develop and use the Subject Property pursuant to this Permit shall not become effective until and unless an ordinance approving the Development Agreement is adopted and takes effect. The foregoing provisions of this Condition shall not be construed to prejudice any rights under applicable law (i) of Applicant to withdraw its application and request for a statutory development agreement and to request that the City reconsider the Project without a development agreement, or (ii) if Applicant takes such action, of City to conduct a new review of the Project and conduct a new public hearing and/or to impose new, different, and/or additional conditions of approval.
6. Prior to the adoption of the Ordinance approving the Development Agreement the Applicant shall agree in writing to these Conditions of Approval.
 7.
 - A. Owner shall submit proposed final exterior colors, materials, including textures and finishes of the materials, and architectural treatments, (the Submittal) to the Community Development Director for review and comment at least thirty (30) days prior to the submittal of any building permit application for a Retail Building, Residential Building, Office Building, or the Hotel Building, for confirmation that the proposed Submittal conforms to the Existing Development Approvals for the Project (USE-0010-2019) and quality of finishes are complementary to the local aesthetic. Owner acknowledges that the Community Development Director may require modifications to the Submittal to promote a design complimentary to the local aesthetic. The Community Development Director will provide any such comments to Owner within fifteen (15) days of receipt of the Submittal, and Owner agrees to consider such comments in good faith. Any modifications to buildings as a result of this architectural review procedure that arise to

the level of a Major Project Modification are subject to review consistent with Section 12.3 of the Development Agreement. Notwithstanding the above review process, the intent of this condition of approval is such that any direction provided by the Community Development Director shall not materially increase Owner's costs or Owner's documented construction timeline or compromise approved footprint, massing or floor plan of any approved buildings.

- B. The Community Development Director may administratively approve minor deviations to the Project subject to the limitations established by Laguna Hills Municipal Code (LHMC) Section 9-92.080(G), provided that: 1) no increase in the intensity of uses approved by this Permit is proposed; 2) the deviation will not result in a violation of the requirements of Title 9 or the Urban Village Specific Plan (UVSP); and 3) the deviation will not result in environmental impacts beyond those analyzed in the Fifth Addendum (March 2021) to the City of Laguna Hills General Plan Update EIR – State Clearinghouse No. 20080811100.
8. Pursuant to City Council Resolution No. 2016-09-13-4, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's / City Council's approval.
 9. The life of this Permit shall be conterminous with the term of the Development Agreement. However, the authorizations and the conditions of this Permit shall continue to apply to uses commenced and improvements completed while the Permit was valid.
 10. Within 48 hours from Project approval, the Applicant shall submit to the City a check in the amount of \$50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Determination.
 11. The conditions of Project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees. The Applicant is hereby notified that the 90-day period in which the Applicant may protest the fees, dedications, reservations, or exactions imposed on this Project through the Conditions of Approval, commencing from the date of approval of the Project, has begun.
 12. Prior to the commencement of any work, the Applicant shall provide a contact number to the Community Development Director for the public to call concerning dust, noise, or other construction-related impacts. The information shall also be posted on site in a manner approved by the Community Development Director.

13. The Project shall comply with LHMC Chapter 5-28 (Smoking and Sale of Tobacco Products). Required signage and notices shall be installed prior to the issuance of a Certificate of Use and Occupancy and commencement of any use.
14. For each grading permit issued by the Public Services Director, prior to the issuance of the permit, the Applicant shall submit the rough and precise grading plans to the Community Development Director for review and approval. Approved grading plans and approved architectural site plans shall reasonably match.
15. For all buildings, the Applicant shall provide final exterior colors and materials information sheets to the Community Development Director for review and approval prior to the issuance of building permits. The approved final colors and materials shall conform to the approved plans submitted in support of this Permit, and shall be reflected on plans submitted for building permit.
16. This Permit does not include the approval of construction of vertical improvements for Pad 2 (Pad 2 is located at the southeast corner of The Village Drive and El Toro Road). Prior to the issuance of a grading permit for Pad 2, which is an approved building pad that is authorized to accommodate a 7,900 square foot commercial building, Applicant shall obtain City approval of a Site Development Permit pursuant to the requirements of the UVSP which shall be processed in accordance with the provisions of LHMC Chapter 9-92. The Site Development Permit for Pad 2 shall be consistent with the requirements of the UVSP and this Permit.
17. The Applicant shall maintain the Subject Property in compliance with property maintenance standards as set forth in LHMC Chapter 9-74. This includes prohibitions on outdoor storage and maintenance of the premises that causes obnoxious odors.
18. No permanent overhead utilities shall be installed.

PERIODIC REVIEW

19. Annually, not less than forty-five (45) days nor more than ninety (90) days prior to the anniversary of the Development Agreement Date, the Applicant shall submit evidence to the City's Community Development Director demonstrating its good faith compliance with the terms and conditions of the Development Agreement pursuant to the requirements of LHMC 9-84.060 and the Development Agreement.

FINAL MAP APPROVAL PRIOR TO BUILDING PERMIT

20. Prior to the issuance of a building permit for any proposed building, the Applicant shall obtain Final Map approval from the City Council for the proposed lot on which a proposed building permit is requested and shall record the Final Map. Evidence of Final Map recordation shall be provided to the Public Services Director and Community Development Director prior to the issuance of the requested building permit.

DISTRICT SEQUENCING PLAN

21. The Applicant's Plans include "District Sequencing Plans", the purpose of which is to separate the Project into specific development areas (hereinafter "Districts") for the purpose of identifying an orderly and efficient manner in which build out of the Project is anticipated to occur, since the Project could be built over an extended period of time. Pursuant to this Condition of Approval, the District Sequencing Plan shall be revised as follows, and submitted to the Community Development Director and Public Services Director for review and approval prior to the issuance of any permits:
- a. A portion of the Village Drive, as depicted by the Plans, may be partially completed with the build out of the Central Retail District. However, no later than the 7th anniversary of the approval of this Permit, the Applicant shall obtain the necessary permits to complete construction of The Village Drive as depicted in the Plans, and shall complete the improvements no later than the 8th anniversary of the approval of this Permit. The Applicant shall not be entitled to any further building permits for vertical construction after the 8th anniversary of this Permit until the improvements required by this condition are completed.
 - b. Should the Applicant obtain a building permit for any residential building in the Southern Residential district prior to the completion of the Site Improvements in the Central Residential District or the Central Retail District, no certificate of occupancy shall be issued until all Site Improvements in the Central Retail District, Central Residential District and Southern Residential District are completed, except as provided for in Condition 26.
 - c. Should the Applicant obtain a building permit for any building in the Northern Office District prior to the completion of the Site Improvements in the Central Retail District, Southern Office District and Central Office District, the Applicant shall complete all of the Site Improvements contiguous to the Northern Office District, including Calle Zocalo, the extension of Calle De La Magdalena, and the proposed extension of Calle De La Plata Drive from Calle Zocalo to Avenida De La Carlota prior to the issuance of a certificate of occupancy for any building in the Northern Office District.
 - d. Should the Applicant obtain a building permit for any building in the Central Office District or the Southern Office District prior to the completion of the Site Improvements in the Central Retail District or Central Residential District, the Applicant shall complete all of the Site Improvements contiguous to both the Central Office District or the Southern Office District, including Calle Zocalo and the proposed extension of Calle De La Plata Drive from Calle Zocalo to Avenida De La Carlota, prior to the issuance of a certificate of occupancy for any building in either the Central Office District or the Southern Office District.

- e. Should the Applicant obtain building permits for any combination of office or residential buildings that result in the issuance of at least three building permits, the Applicant shall commence the construction of Calle Zocalo in its entirety prior to the issuance of a fourth building permit for any combination of office or residential buildings. The Applicant shall not be entitled to a certificate of occupancy for the building associated with the fourth building permit issued (either office or residential) until the Site Improvements required to construct Calle Zocalo have been completed.

TEMPORARY SITE ACCESS AND PARKING PLAN

22. Prior to the issuance of the first building permit within a District, the Applicant shall provide a plan that demonstrates how existing tenants to remain in operation during Project construction will maintain adequate parking and parking lot circulation in addition to vehicle and pedestrian access. The plan shall ensure each building maintains the following: 1) adequate site access (vehicular and pedestrian); 2) adequate parking; 3) access to public and private transportation facilities; and 4) utility services. In approving the plan, the Public Services Director and Community Development Director may consider the historical vehicular and pedestrian connections between the Subject Property and adjacent properties, and the location of existing signalized driveway entrances/ exits. The Applicant shall ensure improvements to remain, or any new improvements required in the approved plan, are maintained in a safe condition for the use of vehicles and pedestrians for as long as the improvements are needed to serve affected buildings until the Project is completed. No new signalized driveway entrances/ exits shall be required as part of such plan. Prior to City approval of the plan, the Applicant shall obtain approval of the Orange County Fire Authority (OCFA) and provide proof of OCFA approval to the Community Development Director. As reasonably determined by the Community Development Director and Public Services Director, the plan shall be implemented and periodically updated prior to the approval of every subsequent demolition, grading, or building permit requested by the Applicant within a District until all Site Improvements are completed, or as otherwise permitted by Condition 26. Further, adjustments to the location of the visual barrier required by Condition 82 shall also be made subject to the reasonable review and approval of the Directors prior to the issuance of every grading or building permit.

CONSTRUCTION OF STREET AND SITE IMPROVEMENTS

23. Unless the context dictates otherwise, whenever a Condition herein requires the Applicant to construct and/ or install a street segment, such construction and/ or installation shall include travel lanes, sidewalks, bike lanes, parking, enhanced paving, street and pedestrian lighting, and landscaping as depicted on the Plans, consistent with the approved District Sequencing Plan described in Condition of Approval 21. Further, unless the context dictates otherwise, whenever a Condition herein requires the Applicant to construct and/ or install "Site Improvements", such

construction and/ or installation shall include but not be limited to perimeter and interior parking lot landscaping and irrigation, pedestrian walkways, parking lot and pedestrian lighting, parking and their associated aisles, water quality and hydromodification improvements, and signs and entry features.

24. Except as provided for in Condition 26, prior to the issuance of the first building shell final or first certificate occupancy for any building in any District, whichever occurs first, the Applicant shall complete construction of the Site Improvements within the District as depicted in the approved Plans. Improvements to be constructed by the Applicant in conjunction with the construction of Calle de Los Caballeros between Calle de La Louisa and Avenida de la Carlota shall include, without limitation, drive aisles, bike lanes, bike paths, pedestrian walkways, crosswalks, lighting, landscaping, irrigation, signage, crosswalks, and ADA access improvements adjacent to the boundary between and/or connecting the Subject Property and the Oakbrook Village Shopping Center ("Oakbrook Village") property (including bike and pedestrian connections at the existing vehicular connection between the two properties and a pedestrian walkway that connects the Oakbrook Village property with the Laguna Hills Transportation Center) (collectively, the "coordinated improvements"). The coordinated improvements are intended to create coordinated and compatible linkages between the Subject Property and the Oakbrook Village property. Prior to the approval of grading or site improvement plans pertaining to Calle de Los Caballeros, the Applicant shall use reasonable commercial efforts to coordinate the planning, design, construction, and installation of the coordinated improvements with the owner(s) of the Oakbrook Village property and shall work with the Community Development Director and Public Services Director to facilitate such coordination. To the extent reasonably feasible, colors, materials, finishes, textures, concrete or concrete paver patterns (or similar materials), landscape planting palette, landscape design, plant spacing, and ground cover materials to be used in coordinated improvements shall match those to be constructed or installed on the portions of the Oakbrook Village property adjacent to the Subject Property. All coordinated improvements shall be depicted on Project improvement plans and shall be reviewed and approved by the Community Development Director prior to their construction or installation. The Community Development Director shall have the discretion to approve Applicant requested modifications to the planned vehicular, bicycle, and/or pedestrian connections or other coordinated improvements depicted on the Plans and/or to extend the time for the Applicant to complete construction and/or installation of any coordinated improvements to the extent reasonably necessary to facilitate coordination with the construction and/or installation of corresponding adjacent improvements on the Oakbrook Village property. In the event the time for Applicant to complete coordinated improvements is extended, the Applicant may install such temporary sidewalk, lighting, private street, or other improvements needed to ensure adequate interim access within the Subject Property and/or to the Oakbrook Village property, subject to the review and reasonable approval of the Community Development Director. Approved temporary improvements shall be removed or modified to conform to the final approved coordinated improvements

on or before the approved extended date for completion of the construction or installation of the coordinated improvements. In complying with this condition, the Applicant shall only be responsible for improvements on the Subject Property.

25. Prior to the issuance of a certificate of occupancy for the Hotel, the Applicant shall complete construction of all of the Site Improvements associated with the Hotel District subject to the review and approval of the Community Development Director and Public Services Director.
26. Except as otherwise provided in these Conditions, no certificate of occupancy for any building shall be issued if required Site Improvements depicted on approved plans are incomplete within the District where the building is located. In Districts with multiple buildings, the Applicant may delay completion of the Site Improvements when only one building within the District is completed, provided that the internal streets within the District are complete, along with the required Site Improvements necessary to serve the building for which a certificate of occupancy has been requested, subject to the reasonable satisfaction of the Community Development Director and Public Services Director. As an alternative to completing the other required Site Improvements, parking areas and other areas designated for required Site Improvements not constructed shall be upgraded through the completion of interim improvements, to include, but not be limited to, parking lot re-surfacing, new parking lot striping, renovation of existing landscaping areas, and updated parking lot lighting photometry, to current standards to the reasonable satisfaction of the Community Development Director. However, such interim improvements may be deferred, postponed or otherwise not required in the reasonable discretion of the Community Development Director, provided the Applicant has commenced construction of a new building and the location of the interim improvements would also be the location of the new building and/or Site Improvements required to serve the new building. For purposes of this condition, "commenced construction" means construction and installation of a building foundation that is included as an element of construction for a building permit for vertical construction. Failure of the Applicant to construct the new building described above and its associated Site Improvements shall not excuse the Applicant from providing the interim improvements. The exceptions described herein shall not apply to the Village Park located in the Central Retail District, which shall be completed prior to the issuance of the first certificate of occupancy for new construction in the District.

PARKING

27. For purposes of the Project Parking Use Permit the Applicant has represented that the non-residential uses of the Project will include the following:
- a. 250,000 SF GLA of shopping center/mall uses, consisting of:
 - i. 99,305 SF GLA of retail
 - ii. 60,695 SF GLA of restaurants
 - iii. 40,000 SF GLA for a health club
 - iv. 50,000 SF GLA for a 1,200-seat cinema
 - b. Between 100 and 150-room hotel
 - c. 465,000 SF GFA of general office

If at any time in the future, the Community Development Director determines, in his or her reasonable application of the requirements of the Parking Use Permit, that a parking and circulation study is necessary to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., a change in the mix of non-residential uses depicted above) in the Project, the Applicant shall, at its sole cost and expense, be responsible for the cost of a parking and circulation study prepared by a licensed/ registered traffic engineer. The Applicant shall, at its sole cost and expense, be responsible for implementation costs of any reasonable changes to Project parking and circulation deemed appropriate by the Community Development Director related to such impacts based on the findings of such study. If required by the Community Development Director, the Applicant shall provide funds to the City to allow the City to retain a licensed/ registered traffic engineer to review any studies prepared by the Applicant to satisfy this condition. The amount paid to the City by the Applicant shall be in accordance with a written proposal obtained by the City pursuant to its Purchasing Ordinance.

28. For each increment of development, the Applicant shall provide no less than the required parking in accordance with the requirements of the UVSP (Section V- Parking) as modified by these conditions of approval. The Applicant may construct interim parking areas on undeveloped portions of the site provided the interim parking areas comply with the requirements of the UVSP. For non-residential development and uses, at the issuance of every building permit or change in use or occupancy, the Applicant shall provide proof of compliance with the City's parking requirements to the Community Development Director utilizing the parking methodologies permitted within the UVSP for non-residential uses, (i.e. the "Consolidated Parking Ratio for shopping Centers" or "Shared Parking Model"). Residential uses shall provide all required parking in accordance with the requirements of the City's Development Code. The Applicant shall propose and implement parking enforcement measures to ensure that parking spaces required for non-residential uses remain available to employees, patrons, and guests of the approved retail, restaurant, hotel, health club, cinema, and office uses on the Property, and that such parking spaces are not utilized as either (1) additional residential parking by residents or guests of the residential buildings on the

Property, or (2) additional parking for employees, patrons, patients, or visitors of the adjacent Saddleback Medical Center on the Property. Such measures may include, without limitation, enforceable parking use or duration restrictions, posting of signage to enable towing of unauthorized vehicles consistent with California Vehicle Code Section 22658, the employment of on-site parking control personnel, and/or other measures reasonably determined by the Community Development Director to be sufficient to ensure non-residential parking spaces on the Property remain available for the non-residential uses and are not improperly utilized by employees, patrons, patients, or visitors of the adjacent Saddleback Medical Center. Such implementation measures shall be included in the Covenant Agreement required by Condition 37.

29. Prior to the implementation of any shared parking on the Subject Property, the Applicant shall prepare a Parking Management Plan for review and reasonable approval by the Public Services Director and the Community Development Director. The Parking Management Plan shall include the following strategies at a minimum.
- a. Valet service for the hotel, retail, and restaurants;
 - b. Manage employee demand in more remote parking areas through an employee parking permit program;
 - c. Coordinate special events;
 - d. Install electronic parking counters and board in the new parking structures;
 - e. Add signage prohibiting hospital and other medical office parkers from parking on site;
 - f. Designate pick-up/drop-off areas on site;
 - g. Designate shuttle stops on site (that serve Laguna Woods, Laguna Hills Transportation Center, hospital, and medical office); and,
 - h. Provide bicycle racks, bike share facilities, and EV charging stations on site.
 - i. Reasonable and effective parking enforcement measures to ensure the required parking spaces intended to serve the non-residential uses on the Property remain available to employees, patrons, and guests of the approved retail, restaurant, hotel, health club, cinema and office uses on the Property, and that such parking spaces are not utilized as either (1) additional residential parking by residents or guests of the residential buildings on the Property, or (2) additional parking for employees, patrons, patients, or visitors of the adjacent Saddleback Medical Center on the Property. The Applicant will install signage in compliance with California Vehicle Code Section 22658 notifying the public that public parking is prohibited, and that vehicles parked in violation of the posted parking requirements will be towed at the vehicle owner's expense. Posted signage will make clear that owners and visitors of residential buildings are prohibited from parking in commercial spaces.
 - j. Parking, with the exception of valet parking, will be free of charge to retail customers.

The Parking Management Plan shall include a description of how each strategy will be implemented, and include details describing when and how the strategies will be implemented including days of the week, time of day, locations, equipment and/ or personnel to be included, permanent and temporary fixtures, and any other information determined by the Community Development Director to be necessary.

LANDSCAPING

30. Prior to the issuance of the first building permit within a District, the Applicant shall submit a final landscape and irrigation plan for the District to the Community Development Director for review and approval. The District landscape design shall include any improvements the Applicant and Chief of Police Services mutually agree upon that improve pedestrian safety in Project open space areas accessible to the public (i.e. unrestricted access areas) using the principles of Crime Prevention Through Environmental Design (CPTED). Examples of design features to be considered can include, but not be limited to, low walls, steps, raised landscape planters, art, boulders, bollards, berms, and water features. Prior to the construction of any Site Improvements in the Southern Office District, the final landscape and irrigation plans for the Southern Office District shall be modified to be consistent with the Revised Parking Layout Concept (Attachment 8 of the June 24, 2021 staff report for USE-0010-2019) to the reasonable satisfaction of the Community Development Director.
31. If applicable, for any building permit issued, the Applicant shall pay the full cost for the City to retain a licensed/ registered landscape architect to review the Applicant's proposed landscape and irrigation plans, and inspect the Applicant-installed landscaping to ensure compliance with the approved Project landscaped plans. The amount paid by the Applicant shall be in accordance with a written proposal obtained by the City pursuant to its Purchasing Ordinance. The Applicant shall pay the actual cost of the landscape plan check and inspection services to the City within 30 days of being invoiced by the City for such services.

PUBLIC ART

32. Applicant shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of the Development Agreement ("Owner's Public Art Obligation"). Pursuant to the UVSP, the minimum aggregate value of Owner's Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which will be based on the valuation as determined by the City's Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project components. Pursuant to the Development Agreement, Six Hundred Fifty Thousand Dollars (\$650,000) of Owner's Public Art Obligation will be satisfied by: (a) a Three Hundred Thousand Dollar (\$300,000) credit for Public Art In-lieu Fees previously paid by the Applicant in conjunction with the 2016 Five Lagunas Project; and (b) a Public Art In-lieu Fee payment of Three Hundred Fifty Thousand Dollar

(\$350,000) within ninety (90) days of the effective date of the Development Agreement. Pursuant to the Development Agreement, that portion of Owner's Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Subject Property, as approved by the City, and may not be satisfied through contribution to the City's Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in the "Public Art" provisions of Section V, at pages 39-40, of the Specific Plan. The City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art proposed to be constructed or installed in satisfaction of Owner's Public Art Obligation. The timing, procedures and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in Exhibit H to the Development Agreement.

33. Prior to the issuance of the first building permit within a District, the Applicant shall submit a final landscape and irrigation plan for the District to the Community Development Director for review and approval. The plan shall demonstrate compliance with LPMC Chapter 9-46 (Landscaping Standards and Guidelines) and LPMC Chapter 9-47 (Landscape Water Efficiency), as may be amended from time to time, including installation of "Smart" landscape irrigation controllers, low precipitation-rate sprinkler heads, and water efficient landscaping, as applicable; and the requirements of the UVSP. Trees installed shall be a minimum one-inch caliper unless otherwise specified in the UVSP. Final landscape and irrigation plans shall include information on minimum spacing between all plant materials except for trees, which shall be planted as indicated on the preliminary landscape plan at a minimum. Upon final inspection of the installed landscaping, the Applicant shall provide additional plant material if approved landscaping is not installed using the correct plant spacing on the approved landscape plan. Final landscape plans shall integrate any future approved art pieces, or other public art from the Project's Public Art Program, in a manner consistent with the Development Agreement.

LIGHTING

34. Prior to the issuance of the first building permit within a District, the Applicant shall submit a lighting and photometric plan to the Community Development Director for review and approval. The Community Development Director may require additional lighting located in an adjoining District if lighting levels at approved pedestrian walkways and internal intersections within the District under construction are insufficient to comply with the requirements of LPMC Chapter 9-40 when completed. Pedestrian and parking lot lighting poles and fixture types shall be consistent with the types depicted in the Urban Village Specific Plan or as otherwise approved by the Community Development Director. The plan shall include a photometric analysis of proposed lighting and shall comply with lighting requirements of the Laguna Hills Municipal Code, including that light and glare shall not be projected beyond the boundaries of the Subject Property. Light fixtures

used shall be consistent with Project architecture as reasonably determined by the Community Development Director. The City may withhold issuance of a certificate of occupancy for any building or portion thereof if the lighting associated with such building has not been installed. For parking areas permitted pursuant to the approved Temporary Site Access and Parking Plan, lighting levels shall be consistent with full build out of the Subject Property on the approved Project Photometric plan.

35. Prior to the commencement of construction of any on-site street, the Applicant shall submit a final lighting and photometric plan to the Community Development Director and Public Services Director for review and approval depicting the design and location of vehicle and pedestrian lighting to be installed. Street light poles and fixture types shall be consistent with the types depicted in the UVSP or as otherwise approved by the Community Development Director and Public Service Director. The plan shall include a photometric analysis of proposed lighting and shall comply with lighting requirements of the Laguna Hills Municipal Code, including that light and glare shall not be projected beyond the boundaries of the Subject Property.
36. Outdoor security and other lighting shall be designed and maintained so as not to illuminate beyond the Subject Property. All exterior lights shall be focused inward and away from surrounding uses and adjacent residential properties.

COVENANT AGREEMENT

37. The approved Project is a single, integrated mixed-use development consisting of a mix of residential, retail, hotel, restaurant, health club, cinema, and office uses, and related interconnected vehicular and pedestrian facilities, parking facilities, public plazas and open spaces, landscape areas, water features, and public art , on approximately 68 acres of property comprised of several contiguous, but separate, legal parcels and includes approval of a precise plan of development for the entire 68 acre development in accordance with the requirements of the Urban Village Specific Plan. Accordingly, simultaneously with the recordation of a Final Map, MGP FUND X LAGUNA HILLS, LLC and/or any successor owner of any portion of the Subject Property shall enter into and record a single Covenant Agreement (or other appropriate document acceptable to the City) with the City in a form approved by the City Attorney and City Manager. The City Manager shall be authorized to execute the Covenant Agreement on behalf of the City. The Covenant Agreement shall be recorded prior to the issuance of any certificates of occupancy. Evidence of the recordation of the agreement shall be provided to the City prior to the issuance of any certificate of occupancy. The Applicant shall provide City with a current title report and/or other evidence satisfactory to the City evidencing title ownership of any portion of the Subject Property at the time of recordation of the Covenant Agreement. The Applicant shall reimburse the City for all legal costs incurred by the City associated with implementation of and/or compliance with this condition.

At a minimum, the Covenant Agreement shall:

- Run with the land and be binding upon all current and future owners and tenants of any portion the Subject Property and their respective heirs, successors, and assignees;
- Evidence and provide record notice of the approved precise plan for development of all portions of the Subject Property as depicted on the plans and specifications submitted to the City in conjunction with this Permit;
- Require all portions of the Subject Property to be developed, used, and maintained in a manner consistent with this Permit, as it may be amended from time to time, and the pertinent specifications and standards contained in these Conditions of Approval, the UVSP, and the City's Development Code;
- Provide for, or reference and incorporate, all current or future reciprocal access and parking easements between and amongst the various parcels on the Subject Property that are necessary to implement the integrated mixed-use development reflected in the approved precise plan of development, including all fire lanes as required by the Orange County Fire Authority (OCFA);
- Establish maintenance standards acceptable to the City for all exterior Project components and areas of the Subject Property and adjacent portions of the right-of-way which Applicant is required to maintain pursuant to these Conditions, including, but not limited to, vehicular, bicycle and pedestrian facilities, parkways, parking facilities, public plazas and open spaces, landscape areas, furniture and shade structures, water features, public art, signage, bus shelters, utilities, sanitary sewer facilities, and storm water drainage devices, and provide for the allocation of responsibility for maintenance of such components and areas in compliance with such standards and the funding thereof;
- Include provisions identifying an entity or entities responsible for ongoing implementation and funding of the Operations and Maintenance (O&M) Plan associated with the Water Quality Management Plan (WQMP) for the Project and compliance with the LHMC Chapter 5-36 and other applicable National Pollutant Discharge Elimination System (NPDES) regulations;
- Provide that the Covenant Agreement may not be substantively amended or terminated without prior written City approval;
- Provide that the City may, but shall not be obligated to, enforce the provisions of the Covenant Agreement; and
- Address and assign responsibility for compliance with Covenant Agreement should portions of the Subject Property be, or in the future come, under separate ownership.
- Include Provisions requiring the Village Park, private streets, sidewalks, bus stops, street furniture, pedestrian pathways, bicycle lanes and pathways, parking areas, and other exterior developed portions of the Property to be accessible and usable by the public, subject to reasonable limitations on public access to address, among other things, public safety, the security of

users of the Village Park, reasonable late-night and after-hours restrictions, or occasional private events, which provisions shall be made enforceable by the City.

BUILDING CODE REQUIREMENTS

38. The Applicant shall be responsible for ensuring all applicable building permits are obtained for any activity requiring a permit. Construction shall comply with the 2019 California Building, Plumbing, Mechanical, Electrical, and Green Building Codes, as may be amended, or the applicable California Building Code in effect at the time of building permit issuance. Any required documents submitted for the purpose of building permit issuance shall be accurately labeled and reflect all work to the reasonable satisfaction of the Community Development Director.
39. Prior to issuance of any building permit, the Applicant shall submit to the Community Development Director all required approvals from the Orange County Health Department.
40. Prior to issuance of each building permit, the Applicant shall submit to the Community Development Director all required approvals from the Orange County Fire Authority.
41. Prior to issuance of each building permit for the demolition of any existing building, the Applicant shall submit to the Community Development Director evidence of all required approvals from South Coast Air Quality Management District or provide verification of plan submittal, as applicable.
42. Prior to issuance of each building permit, the Applicant shall submit a Construction and Demolition Waste Recycling Program application to the Community Development Director, if applicable, as required by LPMC Chapter 5-48.
43. The Applicant shall demonstrate compliance with all applicable building energy efficiency standards established by the California Energy Commission that are in effect at the time of the issuance of any permit.

BUS FACILITIES

44. Prior to the construction of improvements on Calle de la Louisa, the Applicant shall work with the Orange County Transportation Authority (OCTA) and provide bus stops along Calle de la Louisa, as requested by OCTA or City. Bus stop locations for OCTA facilities shall be constructed in accordance with the OCTA standards. The Applicant shall provide bus stop furniture to the reasonable satisfaction of the Community Development Director and Public Services Director to include, but not be limited to, benches, trash receptacles and shade opportunities that will be maintained by the Applicant.

45. Prior to the issuance of a grading permit in each District, the Applicant shall prepare and submit plans for the review and reasonable approval of the Community Development Director and the Public Services Director demonstrating the ability of the Project to provide private bus stops, turn out lanes and related improvements for bus service access to the Subject Property during construction, without causing an impediment to traffic lanes, bicycle lanes or pedestrian facilities. At least one (1) permanent private bus stop shall be provided located on the west side of the Village Park. Other proposed permanent bus stops shall be provided with furniture to include, but not be limited to, benches, trash receptacles and shade structures, canopies, and/or landscaping that provide pedestrian shade. Proposed private bus stops shall be maintained by the Applicant. The features in the approved plans shall be installed concurrently with the construction of Site Improvements, and shall be constructed to the reasonable satisfaction of the Community Development Director and Public Services Director. Prior to issuance of a Certificate of Occupancy for the Cinema/ Anchor 1/2 building or final inspection of the Village Park, whichever occurs first, the private bus stop located on the west side of the Village Park shall be constructed, inclusive of furniture, trash receptacles and shade opportunities.
46. Prior to the issuance of the a certificate of occupancy for the third Residential Building or the first certificate of occupancy for the first Office Building, the Applicant shall reconstruct the OCTA El Toro Road Bus Stop, on the southerly side of El Toro Road easterly of Paseo de Valencia, to accommodate future projected ridership needs based on full Project buildout, to the reasonable satisfaction of the Public Services Director and OCTA, inclusive of street furniture, benches, waste receptacles, bicycle racks, shade structure, lighting and landscaping.

SIGNS

47. Lighted signs shall comply with LHMC Section 9-42.060 (lighting requirements).
48. No permit shall be issued for Sign Type A-1 or A-3 until after the first building permit for a tenant improvement is issued for the Anchor 1/ 2/ Cinema building shell (as identified on the approved Plan).
49. Prior to the issuance of the first building shell final or certificate of occupancy for new buildings in the El Toro Pad District, the Applicant shall design and construct a Perimeter Entry Feature for the southwest corner of El Toro Road and Avenida de la Carlota and on the second entry drive southbound on Avenida de la Carlota as shown on Figures 21 and 25 of the UVSP. Ledge stone used for the project shall be Bear Canyon ledge stone, or equivalent. Ledge stone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and reasonable approval of the Community Development Director and Public Services Director.

50. The enhancement of the Entry Monuments, consisting of walls, pilasters, lighting and architectural elements on the southerly side of El Toro Road, on either side of Regional Center Drive, included within the Project Master Sign Program, shall require, in addition to any other permits, a Public Property Encroachment Permit issued by the Public Services Director prior to performing any work. The Applicant shall repair any damages incurred to the City maintained landscaping and irrigation at these locations as a result of the enhancements and shall maintain the new signage features to the reasonable satisfaction of the Public Services Director.
51. Except as otherwise approved by the Community Development Director, Directional Signage (Signs B1-B5) in the Project Master Sign Program shall be included as part of the completion of Site Improvements required in a District. The Community Development Director may exercise discretion in the timing of the installation of Directional Signage to accommodate construction of buildings, landscaping, and walkways located in close proximity to proposed signage, provided Directional Signage is not required for emergency access, in which case the requirements of the Orange County Fire Authority (if any) shall be met. Directional Signage to be installed in the Village Park shall be installed concurrently with the completion of the park improvements.
52. The 13' x 60' west facing wall sign depicted in Detail 3 on Page 092 of the Plans shall only be lit through indirect illumination (no interior sign illumination). Colors and materials of the indirect lighting fixtures shall be approved by the Community Development Director prior to the issuance of a sign permit for the proposed sign.

DIGITAL DISPLAY

53. The proposed 46' 9" x 24' digital display depicted on Page RT 2.04 of the Plans (Digital Display) is subject to the following requirements:
 - a. For the purposes of this condition of approval, Digital Display shall mean the approximately 1,128 square foot digital screen located on the south elevation of the Cinema/ Anchor 1/2 building facing the Village Park.
 - b. Prior to issuance of building permits for the Digital Display, the Community Development Director shall review and approve the design/materials, location, and operational details (e.g., illumination, maintenance plan, sound system, etc.).
 - c. Digital Display Illumination Measurement Criteria: The illuminance of the digital display shall be measured with an illuminance meter set to measure foot-candles accurate to at least two decimals. Illuminance shall be measured with the Digital Display off, and again with the Digital Display displaying a white image for full color capable Digital Display. All measurements shall be taken perpendicular to the face of the Digital Display. The Community Development Director shall have the authority to review and approve proposed illumination for compliance with these conditions of approval and the Municipal Code, and may modify the illumination standards referenced herein provided that the illuminance

measurements are prepared by a qualified engineer.

- d. Illumination Limits: The difference between the off and solid-measurements using the Digital Display Illumination Measurement Criteria shall not exceed 0.3 foot-candles.
- e. Dimming Capabilities: The Digital Display shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed automatically dim according to ambient light conditions, or that can be adjusted to comply with the 0.3 foot-candle measurements.
- f. City Content: From time to time the City may request, and Owner shall reasonably allow, the City to place content on the sign free of charge on a space available basis not to exceed five (5) percent of total operating hours of the sign.
- g. Operating Hours: The operation of the Digital Display shall be prohibited between the hours of 10:00 pm to 7:00 am. Additional operating hours may be granted in conjunction with a request for a Temporary Use Permit for outdoor events pursuant to LHMC Chapter 9-62.
- h. Maintenance: The Digital Display shall be properly maintained. Defective parts shall be replaced. The Community Development Director shall have the authority to order Applicant to repair the Digital Display if it is found to be defective, damaged, or substantially deteriorated, as established by visual inspection.

PARK FEES

- 54. Payment of the City's public park in-lieu fees shall be made by the Applicant as required by the terms and conditions of the Development Agreement. Otherwise, payment of the City's public park in-lieu fees shall be made by the Applicant pursuant to LHMC Chapter 8-06.

PUBLIC SAFETY

- 55. Prior to the issuance of a permit for the construction of any surface or structured parking, the Applicant shall confer with Orange County Sheriff's Department (OCSD) to identify the locations of preferential parking for police vehicles. Up to two (2) designated parking spaces for police vehicles shall be provided on each parcel subject to the approval of OCSD, including corresponding signage identifying the spaces for emergency vehicle parking only, which shall be subject to the approval of the Community Development Director. The number of spaces required for each parcel may be reduced or eliminated subject to the review and approval of the Chief of Police Services.
- 56. For any vehicle or pedestrian gate limiting access to any portion of the site, the Applicant shall install a limited access device allowing emergency access to OCFA and OCSD. Such vehicle and pedestrian gates shall be reviewed and approved by OCFA and OCSD prior to the issuance of a building permit for conformance with the respective agencies' requirements for limited access devices.

57. The Applicant shall comply with all requirements of OCFA which are attached to this resolution as Exhibit A, which conditions are incorporated herein by reference.

PUBLIC SERVICES

58. No work shall be performed within the public right-of-way by the Applicant or its agents until a public property encroachment permit is issued by the Public Services Director and applicable fees have been paid.
59. Construction equipment and materials deliveries shall not access or depart the Subject Property during morning or evening peak periods, which are 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. The Applicant shall provide a construction vehicle equipment and materials delivery routing plan for approval by the Public Services Director prior to any demolition, grading or construction work. The El Toro Road at I-5 Interchange shall not be utilized as a primary access point for construction vehicles equipment and materials delivery. El Toro Road shall not be utilized as a project access by any construction equipment. No work that may interfere with traffic flow along El Toro Road and/or access to the I-5, as determined by the Public Services Director, shall occur during the month of December of each calendar year.
60. It shall be the Applicant's responsibility to protect-in-place all existing public improvements. The Applicant shall repair or replace, to the reasonable satisfaction of the Public Services Director, any public improvements that are damaged, removed or destroyed as a result of the Project construction. Such replacement or repair work shall be implemented within 10 working days of notice by City and, in any event, shall be completed prior to issuance of any further certificates of occupancy.
61. All public improvements shall be constructed and completed to the reasonable satisfaction of the Public Services Director prior to the recordation of the first Final Map, or on a schedule as otherwise described herein, or the Applicant shall enter into the City's form Subdivision Improvement Agreement, including the posting of securities to guarantee the completion of the public improvements on a schedule as approved by the Public Services Director, and all as approved by the City Attorney and Public Services Director.
62. Final Maps shall be prepared in accordance with City, County, and State requirements, standards, and laws. The Applicant shall submit each Final Map for plan check to both the Public Services Director and County Surveyor and pay all applicable plan check fees to both agencies. The Applicant shall submit a current title report, supporting documents, and traverse closure calculations for plan check. Prior to recordation of any Final Map, for existing easements that directly conflict with future building locations, the Applicant shall provide executed quit claim, plat and legal extinguishment documents in recordable form to the

reasonable satisfaction of the Community Development Director and Public Services Director. The approved executed extinguishment documents shall be recorded prior to building permit issuance and following removal of facilities that conflict with future building locations. Following the recordation of each Final Map, the Applicant shall provide the City with both an electronic copy, in a form acceptable to the Public Services Director, and a duplicate Mylar of the recorded Map.

63. The Applicant shall be limited to no more than six (6) phased Final Maps. Each Final Map shall substantially conform to the requirements of the approved Vesting Tentative Map as determined by the Public Services Director.
64. Any existing survey monumentation disturbed, destroyed, or removed during construction shall be restored by a California Licensed Land Surveyor, and Corner Records shall be filed with the Public Services Director and County Surveyor, within 180 days of disturbance of the monument, in accordance with State Law and standards of the County Surveyor.
65. The Applicant shall prepare and submit rough and precise grading plans, drainage improvement plans, site improvement plans and Storm Water Pollution Prevention Plan/Erosion Control Plans, under the supervision of a State of California licensed/registered civil engineer, on 24"x 36" sheets at a scale acceptable to Public Services Director. Final plan sheets shall be printed on Mylar. Upon completion of construction, the Applicant shall provide the City with drawings of record in both an electronic copy, in a form acceptable to the Public Services Director, and a duplicate Mylar of the plans.
66. All grading plans shall be designed and all grading shall be performed in accordance with the City's Grading and Excavation Code and grading plan checklist. The applicable grading plan shall be approved by the Public Services Director prior to the issuance of any building permits for any new buildings on the Subject Property.
67. Concurrently with the submittal of any grading plan, a separate hydrology and hydraulic analysis report, in accordance with the then current County of Orange Hydrology Manual, for the Subject Property shall be provided to the Public Services Director for review and approval. The grading plan shall include a drainage plan, which shall provide 100-year storm protection at one foot below all finished floor elevations, collect 25-year storm flows in sump conditions into drainage devices and collect 10-year storm flows in all other cases into drainage devices, not including the required hydromodification retention of flows. During 100-year storm events, one travel lane in each direction on primary internal access roads shall be free of inundation, open and passable as approved by the Public Services Director. No onsite development shall impede the functionality of any existing drainage devices in the public right of way. The hydraulic analysis shall

demonstrate the above specifications are met. No concentrated drainage shall be allowed onto public driveways or sidewalks and stormwater drainage shall be conveyed to the storm drain system prior to crossing of the public right of way.

68. Prior to the issuance of the last certificate of occupancy within a District, all existing private storm drain pipes of 18" diameter or greater to remain in place upon the completion of all Site Improvements in each District shall be inspected, photographed/videotaped and logged by the Applicant as to their condition, including but not limited non-destructive testing, to confirm their ability to support live and dead loads of the planned development and identify the long term viability of the existing drainage systems to function as designed. The design Civil Engineer and/or Soils/Materials Engineer shall attest to the condition of these drainage systems and submit their findings to the Public Services Director for review and approval. Prior to the issuance of each certificate of occupancy for any buildings on the portion of the Subject Property covered by the applicable grading permit, any storm drain pipes, private or public, determined by the Public Services Director to not meet current standards shall be removed and replaced, or rehabilitated, to the reasonable satisfaction of the Public Services Director.
69. The planned relocation of a portion of the 66" storm drain lines, as identified on the approved Plans, necessary to avoid conflict with Office Buildings 1-4, shall be accomplished such that the existing drainage patterns shall not be disturbed. The existing 66" storm drain line shall remain operational while the new storm drain alignment is constructed. The disconnection of the existing 66" storm drain line shall not occur between the months of October to April in any given year and shall not occur otherwise if there is a prediction of any precipitation within seven days of, or during, the planned disconnection of said 66" storm drain line. The connection of the existing 66" storm drain line to the relocated and new 66" storm drain line shall be fully completed within fourteen (14) calendar days. The 66" storm drain shall continue to accept public and private storm waters as it currently is configured and convey said water without disruption of the hydraulic grade line from the easterly boundary of the Project to Aliso Creek. Upon completion of the new 66" storm drain line located on the Subject Property, the Applicant shall have this storm drain system inspected, cleaned, and repaired, as needed, from the easterly boundary of the Subject Property to Paseo de Valencia.
70. Prior to the issuance of a building permit for any building, the Applicant shall demonstrate to the reasonable satisfaction of the Public Services Director that adequate building setbacks have been provided allowing construction excavation/access to, and maintenance of, private storm drains. Building setbacks may range from a minimum of 15' to an estimated maximum of 25' in width, depending upon the size and depth of the storm drain pipes, to the reasonable satisfaction of the Public Services Director.

71. Concurrently with the submittal of any grading plan, the Applicant shall submit a Final Geotechnical report prepared by a State of California registered/ licensed Engineering Geologist for approval by the Public Services Director. The report shall include an evaluation of area geology, onsite soils, and earthquake potential and provide recommendations on pavement sections, building foundations, water table impacts, and a discussion of the functionality of the hydromodification and water quality features relating to infiltration rates.
72. All new parking lots, drive aisles, and private streets shall be constructed of asphalt concrete over crushed aggregate base over subgrade, or equal, and compacted to a relative compaction of 95% or as required by the soils engineer of record in the Final Geotechnical Report. The structural pavement thickness shall be equivalent to no less than 4" AC over 6" AB, or more, for drive aisles, and 4" AC over 4" AB for all other areas, or more, as required by the soils engineer of record and approved by the Public Services Director.
73. The final street improvement/grading plans involving Calle de la Louisa shall include a northerly bound lane transition beginning at Calle de la Plata, on a minimum basis of a 25:1 ratio for each foot of lane shift, to the reasonable satisfaction of the Public Services Director.
74. The intersection of Calle de la Plata at Calle de la Louisa shall be modified to directly align the centerline of Calle de la Plata on either side of Calle de la Louisa, taking into account the existing median island on the westerly side of this intersection, and include one westerly bound left turn lane and one westerly bound through/right turn lane, each with a minimum 100' lane length, not including transitions, to the reasonable satisfaction of the Public Services Director.
75. The intersection of Health Center Drive at Calle de la Louisa shall be modified to directly align the centerline of Health Center Drive on either side of Calle de la Louisa, taking into account the existing median island on the westerly side of the intersection, and include one westerly bound left turn lane and one westerly bound through/right turn lane, each with a minimum 100' lane length, not including transitions, to the reasonable satisfaction of the Public Services Director.
76. Any street improvement lane transitions utilized on the Subject Property shall be on the basis of a minimum 25:1 ratio for each foot of lane transition, or greater, matching the anticipated prevailing speed of traffic for the ratio value to one, to fully align the traffic lanes to the reasonable satisfaction of the Public Services Director.
77. The Project, as hereby approved, does not trigger payment of the traffic impact mitigation fee in accordance with Chapter 9-102 of the Laguna Hills Municipal Code. If, however, there are future amendments or modifications to the Project, prior to issuance of any building permits, the Applicant shall, pursuant to Chapter 9-102, pay a traffic impact mitigation fee, if applicable.

78. Prior to the issuance of any building permit, the Applicant shall pay, and provide City with evidence of payment of, all fees required by public agencies other than the City, whether or not collected by the City, including, but not limited to, the fees imposed pursuant to the County of Orange's major thoroughfare and bridge fee programs known as the Coastal Area Road Improvements and Traffic Signal (CARITS) program, and the Moulton Parkway/Laguna Niguel (MP/LN) programs, and by OCFA, the El Toro Water District (ETWD), the San Joaquin Hills Transportation Corridor Agency, and the Saddleback Valley Unified School District.
79. Concurrently with the submittal of any grading plan and prior to issuance of each grading permit, the Applicant shall submit for review and approval by the Public Services Director a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used on-site to control predictable pollutant run-off. This WQMP shall identify Low Impact Development (LID) BMPs and routine structural and non-structural measures specified in the current Orange County Drainage Area Management Plan (DAMP) and the San Diego Regional Water Quality Control Board (SDRWQCB) requirements applicable to each parcel under development. This WQMP shall:
 - a. Address site design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, conserving natural areas, preserving trees, and retaining existing site hydrology to the maximum extent practicable;
 - b. Replicate the pre-development hydrologic functions through site preservation, infiltration, retention, detention, evapotranspiration, and filtration treatment systems (hydromodification).
 - c. Incorporate applicable routine source control BMPs as defined in the DAMP and provide a detailed description of their implementation;
 - d. Incorporate applicable treatment control BMPs as defined in the DAMP;
 - e. Implement Low Impact Development (LID) BMPs to reduce runoff to the maximum extent practicable.
 - f. Include full capture trash and debris systems consistent with SDRWQCB Order No. R9-2017-0077 (or as may be amended) and per the approval of the Public Services Director.
 - g. Include an Operation and Maintenance (O & M) plan that identifies the mechanism(s) by which long-term O & M of all post construction BMPs will be provided and funded, the schedule for O & M and the responsible party for the O & M.

- h. Conform to hydromodification criteria. The Applicant shall document compliance with hydromodification criteria by providing calculations consistent with the Grading Plan and WQMP and in accordance with the SDRWQCB NPDES Order No. R9-2013-0001, Section E.3.c(2), as amended by Order Nos. R9-2015-0001 and R9-2015-0100, or as may be superseded or further amended. Hydromodification calculations shall only be made by using the South Orange County Hydrology Model as provided by the County of Orange.
80. Prior to issuance of the first grading permit, the Applicant shall submit a copy of the State issued Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the Public Services Department. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the Subject Property and be available for City review on request. In addition, the Applicant shall include notes on the grading plans indicating that the Project will be implemented in compliance with the Statewide Permit for General Construction Activities.
 81. The Applicant shall overseed, irrigate, and/ or treat with a dust palliative any soil on the Subject Property exposed as a result of any demolition work and/or grading work, and which is not otherwise undergoing continuous construction for any 45-day period, such that blowing wind shall not generate soil movement of any kind. The growth of any plant material on any land not undergoing continuous construction shall always be controlled to a height of not more than 12 inches.
 82. Consistent with the approved District Sequencing Plan, within 30 days of Project Approval the Applicant shall install a visual barrier facing all public streets, or install other comparable perimeter screening materials subject to the reasonable satisfaction of the Community Development Director and Public Services Director. At the reasonable request of the Community Development Director, the Applicant shall integrate temporary intermittent landscape planters into the design of the visual barrier to be constructed.
 83. Each underground storm water storage device subject to traffic loads shall meet American Association of State Highway and Transportation Officials (AASHTO) H20 loading standards or higher, as may be amended, as recommended by the soils engineer of record and to the reasonable satisfaction of the Public Services Director.
 84. Prior to the issuance of the first grading permit, the Applicant shall pay the City the full cost to purchase and install new debris gates and full capture trash screens to fit into existing catch basins, for all existing catch basin inlets serving Avenida de la Carlota and El Toro Road along the frontage of the Project, as determined by

the reasonable discretion of the Public Services Director, to include the following:

- a. Catch Basin #97 located on the southerly side of El Toro Road approximately 152' westerly of the centerline of Avenida de la Carlota.
 - b. Catch Basin #61 located on the westerly side of Avenida de la Carlota approximately 709' southerly of the centerline of Plaza Lane / Project Driveway (private street intersection).
 - c. Catch Basin #178 located on the westerly side of Avenida de la Carlota approximately 448' northerly of the centerline of Oakbrook Village (private street intersection).
85. The Applicant shall install debris gates and full capture trash screens into all private catch basin inlets within the Subject Property simultaneously with the completion of Site Improvements within a District being improved, but not later than the issuance of the first certificate of occupancy of any building in a District. The Applicant shall include the regularly scheduled maintenance and cleaning of these private devices in the WQMP, all in accordance with the then current standards of the State of California Water Resources Control Board and the City of Laguna Hills.
86. Prior to the issuance of the third certificate of occupancy for any combination of Residential and/or Office Buildings (i.e. three residential buildings, two residential buildings and one office building, three office buildings, etc.), the Applicant shall prepare a current Traffic Signal Warrant Analysis following the procedures in the Caltrans Traffic Manual for the proposed new traffic signal at the intersection of Avenida de la Carlota and the extension of Health Center Drive (Intersection 35 referenced in the "Traffic Impact Analysis for the Village at Laguna Hills" dated September 1, 2020, in Section 6.0 Site Access) and submit it for review and approval by the Director of Public Services. If the traffic signal has not as yet met warrants, the Applicant shall repeat the Traffic Signal Warrant Analysis upon the issuance of the certificate of occupancy of each additional Residential or Office Building. If the traffic signal is deemed to be warranted, within six months of said Warrant Analysis approval, the Applicant shall prepare the design of the Traffic Signal by a State of California Licensed/ Registered Civil Engineer or Traffic Engineer and submit the plans to the Director of Public Services for review and approval. Within six months of the approval of said Traffic Signal design, the Applicant shall construct and install said Traffic Signal and all ancillary improvements and equipment to the reasonable satisfaction of the Director of Public Services. Prior to the completion of construction of the Traffic Signal, if needed, the Applicant shall dedicate a traffic signal maintenance easement for any traffic signal equipment located on the Subject Property.
87. Prior to the issuance of the final certificate of occupancy for the fourth Residential Building, the Applicant shall cause a Traffic Signal Warrant Analysis to be performed by a State of California Licensed/Registered Civil Engineer or Traffic Engineer to determine if the intersection of Paseo de Valencia at Calle de los Caballeros should be converted to a fully operational intersection and be provided

with a traffic signal. If said Warrant Analysis does not meet at least one Warrant by this initial analysis, the Warrant Analysis shall be repeated prior to the issuance of the final certificate of occupancy for the final Residential Building and be submitted to the Public Services Director for review. If the Traffic Signal is now warranted, the City will reasonably evaluate if alternative traffic controls, other than a traffic signal, can be implemented to address the traffic conditions. However, if as reasonably determined by the Public Services Director the traffic signal is appropriate to address the traffic conditions, the Applicant shall contribute a pro-rata share of funding for the full cost of the design and construction of said signal and related ancillary improvements and equipment (as specified in Condition No. 88). Prior to the issuance of any further certificates of occupancy, Applicant shall deposit with the City an amount equal to the Project's pro-rata share of traffic contribution to the intersection of the cost of such design and construction, as reasonably determined by the Public Services Director. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment exceeds the amount of the deposit, Applicant shall pay City the difference within thirty (30) days of written request by City. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment is less than the amount of the deposit, City shall refund Applicant the difference within thirty (30) days after completion of the construction and installation of the signal and all related improvements and equipment, as evidenced by a notice of completion issued by the City.

88. The design of any new traffic signals shall be to the standards of the City of Laguna Hills and Caltrans Standard Plans and Specifications and shall include, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the Public Services Director. The Applicant shall provide the City the full cost to purchase the traffic signal controller, video detection equipment and emergency vehicle preemption equipment in advance of the Applicant's proposed construction. The schedule for the installation of said signals shall be subject to the reasonable discretion of the Public Services Director.
89. As reasonably determined by the Public Services Director, the Applicant shall be responsible for funding, in advance, the full cost of the purchase and installation by City of specified vehicular video detection equipment for retrofit of the Avenida de la Carlota at Plaza Lane / Plaza Drive traffic signal in accordance with City standards. The Applicant shall provide the City the full cost to purchase and install the equipment, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.

90. As reasonably determined by the Public Services Director the Applicant shall fund, in advance, the full cost of the replacement of the existing illuminated street name signs on existing traffic signals to match the new street name designations serving access to the Subject Property. Such illuminated street name signs shall be replaced with LED illuminated street name signs as selected by City. The Applicant shall provide the City the full cost to purchase and install the signs, as determined in the reasonable discretion of the Public Services Director, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
91. The Applicant shall be responsible for funding, in advance, the full cost of replacement of any City Wayfinding signage to be modified from "Laguna Hills Mall" to "Village at Laguna Hills", or any other City approved Project name, at any location at which the name change is required. The Applicant shall deposit with the City an amount equal to the full cost to manufacture and install all such signs, as reasonably determined by the Public Services Director. In the event the full documented cost to manufacture and install said signs exceeds the amount of the deposit, Applicant shall pay City the difference within thirty (30) days of a written request by City. In the event the full documented cost to manufacture and install said signs is less than the amount of the deposit, City shall refund Applicant the difference within thirty (30) days after installation of the last such sign. The Applicant's deposit shall be made prior to the issuance of the first certificate of occupancy for any building located within the El Toro Pad District.
92. The Project's southerly driveway access to Avenida de la Carlota (the extension of Calle de Los Caballeros, a private drive) shall be constructed as a right turn in and right turn out only driveway. No left turn access at this location shall be allowed.
93. Prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District, or one year from the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, as reasonably determined by the Public Services Director, whichever occurs first, the Applicant shall construct the enhanced parkway along Avenida de la Carlota, from El Toro Road to Plaza Lane/Project Driveway, consistent with the UVSP, to the City's standards and specifications. The construction of these improvements shall include, as needed, the construction of retaining walls and pedestrian barriers at the top of the retaining wall and the modification, relocation and/or addition of Southern California Edison (SCE) street lighting, including the payment of fees to SCE. The construction of these improvements shall maintain the current Orange County Transportation Authority (OCTA) bus stop within the limits of this work. The Applicant shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way by an instrument in a form acceptable to the Public Services Director and City Attorney. The electrical meter and water meters serving the landscape areas described herein shall be separated from any other Project landscaping. The enhanced parkway improvement shall be designed and constructed to the reasonable satisfaction of the Community

Development Director and Public Services Director and shall be maintained by the Applicant in a first class condition similar to the condition on the completion of the original construction and/or installation, reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the UVSP area, as reasonably determined by the Public Services Director.

94. Prior to (a) the issuance of the first Office Building certificate of occupancy, or (b) one year from the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, or (c) the completion of the required components of Phase One (as defined in the Development Agreement), whichever occurs first, as reasonably determined by the Public Services Director, the Applicant shall construct the enhanced parkway along the westerly side of Avenida de la Carlota from Plaza Lane / Project Driveway to the southern Project boundary, consistent with the UVSP, including the modification, relocation and/or addition of Southern California Edison (SCE) street lighting to the reasonable satisfaction of the Public Services Director, including the payment of fees to SCE, within the public right of way, to the City's standards and specifications, except as noted herein. The Applicant shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way, by an instrument in a form acceptable to the Public Services Director and City Attorney. The electrical meter and water meters serving the landscaping areas described herein shall be separate from any other Project improvements. The enhanced parkway improvement shall be designed and constructed to the reasonable satisfaction of the Community Development Director and Public Services Director and shall be maintained by the Applicant in a first class condition similar to the condition on the completion of the original construction and/or installation, reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the UVSP area, as reasonably determined by the Public Services Director. In consideration of the existing driveway to/from Avenida de la Carlota (located approximately 300 feet from the south property line) within the Southern Office District being utilized for interim access to the Project, the enhanced parkway improvements impacting the driveway can be deferred until said driveway is removed from service. In addition, the enhanced parkway improvements at the intersection of Avenida de la Carlota and Calle de los Caballeros can be deferred until such time as the intersection is improved as required by any Condition requiring the construction of the Site Improvements in the Southern Residential District.
95. The Applicant shall dedicate a landscape maintenance easement to City to coincide with and matching the rear curb line of the corner Entry Monuments at the Subject Property's entrance on the southerly side of El Toro Road at Regional Center Drive. Such dedication shall be reflected on the applicable Final Map or in a separate dedication instrument in a form approved by the City Attorney and Public Services Director, to be recorded prior to the issuance of a certificate of occupancy for any building.

96. All of the existing and new Project entrances to the Subject Property along Avenida De La Carlota shall be reconstructed/constructed such that they are at 90 degrees to the centerline of Avenida de la Carlota and shall be brought up to current ADA ramp and sidewalk standards to the reasonable satisfaction of the Public Services Director, utilizing Armor Tile blue cast-in-place detectable warning surfaces at ramps.
97. Within one-year of the completion of the Avenida de la Carlota enhanced parkway improvements described herein (COA Nos. 93 and 94), the Applicant shall design and construct a 0.15' asphalt concrete overlay over the entire width of Avenida de la Carlota, from El Toro Road to the southerly Subject Property boundary. Said design shall include removal and replacement of deteriorated pavement, crack sealing, cold-planing, the pavement overlay, striping and advance traffic signal loop detector replacements as designed by a State of California registered/ licensed Civil Engineer to the reasonable satisfaction of the Public Services Director. The Applicant may, at its option, fund the full cost necessary for the City to perform this work. The terms for payment to City for performance of the work shall be within the reasonable discretion of the Public Services Director. Upon completion of the asphalt concrete overlay described herein, no further utility excavations or storm drain modifications shall be allowed within Avenida de la Carlota for a period of five years. Notwithstanding this five-year limitation on excavations, if there is no alternative to a critically necessary excavation as reasonably determined by the Director of Public Services, the Applicant shall construct and implement enhanced pavement repairs to restore the like new condition of the pavement following completion of the excavation. The enhanced pavement repairs shall, at a minimum, consist of the cold plane of 0.17' asphalt concrete for a total distance of 100', 50' beyond either side of the excavation location, from curb to the closest full lane width of the excavation location to the reasonable satisfaction of the Director of Public Services.
98. Except as otherwise provided in these Conditions, no work, excavations, or construction activity of any nature, either in, on, or under El Toro Road shall be permitted in conjunction with construction of the Project.
99. For every grading permit requested, prior to the issuance of said permit the Applicant shall provide an Americans with Disabilities Act (ADA) accessibility review for compliance with all applicable state and federal accessibility statutes, regulations and standards to the reasonable satisfaction of the Public Services Director. In addition, the accessibility review shall depict compliance with California Disabled Accessibility requirements as required by Chapter 11 of the California Building Code (as may be amended, or the applicable California Building Code in effect at the time of a request for building permit application). The accessibility review shall include all existing and future public and private sidewalks, walkways, pathways, access ramps hand rails and all other ADA regulated facilities for the area of the Property for which a grading permit is requested. The public streets to be included in this review are the southerly side of El Toro Road and the westerly

side of Avenida de la Carlota coincident with all the Project boundaries. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted as approved by the Public Services Director and Community Development Director. The Applicant shall install, construct or reconstruct to the City's standards and reasonable satisfaction of the Public Services Director, any existing public and private facilities identified in the accessibility review that are not in compliance with ADA standards, prior to the issuance of any certificate of occupancy. In complying with this condition, the Applicant may prepare a "CAsp Masterplan" subject to the review and approval of the Community Development Director and Public Services Director. The Directors shall refer to the CAsp Masterplan to determine the extent of existing improvements to be protected in place during construction that should be modified to join with new ADA improvements. Accessibility improvements which are the subject of a grading or building permit shall be constructed and installed prior to grading plan close out, issuance of a building shell final, or certificate of occupancy for a tenant improvement, (depending on the type of permit requested by the Applicant).

100. Prior to the issuance of any grading permit, the Applicant shall demonstrate to the reasonable satisfaction of the Public Services Director that all on-site access routes are capable of accommodating all truck access and truck turning radii.
101. The Applicant shall indicate on all grading and/or street improvement plans the location of bicycle pathways and lanes throughout the Project site, as depicted on the Bicycle Connectivity Plan (Sheet L5.11 of the Plans), including but not limited to connectivity to Oakbrook Village, to the reasonable satisfaction of the Public Services Director and Community Development Director. Approved bicycle pathways and lanes shall be constructed to the reasonable satisfaction of the Public Services Director and completed concurrently with construction of related street improvements.
102. Within each District, prior to the issuance of a certificate of occupancy for any building, or issuance of a building permit final (or similar approval) for a Site Improvement building permit, the Applicant shall demonstrate compliance with the applicable WQMP to the reasonable satisfaction of the Public Services Director, including:
 - a. Demonstrates that all LID, hydromodification, and other structural BMPs described in the WQMP have been implemented, constructed, and installed in conformance with approved plans and specifications;
 - b. Demonstrates that the Applicant has complied with and/or is prepared to implement all non-structural BMPs described in the WQMP;

- c. Demonstrates that an adequate number of copies of the Project's approved WQMP are available for the future occupants;
 - d. Demonstrates that the Applicant has agreed to and recorded the Covenant Agreement, CC&R's, another agreement, or another legal instrument approved by the City Attorney that shall require the property owner, successors, tenants (if applicable), and assigns to fund, operate and maintain in perpetuity the post-construction BMPs described in the WQMP.
103. Should any grading, site or public improvement work require inspection services during non-standard City working hours and days, the Applicant shall be required to make payment of a daily fee per the City's adopted fee schedule for each day of the work prior to the work being performed, subject to the availability of City inspection personnel to provide the necessary inspection.

EL TORO WATER DISTRICT

104. For each Final Map approval requested by the Applicant, the Applicant shall comply with the requirements of the ETWD, including but not limited to, design of new water lines, sewers, and storm drains, and relocation of existing easements for which ETWD is a lienholder, successor in interest, assignee, or otherwise the legal beneficiary for the requested Final Map. The Applicant shall provide proof of compliance with the requirements of ETWD to the Public Services Director and Community Development Director prior to City Council approval of the requested Final Map.
105. For each Final Map filed, the Applicant shall obtain a "Will Serve" letter from ETWD prior to the approval of the Final Map. Existing water lines and sewer lines on the Subject Property shall be relocated to the satisfaction of ETWD. For existing easements to be vacated, the Applicant shall demonstrate the manner in which the easements will be vacated through separate instrument(s) upon completion of any new infrastructure construction and existing infrastructure removal. Prior to the issuance of building permits the aforementioned easements shall be vacated.
106. The Applicant shall design and secure, to the satisfaction of ETWD to ensure adequate water service is provided to the Project as well as any other areas adjacent to the Project that currently utilize the existing facilities that are located within the Subject Property. For each Final Map requested by the Applicant, the Applicant shall provide evidence to the Public Services Director prior to Final Map approval by the City Council that it has complied with all requirements of ETWD.
107. For each grading and building permit requested, prior to the issuance of any permits, the Applicant shall provide evidence of design approval of all required water and sewer improvements from ETWD to the reasonable satisfaction of the Public Services Director and Community Development Director.

108. Prior to the issuance of any building shell final or certificate of occupancy for any building, all water and sewer improvements serving the subject building shall be constructed to the satisfaction of ETWD and the reasonable satisfaction of the Public Services Director and Community Development Director.
109. Prior to the issuance of a building permit for any new building, or approval of a change in use for an existing building, the Applicant shall obtain a "Will Serve" letter from ETWD. The Applicant shall provide to the Community Development Director evidence of ETWD's issuance of a "Will Serve" letter for the new building or use.
110. Water lines shall be sized to accommodate the total domestic requirements and fire-flow requirements of OCFA.

CONSTRUCTION ACCESS

111. During construction of the Project, the Applicant shall maintain adequate site vehicular and pedestrian ingress and egress for customers and utilize temporary directional signage in the public right-of-way as needed to the reasonable satisfaction of the Public Services Director and Community Development Director. Required directional signage shall comply with City standards and specifications, including but not limited to, the CalTrans design manual, the California Manual of Uniform Traffic Control Devices, and/or as recommended by the American Association of State Highway and Transportation Officials (AASHTO). Required private directional signage shall be provided as appropriate at the reasonable discretion of the Community Development Director.
112. During any construction, adequate emergency access for police, fire, and paramedic vehicles, to the standards of, and approval of, the OCFA, shall be maintained on the Subject Property at all times.
113. Prior to the issuance of any demolition, grading, building or other permit within a District, the Applicant shall submit a construction staging plan to the Community Development Director identifying areas to be used for equipment and material storage, placement of construction trailers, portable restrooms, delivery areas for loading and unloading of materials and equipment, construction waste diversion processing, and construction employee parking. The Applicant shall periodically submit an updated construction staging plan, as needed and/or when reasonably requested by the Community Development Director. Appropriate pedestrian and vehicular safety barriers shall be installed in all areas as required by the Community Development Director prior to the issuance of permits. In addition, prior to the issuance of any permits within a District, an on-site pedestrian and vehicle parking circulation plan shall be submitted to the City for review and approval by the Public Services Director and Community Development Director identifying pedestrian and vehicle access, including temporary parking for disabled patrons for businesses that will remain open during construction.

114. During the course of construction, the Applicant shall immediately respond to requests made by a City inspector to reasonably resolve any public safety or access issues identified during the work. Modifications to an approved construction staging plan shall be made when requested by a City inspector within 48 hours, or as soon as possible as determined by the Community Development Director.

PARKING STRUCTURES

115. Parking structures shall be designed to include pavement treatments/materials or finishing techniques that reduce noise generated by automobile tire squeal. All pavement treatments and materials shall be subject to the reasonable approval of the Community Development Director prior to building permit issuance for any parking structure.
116. For Parking Structures A and B, construction shall include an electronic parking data display board at each entrance identifying available parking spaces, which is subject to the reasonable approval of the Community Development Director. Equipment for this requirement shall be shown on the parking structure plans approved as part of the issuance of a building permit and completed prior to the issuance of a certificate of occupancy for the parking structure for which the certificate of occupancy is requested.
117. Prior to building permit issuance for each parking structure, the Applicant shall confer with OCSD to identify features consistent with best practices identified in "Crime Prevention Through Environmental Design in Parking Facilities" or other standards acceptable to OCSD that could be incorporated into the parking structure for which a building permit is requested.

MECHANICAL EQUIPMENT

118. Mechanical equipment, storage, trash areas, and utilities installed at ground level shall be architecturally screened by a solid or semi-solid material from public view to the reasonable satisfaction of the Community Development Director. The method of screening shall be architecturally compatible in terms of materials, color, shape, and size. The screening design shall blend with the building design and include landscaping when on the ground. For rooftop mechanical equipment, building parapet walls shall be at least as high as the equipment and vents installed on each building. For any roof-top equipment, in lieu of fully screening the equipment, the Applicant may provide a "line of sight" study to the Director that indicates no screening is required given the location of mechanical equipment on the roof of a building relative to one or more viewpoints within the Project (as reasonably determined by the Community Development Director) at finished grade. Roof mounted solar panels are excluded from this requirement so long as the overall height of the equipment is as close to the height of building parapet walls as possible, or where integrated into an accessory building such as a roof top carport.

RESIDENTIAL BUILDINGS

119. Prior to the issuance of a building permit for any Residential Building, the Applicant shall provide final details and specifications identifying the amenities of all outdoor landscaped courtyards and pool courtyards to the Community Development Director for review and approval. The building plans shall label the location of pools, spas, cabanas, barbeques, fire pits, wet bars, seating areas and other amenities as depicted on the Plans.

STREET FURNITURE

120. Within any District, prior to the issuance of the first building permit, the Applicant shall submit a final street furniture plan (site location, specification sheets, dimensions, and materials board) to the Community Development Director and Public Services Director for review and approval for the District in its entirety as modified by Condition 26. Such plan shall include pet waste stations, benches, water fountains, free standing landscape planters, trash receptacles, tree grates, bike racks, bollards, shade structures, and light poles and fixtures consistent with the UVSP or as otherwise approved.
121. Unless specified otherwise in these Conditions, the timing of the installation of pet waste stations, benches, water fountains, free standing landscape planters, trash receptacles, tree grates, bike racks, bollards, shade structures and light poles identified in an approved final street furniture plan shall be installed to the reasonable satisfaction of the Community Development Director and Public Services Director.

OUTDOOR DINING

122. To ensure adequate accessibility, and pedestrian safety and security, for any restaurant use with a designated outdoor dining or patio area, the Applicant shall provide an outdoor dining/ patio plan for review and approval by the Community Development Director prior to the issuance of building permits for the use depicting the size of the space, number of chairs and tables, and separation between public areas and the patio area. Where outdoor service of alcohol is proposed, the Applicant shall provide a barrier a minimum of 42-inches in height and of a length necessary to delineate the public areas from the outdoor dining/patio area subject to the approval of the Community Development Director and the Department of Alcoholic Beverage Control ("ABC") prior to commencement of alcohol service in outdoor dining/patio areas. All requirements of the Community Development Director and ABC shall be implemented prior to the commencement of the restaurant use.

SOLID WASTE

123. Prior to the issuance of any building permits for the Project, the Applicant shall submit a Waste Management Plan that includes the specifications for the collection and diversion of municipal solid waste, recycling, and organic materials at the Project. The plan shall be reviewed and approved by the Community Development Director and shall demonstrate conformance with the requirements of the City's Municipal Code and state law, and shall specifically address the state-mandated diversion requirements set forth in AB939, AB 341, AB 1826, AB 827 and the regulations implementing SB 1383 (California Code of Regulations Title 14, Division 7, Chapter 3). The Waste Management Plan shall include the following elements and demonstrate compliance with the conditions provided below:
- a. Locations and dimensions of bin/cart storage areas, and/or the bin(s) cart(s) designated enclosure areas.
 - b. Projected weights and volumes of the following material streams using the conversion factors provided in this section:
 - i. Recyclables (as defined by AB 341, including recoverable paper, cardboard, plastic, metal, etc.)
 - ii. Organic materials (as defined by AB 1826/SB1383, including food scraps, landscaping waste, wood waste, and food-soiled paper),
 - iii. Municipal solid waste (MSW or trash).
 - c. Proposed service levels, including type of waste container (MSW, recycling, or organics material), size of container, and frequency of collection.
 - d. Demonstration that adequate clearance is provided for the waste and recycling hauler vehicle to safely and efficiently service the carts/bins/receptacles.
 - e. Demonstrated paths of residents/tenants depositing of designated materials into the correct cart/bin and sufficient storage enclosure areas for containment until collection.
 - f. If underground and/or garage areas are designated enclosure/aggregation points, those areas need to be accessible for movement, placement and storage of bins/containers for waste, recyclables, and organic materials. Adequate space needs to be provided for safely accessing containers for service by the collection company and not require movement of carts/bins more than 25 feet to the location of the collection vehicle on level access with no inclines.
 - g. Location requirements for tenants' trash enclosures shall be subject to state issued guidelines or requirements, if any. If chutes are utilized for multifamily properties, all SB 1383 mandated three bin/cart types (MSW, recyclables, organics) will be adjacent to each other and in sufficient quantity to handle each of the specific material types without causing an overflow into one of the other material types. No more than a 20% level of cross contamination between the three material types shall be permitted. If chutes are utilized to convey the materials there will be a designated chute for each (MSW, recyclables, and organics.)

- h. Any generator (business) that elects to self-haul its own recyclables or organics, must demonstrate a diversion level as required by CalRecycle regulations governing all diversion legislation.
124. The enclosures and or storage areas shall have adequate space to accommodate containerization of the projected levels of the three materials streams generated by the Project (recyclables, organic waste, and municipal solid waste). The Waste Management Plan shall include projected weights and volumes of generation for each business type at the Project (retail, restaurant, residential, hotel, office, etc.) calculated using the generation and density factors shown in Tables 1 and 2 below. In addition, using the factors in Tables 1 & 2 below, the Waste Management Plan shall show adequate dedicated space in the recyclable, organics, and trash storage areas to ensure that all applicable state mandated diversion requirements are met. Any deviation from the standards in Table 1 shall need specific approval from the City staff overseeing the permit application and approval. All enclosures shall be covered, include an inlet/drain to the sanitary sewer system, and shall prohibit any liquids from leaving the site or entering a storm drain. Please refer to the City's 'Covered Trash Enclosure Detail' (<https://www.ci.laguna-hills.ca.us/DocumentCenter/View/373/Trash-Enclosure-Detail-PDF>) for further guidance.

Table 1.
Generation Rates and Material Stream Percentages per Business Type

	Project Generation Rates	Waste Generation Rates by Material Stream*		
		MSW	Recyclables	Food Scraps
For retail establishments*	3,250 lbs. per 1000 sq. ft. per year	25%	70%	5%
For restaurants*:	6,483 lbs. per employee per year or 1825 lbs. per 1000 sq. foot per year	20%	35%	45%
For multi-family housing units**:	2,278 lbs. per unit per year	35%	45%	20%
Office*	2,190 lbs. per 1,000 sq. feet per year	25%	70%	5%
Hotel*	1,460 lbs. per room per year	20%	35%	45%

Table 2. Density Factors for Material Streams (used to convert weight to volume)

Density Factors (in lbs. per cubic yard)***	
Dry MSW - retail	80
MSW - residential	100
Commercial Mixed Recycling	40
Residential Mixed Recycling	45
Food Scraps	500
Green waste	110

Sources:

*CalRecycle Targeted Statewide Waste Characterization Study: Waste Disposal and Diversion Findings for Selected Industry Groups;

**Multi-family generation rates found in multi-family units in Mission Viejo;
***CR&R 2015 annual route audit results in Laguna Hills and weigh-based field audits;

Example 1: How to Calculate Projected Weekly Waste Generation:

Step 1: Determine total annual waste generation based on business use and square footage. If the applicant's project will have 10,000 square feet of retail business use, the applicant would calculate the total generation per year of waste materials. In this case, using the 'Project Generation Rates' value for retail in Table 1, the retail space would generate a projected 3,250 lbs. per 1000 square feet, or 32,500 lbs. per year of waste for a 10,000 square foot retail space. Applicant will calculate generation rates by waste stream in Step 2.

Step 2: Calculate projected annual material weights by stream. Next, the applicant would apply the values of 'Waste Generation Rates by Material Stream' to this annual generation projection to determine the weights of each stream that are expected to be generated each year. For the retail space, applicant would multiply the total projected weight generation by the percentages included in Table 1. The applicant can project the following weights:

- 8,125 lbs. of MSW per year (32,500 lbs. of waste per year x 25% MSW coefficient);
- 22,750 lbs. of recyclables per year (32,500 lbs. of waste per year x 70% recyclables coefficient);
- 1,635 lbs. of organic materials per year (32,500 lbs. of waste per year x 5% organics coefficient).

Step 3. Convert projected material weights into weekly volumes. To convert weights of projected material streams into volumes, the applicant will divide the projected annual weights of each material generated by the material density factors in Table 2. For the retail space example, the applicant would project the following weekly generation volumes:

- 101.5 cubic yards per year of MSW (8,125 lbs. of MSW per year divided by 80 lbs. per cubic yard) divided by 52 weeks per year equals **2 cubic yards per week of MSW generation**
- 568.75 cubic yards per year of recycling (22,750 lbs. of recyclables per year divided by 40 lbs. per cubic yard) divided by 52 weeks per year equals **11 cubic yards per week of recyclables generation**
- 3.25 cubic yards per year of organic materials (1,625 lbs. of organic materials per year divided by 500 lbs. per cubic yard) divided by 52 weeks per year equals **.0625 cubic yards per week of organic materials generation.**

125. The Applicant shall demonstrate in its Waste Management Plan that any recycling

and/or trash areas used on site to consolidate materials shall provide adequate square footage and clearance within the recycling/ trash area to safely service receptacles, and that will not require staging or handling of materials that may obstruct pedestrian walkways, bike paths, on-site vehicle circulation, or otherwise create adverse conditions on the Project resulting from the handling of containers outside of enclosure areas resulting in noise disturbances, odors, or outdoor storage.

126. Diagram 1 and Table 3 below provides photos and dimensions for MSW, recycling, and organics recycling containers provided by the City's franchised hauler. These bin dimensions can be used to ensure there is adequate space in the enclosure to containerize the projected volumes that will be generated by the Project.

CONTAINER SIZES AND COLORS			
CART SIZES	BLACK WASTE CART	BLUE RECYCLE CART	
64 GALLON 41.75"h x 24.25"w x 31.75"d*			
96 GALLON 43.25"h x 29.75"w x 35.25"d*			
GREEN ORGANICS /FOOD SCRAP RECYCLING CART			
64 GALLON 41.75"h x 24.25"w x 31.75"d*			
BIN SIZES	BLACK TRASH BIN	BLUE RECYCLE BIN	
2-Yard			
3-Yard			
4-Yard			
	SPLIT BIN	FOOD SCRAP BIN	
4-Yard		2-Yard	
* CONTAINERS MAY VARY IN SIZE			

Diagram 1 – Carts and Bins Available for Project

Table 3: Bin Dimensions and Material Stream Availability

Container	Width	Depth	Height	Cubic Yards	Streams Available
64-gallon	24.25"	31.75"	41.75"	0.3	MSW, Recycling, Organics
96-gallon	29.75"	32.25"	43.25"	0.5	MSW, Recycling
2-yard	7'	3'6"	3'10"	2	MSW, Recycling, Organics
3-yard	7'	4'	4'	3	MSW, Recycling
4-yard	7'	5'6"	5'	4	MSW, Recycling
3-yard split	7'	4'	4'	1.5 yd for each stream, 3 yd bin total	MSW, Recycling
4-yard split	7'	5'6"	5'	2 for each stream, 4 total	MSW, Recycling

Example 2: How to determine containers sizes and frequency needed to adequately containerize projected materials generations

Step 1: Determine appropriate container size and frequency needed. Using the weekly projected generation levels calculated in example 1, the applicant projects that the 10,000 square foot retail operation will generate approximately 2 cubic yards per week of MSW, 11 cubic yards per week of recyclables, and 0.0625 cubic yards per week of organic materials. Using the bin sizes in Diagram 1 and Table 3, identify the needed frequency and size of containers. In this case, the applicant would likely need the following service configurations:

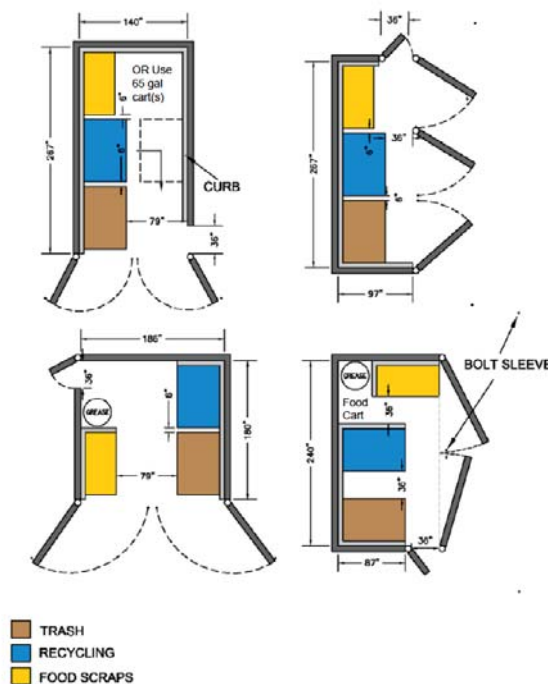
- **MSW Service Needs:** One 2-yard MSW dumpster serviced one day per week (2 yards of weekly MSW service matches the projected MSW generation levels of 2 cubic yards per week). Applicant may opt for one 3-yard bin serviced 1 day per week to allow for a slight volume buffer for high-waste-volume events, such as the holiday shopping season.
- **Recycling Service Needs:** One 4-yard recycling dumpster serviced 3 days per week or 1 3-yard recycling dumpster serviced 4 days per week (12 yards of weekly recycling service exceeds the projected recycling generation levels of 11 cubic yards per week).
- **Organic Material Recycling Service Needs:** One 64-gal organics cart serviced 1 day per week (0.3 yards of weekly organics recycling service exceeds the projected organics generation levels of 0.0625 cubic yards per week).

Step 2: Determine approximate footprint of needed service equipment. Using the bin and cart dimensions included in Table 3, determine the size of the enclosure space needed to accommodate the projected number of MSW, recycling, and organics containers calculated in Step 1. Diagram 2 includes some examples of bin configurations for the applicant's consideration. For example, a 10,000 square foot

retail space would have to provide an enclosure plan to the City that could house one (1) 2-yard MSW dumpster with a 7"x3.5" footprint; one (1) 3-yard recycling dumpster with a 7"x4" footprint; and one (1) 64-gallon organics receptacle with a 24.25" x 31.75" footprint. The enclosure would also need to require room for users to easily access each bin type and or the hauler to service each container. **Note:** the applicant's retail business or project may require more or less dedicated capacity and enclosure space than the above example.

127. For enclosures servicing all SB 1383 identified three material streams (MSW, Recyclable Materials, organics materials, and a cooking oil/grease tank if the location generates oil and grease), Diagram 2 below provides suggested enclosure configurations to house bins or 65-gallon food scrap carts, as necessary to serve the Project. The Waste Management Plan shall also incorporate the ability to accommodate seasonal changes and any future changes in types of tenants that may increase the amount of material generated. Applicant may need enclosures with space for more than 1 of each recycling, organics, and MSW bin, depending on projected material volume generation. If feasible, one or two 65-gallon food scrap carts could be substituted in for a food scrap bin. It is the applicants' responsibility to provide enclosure plans that provide adequate space for projected generation levels and that are in compliance with the City's design standards.

Diagram 2: Possible Enclosure Configurations for 3 Waste Streams

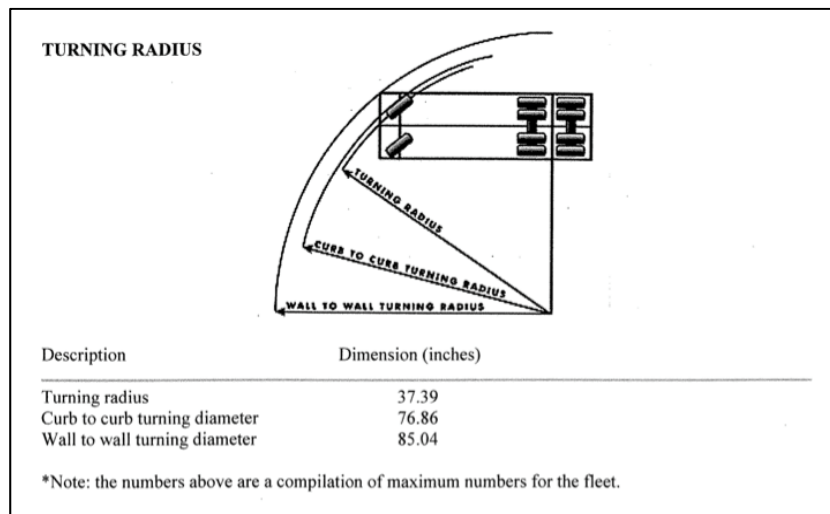


ALL FIGURES INCLUDE TWO 4 CUBIC YARD DUMPSTERS AND ONE 2 CUBIC YARD DUMPSTER.
GREASE BARREL MEASURES 36" IN DIAMETER. NOTE: 65 gal FOOD CART
Dimension equal to grease barrel

128. The figures provided in Table 1 provide annualized generation rates and do not take into account seasonal fluctuations in waste and recyclables generation volumes that may especially impact retail, multi-family, and hospitality business

uses. The volume of recyclables and waste generated fluctuates over the course of the year. For retail and hospitality uses, peak generation occurs October through January and potentially June – August. For multi-family, generation will peak around all holiday seasons and usually tends to be higher during winter months when compared to summer months. The tables provided assume that annualized figures. Enclosures will need to be able to accommodate larger bins or additional pick-ups to avoid bin overfilling during peak seasons. For retail and hospitality business uses, the applicant shall demonstrate that a volume capacity increase of 30% can be obtained through either 1) adding additional collection containers to the enclosures used by retail generators or by 2) increasing collection frequency of existing collection containers in the enclosures used by retail generators without having to place containers outside of the enclosure or expanding the enclosure. For multi-family uses, the applicant shall demonstrate that a volume capacity increase of 20% can be obtained through either 1) adding additional collection containers to the enclosures used by multi-family generators or by 2) increasing collection frequency of existing collection containers in the enclosures used by multi-family generators without having to place containers outside of the enclosure or expanding the enclosure.

129. To ensure service vehicles can access Project waste facilities, service areas intended to be serviced by vehicles shall provide the following turning radius requirements and be able to accommodate the following truck dimensions:
- The turning radius shall be adequate for a 3-axle truck. The overall length, including the forks is 36 feet. Construction plans shall include the appropriate details prior to the issuance of building permits.
 - The following truck turning dimensions shall be used as depicted in the diagram below.



130. The Project shall provide adequate space for both the receiver and the compaction equipment. The chart below provides the clearances required for compactors.

Required Clearances for Compactors	
Vertical (Approach & Exit)	14' high
Vertical (Rails raised w/compactor)	25' high
Lateral	2' around compactor
Service Area Length	75' long

131. For all compactors used on-site, the Applicant shall meet the manufacturer's recommended specifications for minimum dimensions required to operate the equipment. If none are listed, the Applicant may use the following as a guide subject to the review and approval of the Community Development Director:

Front Load Truck Emptied Compactor Dimensions*			
Compactor Size	Height	Width	Depth
2 yds.	8.5'	8'	5'
3 yds.	7'	8'	7'
4 yds.	8'	8'	9'

132. In addition to the City's standard requirements that provide for trash enclosures to be covered with an in-place constructed roof, the Applicant shall ensure that enclosure roof heights do not obstruct direct collection truck access to bins and that each enclosure include an inlet/drain to the sanitary sewer system for any liquids or leakage from the bins.
133. The Applicant shall install signage in all enclosures to indicate the type of material that can be disposed of in the bin. Signage for multifamily portion of project shall comply with residential requirements of SB 1383. Signage for commercial portions of the project will comply with the commercial requirements of SB 1383.
134. The Applicant will reasonably cooperate with the City in providing information for the City's annual reporting to CalRecycle on the Project's collective SB 1383 recycling programs and efforts.
135. The Applicant will implement all diversion programs that are required by statutory requirements and will cooperate with the city in overseeing and maintaining programs as required by SB 1383 in the Project.
136. The Applicant will conform to the provisions of the City's SB 1383 Mandatory Commercial and Residential Recycling Ordinance.

REMEDICATION

137. Any and all contamination identified in the Phase I Environmental Site Assessment completed in July of 2020 for the Project, or encountered during construction of the Project, shall be remediated as required by all applicable federal, state and local laws and regulations.

MITIGATION MEASURES

138. The Applicant shall comply with all mitigation measures applicable to the Project as set forth in the Mitigation Monitoring and Reporting Program attached to these Conditions as Exhibit B.

SECTION 5. This Resolution shall take effect upon adoption by the City Council of an Ordinance approving the proposed Development Agreement for the Project.

PASSED, APPROVED, AND ADOPTED this 8th day of March, 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2022- adopted by the Planning Agency and City Council of the City of Laguna
Hills, California, at a Regular Meeting thereof held on the 8th day of March, 2022, by the
following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MELISSA AU-YEUNG, CITY CLERK

ORDINANCE NO. ORD 2022-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND MGP FUND X LAGUNA HILLS, LLC FOR THE VILLAGE AT LAGUNA HILLS PROJECT.

WHEREAS, MGP Fund X Laguna Hills, LLC ("Owner") initiated an application with the City of Laguna Hills ("City") for approval of a development agreement to implement land use entitlements in order to continue to redevelop the existing approximately 68-acre former Laguna Hills Mall site generally located along the southerly side of El Toro Road and the westerly side of Avenida de la Carlota of in the City of Laguna Hills (the "Property") through the demolition and removal of the remaining portions of the Laguna Hills Mall structure and the construction of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park) and related amenities, (the "Project"); and,

WHEREAS, on March 8, 2022 the City adopted Resolution No. PA2022-03-08-2 approving land use entitlements for the Project delineated as Case No. USE-010-2019, which consist of a Site Development Permit for new development, a Master Sign Program for various on-site signs, a Conditional Use Permit for a new health club facility, a Conditional Use Permit for a new hotel, a Conditional Use Permit to allow shared parking, a Vesting Tentative Tract Map to subdivide the property into 16 lots, and a Precise Plan for mixed use development of the site, along with conditions of approval with respect thereto; and

WHEREAS, the City has evaluated the Project's potential environmental impacts and, on March 8, 2022, adopted Resolution No. PA2022-03-08-1 making corresponding findings regarding the Project's compliance with the California Environmental Quality Act pursuant to Public Resources Code Section 21166 and California Code of Regulations, Title 14, Sections 15162 and 15164, and adopting a Fifth Addendum to the Laguna Hills General Plan Program Environmental Impact Report for the Project; and,

WHEREAS, the City Council serves as, and is, the Planning Agency of the City pursuant to Government Code Section 65100; and

WHEREAS, on April 2, 2021 and April 5, 2021, as required by Government Code Section 65867, the City caused public notice to be given of the City Council's intention to consider adoption of the development agreement for the Project as provided in Government Code Sections 65090 and 65091 and Chapter 9-96 of the Laguna Hills Municipal Code, and on: April 27, 2021; June 24, 2021; and June 29, 2021, as required

by Government Code Section 65867, the City Council held a public hearing on adoption of the development agreement, and introduction and first reading of this ordinance; and,

WHEREAS, on _____, 2022, the City Council considered the adoption of this ordinance approving and authorizing the execution of the development agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The development agreement with the Owner for the Project attached hereto as Exhibit "A" is hereby APPROVED based on the following statement of findings:

- A. The development agreement and the Project are consistent with the objectives, policies, general land uses, and programs of the Laguna Hills General Plan and the Urban Village Specific Plan encouraging an urban village identity to include a variety of high-quality public, regional commercial, recreational, and high-density residential uses working in concert to create an "urban village" with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas.

The Project includes modifications to the Five Lagunas Project approved in 2016 that will result in Development of the following on the Property:

- i. up to 250,000 square feet of space within Retail Buildings;
 - ii. up to 465,000 square feet of space within Office Buildings;
 - iii. two Parking Structures to serve the office uses;
 - iv. a Hotel containing between 100 to 150 rooms;
 - v. up to five (5) Residential Buildings containing up to 1,500 multiple family residential units, 200 of which will be Affordable Units;
 - vi. the construction of park and open space improvements within the Village Park; and
 - vii. the construction of associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure.
- B. The development agreement and the Project are consistent and compatible with the densities and uses authorized for the Project site specified in the Laguna Hills General Plan, the Urban Village Specific Plan, and the Zoning and Development Code of the City.
- C. The development agreement provides for the orderly development of the Project property. The development agreement identifies the different phases and timing for construction of the Project and public improvements.

SECTION 2. The City Council finds that the above recitations are true and correct and constitute the findings of the City Council and Planning Agency in this case.

SECTION 3. The City Manager is hereby directed and authorized to take all necessary actions to implement this ordinance, including but not limited to, to execute the development agreement attached hereto as Exhibit "A" and other related documents, and to make minor clerical or non-substantive changes thereto.

SECTION 4. A fully executed copy of the development agreement attached hereto as Exhibit "A" between the City and the Owner shall be filed and maintained in the office of the City Clerk.

SECTION 5. The City Clerk shall record a copy of the development agreement with the Orange County Clerk-Recorder within 10 days of the effective date of this ordinance, on or before _____, 2022.

SECTION 6. This ordinance shall become effective 30 days after its adoption, on _____, 2022.

SECTION 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

SECTION 8. The City Clerk shall certify to the adoption of this ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this ordinance and a certified copy of the text of this ordinance shall be posted in the office of the City Clerk five days prior to the date of adoption of this ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this ordinance, together with the vote for and against the same, in the office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2022.

DAVID WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing Ordinance No. ORD 2022-1 was duly introduced
and placed upon its first reading at a Regular Meeting of the City Council on the ____ day
of _____, 2022, and that thereafter, said ordinance was duly adopted and passed at a
Regular Meeting of the City Council held on the ____ day of _____, 2022, by the following
vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

EXHIBIT "A"
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

**DEVELOPMENT AGREEMENT
(Village at Laguna Hills Mixed Use Project)**

BY AND BETWEEN

**THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing
under the Constitution and laws of the State of California**

AND

MGP FUND X LAGUNA HILLS, LLC, a Delaware limited liability company

THIS DEVELOPMENT AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF ITS EFFECTIVE DATE
PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

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**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAGUNA HILLS
AND
MGP FUND X LAGUNA HILLS, LLC**

This Development Agreement (“Development Agreement”) is made and entered into this _____ day of _____, 2022 (“Development Agreement Date”), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California (“City”) and MGP FUND X Laguna Hills, LLC, a Delaware limited liability company (“Owner”), pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division I of Title 7, Sections 65864 through 65869.5 of the California Government Code (the “Development Agreement Statute”).

RECITALS

This Development Agreement is predicated upon the following facts:

A. City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the “Development Agreement Statute”) and Chapter 9-84 of the Laguna Hills Municipal Code (the “Development Agreement Ordinance”) to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in project costs and to encourage investment in and commitment to comprehensive land use planning, which will make maximum efficient utilization of resources at the least economic cost to the public; provide assurance to the applicants of development projects: (i) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements, and (ii) encourage private participation in comprehensive planning and reduce the private and public economic costs of development.

B. These Recitals refer to and utilize certain terms which are defined in this Development Agreement. The Parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

C. Owner represents that it owns in fee the approximately 68-acre former Laguna Hills Mall site (the “Property”) located in the City of Laguna Hills, within the Specific Plan area, which is more particularly described and depicted in **Exhibit A** to this Development Agreement.

D. City desires that the approximately 240 acre area bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and I-5 on the east be developed in a manner consistent with the Village Commercial land use designation of the City’s General Plan, which generally envisions the development of this area as a community core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to

create an “urban village” with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas.

E. In order to carry out the goals and policies of the General Plan for the Village Commercial area, on November 26, 2002, the Laguna Hills City Council adopted the Urban Village Specific Plan (the “Specific Plan”), establishing a land use concept, plans for additional public open space and pedestrian pathways, design guidelines, and development standards for new developments in the Specific Plan area aimed at creating an urban village identity. The allowed development intensity in the Specific Plan area is determined based upon vehicle trip generation limits, rather than land use type or size, and the Specific Plan provides for flexibility in development options and the mixture of land uses, provided established anticipated aggregate vehicle trip limits generated by new development are not exceeded. The City implements this aspect of the Specific Plan through a vehicle trip budget debiting process pursuant to which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the Specific Plan area (the “Specific Plan Area Trip Budget Allocation”). Pursuant to the Specific Plan, applicants for new development projects are authorized to develop to the maximum intensity of their plans, otherwise consistent with the Specific Plan, upon verification that the vehicle trip generation impacts created by the new development shall not exceed the remaining Specific Plan Area Trip Budget Allocation. In July 2009, the Laguna Hills City Council adopted a comprehensive update to the City’s General Plan, which authorized increased development intensity, and a corresponding increased number of authorized aggregate additional vehicle trips to accommodate future development projects, within the Specific Plan area. In April 2011, the Laguna Hills City Council approved amendments to the Specific Plan in order to implement the General Plan update.

F. In March 2016, the City Council approved Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 for the Property, which authorized redevelopment of the Laguna Hills Mall and the Property with a mixed-use retail and residential project, branded the Five Lagunas Project.

G. Owner now desires to modify the Five Lagunas Project and, ultimately replace it with revised land use entitlements to permit redevelopment of the Property through the demolition and removal of the former Laguna Hills Mall structure and the construction on the Property of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park) and related amenities branded as the Villages at Laguna Hills, all as more particularly defined herein (hereinafter collectively referred to as the “Project”).

H. The City has evaluated the Project’s environmental potential impacts and, on _____, 2022 adopted Resolution No. _____ making corresponding findings regarding the Project’s compliance with the California Environmental Quality Act pursuant to Public Resources Code Section 21166 and California Code of Regulations, Title 14, Sections 15162 and 15164, and adopting a Fifth Addendum to the Laguna Hills General Plan Program Environmental Impact Report for the Project.

I. In order to implement the Project, Owner has submitted, and City has approved, Case No. USE-010-2019 for the Project, which includes the following discretionary permits: a Site Development Permit, a Precise Plan, a Master Sign Program, a Vesting Tentative Tract Map, a Parking Use Permit, a Conditional Use Permit for a hotel, and a Conditional Use Permit for a health club, along with associated conditions of approval.

J. City desires to accomplish the goals and objectives set forth in City's General Plan and the Specific Plan and finds that the Project will accomplish said goals and objectives. The City has determined that the Project is consistent with the General Plan, the Specific Plan and the Existing Land Use Regulations, as defined below.

K. In accordance with the Specific Plan, a traffic impact analysis dated September 1, 2020 (the "Traffic Impact Analysis") was prepared by Linscott, Law & Greenspan, Engineers, which analyzes the potential traffic impacts of the Project in comparison to the Five Lagunas Project, calculates the net change in peak hour vehicle trips that will be generated as a result of the Project, and demonstrates that there are sufficient remaining additional peak hour vehicle trips available in the current Specific Plan Area Trip Budget Allocation to accommodate the Project.

L. As consideration for the benefits gained by Owner from the vested rights acquired pursuant to the Development Agreement Statute and to conform with the requirements of the Specific Plan, City is requiring that Owner construct and install as part of Development of the Project certain public improvements and provide other public benefits.

M. In order to avoid any misunderstandings or disputes which may arise from time to time between Owner and City concerning the proposed Development of the Project and to assure each party of the intention of the other as to the processing of any land use entitlements which now or hereafter may be required for such development, the Parties believe it is desirable to set forth their intentions and understandings in this Development Agreement. In order for both City and Owner to achieve their respective objectives, it is imperative that each be as certain as possible that Owner will develop and that City will permit Owner to proceed with Development of the Project and public improvements and other public benefits as approved by City within the time periods provided in this Development Agreement, except as otherwise indicated herein.

N. The City caused public notice to be given of the City Council's intention to consider adoption of a development agreement for the Project as required by Section 65867 of the Development Agreement Statute.

O. The City Council held public hearings on the Development Agreement as required by Section 65867 of the Development Agreement Statute.

P. The City Council hereby finds and determines that this Development Agreement: (i) is consistent with the objectives, policies, general land uses, and programs contained City's General Plan and Urban Village Specific Plan; (ii) is compatible with the uses authorized in the Village Commercial land use district; (iii) provides for the orderly development of the Property; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

Q. In preparing and adopting the General Plan and in granting the Existing Development Approvals, City considered the health, safety and general welfare of the residents of City and prepared in this regard an extensive environmental impact report and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and in granting the Existing Development Approvals, the City Council carefully considered and determined the projected needs (taking into consideration the planned development of the Project and all other areas within the City) for water service, sewer service, storm drains, electrical facilities, traffic/circulation infrastructure, police and fire services, paramedic and similar improvements, facilities and services within the Specific Plan area, and the appropriateness of the density and intensity of the development comprising the Project and the needs of City and surrounding areas for other infrastructure.

R. On _____, 2022, the City Council adopted the Authorizing Ordinance approving and authorizing the execution of this Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and pursuant to the Development Agreement Ordinance, and pursuant to the mutual promises and covenants herein contained, the Parties hereto agree as follows:

SECTION 1 DEFINITIONS

The following words and phrases are used as defined terms throughout this Development Agreement, and each defined term shall have the meaning set forth below.

1.1 Affordable Housing Implementation Plan. “Affordable Housing Implementation Plan” or “AHIP” means the Village at Laguna Hills Affordable Housing Implementation Plan attached as **Exhibit F** to this Development Agreement.

1.2 Affordable Unit(s). “Affordable Unit(s)” means a unit or units of housing that is/are located within a Residential Building and is/are affordable to Moderate Income Households or Lower Income Households, as those terms are defined herein.

1.3 Authorizing Ordinance. The “Authorizing Ordinance” means Ordinance No. ORD 2022-__ approving and authorizing this Development Agreement.

1.4 CEQA. “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and the regulations adopted pursuant thereto (Title 14 of the California Code of Regulations, Section 15000 *et seq.*), as they may be amended from time to time.

1.5 Certificate(s) of Occupancy. “Certificate(s) of Occupancy” means certificate(s) of occupancy granted by the building department of the City in accordance with the Uniform Building Code.

1.6 Commence Construction or Commenced Construction. With respect to Residential Buildings, Retail Buildings, and Office Buildings, “Commence Construction” or “Commenced Construction” means Owner has begun actual construction of vertical components of buildings. With respect to the Village Park, “Commence Construction” or “Commenced Construction”

means Owner has completed precise grading of the portion of the Property designated for the Village Park and begun actual installation of the landscaping and irrigation required to be included in the Village Park pursuant to the Existing Development Approvals. Once the Owner has Commenced Construction of each of the Residential Buildings, Retail Buildings, Office Buildings, Hotel, and/or Village Park, the Owner shall Complete Construction, as hereinafter defined, with commercially reasonable diligence.

1.7 Complete Construction, Completed Construction, or Completion of Construction. With respect to Residential Buildings, Retail Buildings, Office Buildings, and the Hotel, “Complete Construction,” “Completed Construction,” or “Completion of Construction” means that the Owner (i) has requested and is entitled to issuance of Certificate(s) of Occupancy, and (ii) has obtained written approval from the appropriate City officials for all Public Improvements required to be completed prior to issuance of the relevant Certificate(s) of Occupancy pursuant to the Existing Development Approvals. With respect to the Village Park, “Complete Construction,” “Completed Construction,” or “Completion of Construction” means that Owner has installed all landscaping, irrigation, lighting, pedestrian pathways, water features, shade structures, seating, equipment, and/or other infrastructure required to be included in the Village Park pursuant to the Existing Development Approvals.

1.8 City. “City” means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

1.9 City Manager. “City Manager” means the City Manager of the City of Laguna Hills or his or her designee.

1.10 Community Benefit Fees. “Community Benefit Fees” shall have the meaning ascribed in Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not Development Fees and subject to the Mitigation Fee Act or the Quimby Act, and City may deposit such payments into the City’s general fund and expend such funds for any lawful purpose.

1.11 Covenant Agreement. “Covenant Agreement” means the covenant agreement with the City as required by the existing Development Approvals.

1.12 Develop, Developed, or Development. “Develop,” “Developed,” or “Development” means the improvement or renovation of the Property for the purposes of completing the structures, improvements and facilities comprising the Project, including, without limitation: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of buildings, structures, and other facilities; the installation of landscaping; and the construction of other facilities and improvements necessary or appropriate for the Project. “Develop,” “Developed,” or “Development” does not mean the maintenance, repair or reconstruction of any building, structure, improvement, landscaping or facility after the Completion of Construction.

1.13 Development Agreement. “Development Agreement” means this Development Agreement and any subsequent amendments to this Development Agreement which have been

made in compliance with the provisions of this Development Agreement, the Development Agreement Statute, and the Development Agreement Ordinance.

1.14 Development Agreement Date. The “Development Agreement Date” means the effective date of the Authorizing Ordinance, which date is shown on page 1, paragraph 1 of this Development Agreement.

1.15 Development Agreement Ordinance. The “Development Agreement Ordinance” means Chapter 9-84 of the Laguna Hills Municipal Code.

1.16 Development Agreement Statute. The “Development Agreement Statute” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Development Agreement Date.

1.17 Development Fees. “Development Fees” shall have the meaning ascribed in Section 10.1 of this Development Agreement, as specified in **Exhibit B** to this Development Agreement.

1.18 Development Plan. “Development Plan” means this Development Agreement, the Existing Development Approvals, and the Existing Land Use Regulations, as well as all Subsequent Development Approvals, and all Subsequent Land Use Regulations to which Owner has consented to in writing, which consent shall be in Owner’s sole and absolute discretion. Depending on the context, “Development Plan” may also mean Development of the Project in accordance with the Development Plan.

1.19 Discretionary Action(s), Discretionary Approval(s), or Discretionary Permit(s). “Discretionary Action(s)”, “Discretionary Approval(s)”, or “Discretionary Permit(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Action, Ministerial Approval, or Ministerial Permit.

1.20 Excusable Delay. “Excusable Delay” is defined in Section 22.1.

1.21 Excusable Delay re Hotel. “Excusable Delay re Hotel” means a delay in the construction of the Hotel which results from the failure of the market to support an Upscale hotel as demonstrated by an Updated Hotel Study. Owner shall demonstrate the existence of Excusable Delay re Hotel pursuant to those procedures described in Subsection 5.4.1(H). Notwithstanding anything herein to the contrary, “Excusable Delay,” as described in Section 22.1, is not applicable to the Development of the Hotel.

1.22 Existing Development Approvals. “Existing Development Approvals” means those certain land use entitlements associated with Case No. USE-010-2019, which were approved for the Project by the City on _____, 2022, and which include a Site Development Permit, a Precise Plan, a Master Sign Program, a Vesting Tentative Tract Map, a Parking Use Permit, a Conditional Use Permit for a Hotel, and a Conditional Use Permit for a health club, along with all conditions of approval with respect thereto. To the extent any of the land use entitlements approved for the Project are amended from time to time upon application by Owner, “Existing Development

Approvals” shall include such matters as so amended. If this Development Agreement is required by law to be amended in order for “Existing Development Approvals” to include any such amendments, “Existing Development Approvals” shall not include such amendments unless and until this Development Agreement is so amended.

1.23 Existing Land Use Regulations. “Existing Land Use Regulations” means all ordinances, laws, resolutions, codes, rules, regulations, moratoria, initiatives, policies, requirements, or guidelines of the City in effect on the Development Agreement Date, which govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, the Specific Plan, Mitigation Monitoring Program, and all other ordinances of City establishing subdivision standards, park regulations, impact or Development Fees and building and improvement standards. Existing Land Use Regulations do not include non-land use regulations, which include, without limitation, all City ordinances, resolutions, rules, regulations or official policies governing: business licenses issued by the City for the conduct of businesses, professions, and occupations; taxes and assessments; the control and abatement of nuisances; the granting of encroachment permits and the conveyance of rights and interests which provide for the use of the entry upon public property; and/or the exercise of the power of eminent domain.

1.24 Final Map(s). “Final Map(s)” refers to one or more final maps which may be filed with respect to the vesting tentative tract map approved as part of the Project Approvals, as provided in Government Code Sections 66456 et. seq.

1.25 Five Lagunas Project. “Five Lagunas Project” means development of the Property in the manner authorized by the Five Lagunas Entitlements.

1.26 Five Lagunas Entitlements. “Five Lagunas Entitlements” mean that certain Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 approved by the City on March 22, 2016, as amended, and all permits and approvals implementing the foregoing granted by the City.

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

1.28 Hotel. “Hotel” means the hotel structure and related use(s) and associated parking facilities and infrastructure authorized to be Developed pursuant to the Existing Development Approvals. The quality of the Hotel shall be not less than Upscale. The approximate size and location of the Hotel is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Hotel.”

1.29 Hotel Feasibility Study. “Hotel Feasibility Study” means a study conducted by a “Qualified Hotel Consultant” determining whether or not the operation of an Upscale Hotel of approximately 100-150 rooms is supported by market data.

1.30 HVS. “HVS” means HVS Consulting & Valuation, a division of TS Worldwide, LLC.

1.31 Initial Hotel Feasibility Study. “Initial Hotel Feasibility Study” means the study dated December 13, 2021, as supplemented by letter dated December 14, 2021, conducted by HVS evaluating the market feasibility of an Upper-Upscale hotel and Upscale hotel within the Property and determining that an Upscale select-serve hotel would be feasible and that an Upper-Upscale hotel would be infeasible.

1.32 Litigation Delay. “Litigation Delay” means any period of excusable delay described in Subsection 22.1.1(D) of this Development Agreement.

1.33 Lower Income Households. “Lower Income Households” has the meaning set forth in California Health and Safety Code Section 50079.5.

1.34 Major Project Modification(s). “Major Project Modification(s)” means any Discretionary Approval or Discretionary Permit requested by Owner that is approved, granted, or issued after the Development Agreement Date, which would result in the authorization for any of the following: (i) the Development of more than five (5) Residential Buildings and/or more than 1,500 residential units on the Property; (ii) the Development of fewer than four (4) Residential Buildings on the Property; (iii) the Development of fewer than 200 Affordable Units on the Property; (iv) the Development of fewer than one hundred (100) hotel rooms on the Property; (v) the Development of less than 210,000 square feet of space within Retail Buildings on the Property; (vi) the Development of more than four (4) Office Buildings and/or 465,000 square feet of space within Office Buildings on the Property; (vii) the Development of a Village Park that is less than two (2) acres in size; and/or (viii) the construction or relocation of any Residential Building, Retail Building, Office Building, or Parking Structure to a location on the Property different from that authorized by the Existing Development Approvals, provided, however, that a minor change to the orientation, location, and/or building footprint of such a structure within the boundaries of the same legal lot shall not be deemed to be a Major Project Modification. Notwithstanding anything herein to the contrary, Major Project Modifications may be granted, denied, or conditionally approved by the City acting in its sole and absolute discretion.

1.35 Milestones. “Milestones” means the outside dates by which specified obligations of Owner under this Development Agreement are required to have been performed. The Milestones are summarized in **Exhibit D** to this Development Agreement, with reference to the section of the Development Agreement stating each obligation. **Exhibit D** shall be incorporated into this Development Agreement and considered an enforceable part thereof.

1.36 Ministerial Action(s), Ministerial Approval(s), or Ministerial Permit(s). “Ministerial Action(s)”, “Ministerial Approval(s)”, and “Ministerial Permit(s)” means a permit approval or clearance in conformance with the Existing Land Use Regulations, including, without limitation, conformance maps for tentative maps, determinations of compliance with the Project conditions of approval of the Existing Development Approvals, grading plans, improvement plans, buildings plans and specifications, and ministerial issuance of one or more Final Maps, zoning clearances, grading permits, improvement permits, wall permits, building permits, demolition permits, lot line adjustments, encroachment permits, temporary use permits, and certificates of use and occupancy as necessary for completion of the Development of the Property in accordance with the Development Plan, as distinguished from an activity which is defined herein as a Discretionary Action, Discretionary Approval, or Discretionary Permit.

1.37 Mitigation Fee Act. “Mitigation Fee Act” shall mean California Government Code Section 66000 et. seq., as it may be amended from time to time.

1.38 Mitigation Monitoring Program. “Mitigation Monitoring Program” means those portions of the Mitigation Monitoring and Reporting Program adopted by the City Council on July 14, 2009 in conjunction with certification of the Program Environmental Impact Report prepared in connection with the 2009 Comprehensive Update of the City’s General Plan (“PEIR”) and as made applicable to the Five Lagunas Project. The Five Lagunas Project’s mitigation measures apply to the Project as indicated in the Fifth Addendum to the PEIR and Exhibit B of Resolution No. _____ approving the Existing Development Approvals.

1.39 Moderate Income Households. “Moderate Income Households” means persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current median income of the County of Orange adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time.

1.40 Mortgage. “Mortgage” means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security.

1.41 Mortgagee. “Mortgagee” means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.42 New Retail. “New Retail” means that portion of the minimum one hundred forty thousand (140,000) square feet of space within Retail Buildings required to be Developed in Phase One other than the existing approximately 10,125 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Restaurant” and the approximately 12,970 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Building.”

1.43 Office Buildings. “Office Buildings” means the office structures intended to house business, medical, and professional office, financial institution, and ancillary office-serving supportive retail and service uses, and associated parking facilities and infrastructure, authorized to be Developed pursuant to the Existing Development Approvals. The Office Buildings do not include the Hotel, the Retail Buildings, or the Residential Buildings. The approximate size and location of the Office Buildings are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Office.”

1.44 Owner. “Owner” is MGP FUND X Laguna Hills, LLC and any person or entity with which or into which MGP FUND X Laguna Hills, LLC may merge, and any person or entity who may acquire substantially all of the assets of MGP FUND X Laguna Hills, LLC and any person or entity who receives any of the rights or obligations under this Development Agreement in accordance with the provisions of Section 21 (Assignment) of this Development Agreement.

1.45 Parking Structure(s). “Parking Structure(s)” means the two (2) parking structures authorized to be Developed pursuant to the Existing Development Approvals. The approximate

size and location of the Parking Structures are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Parking Structure.”

1.46 Owner’s Public Art Obligation. “Owner’s Public Art Obligation” shall have the meaning ascribed in Section 7.4 of this Development Agreement.

1.47 Parties; Party. “Parties” means the Owner and the City. A “Party” refers to either the Owner or the City.

1.48 Phase One. “Phase One” means the Development of the portions of the Project described in Subsection 5.4.1 of this Development Agreement. Phase One generally includes, without limitation, Development of the following, including the associated demolition of existing improvements, on the Property: (i) the Village Park; (ii) at least 140,000 square feet of space within Retail Buildings, and up to 250,000 square feet of space within Retail Buildings; (iii) a Hotel, of Upscale quality, containing between 100 and 150 rooms; (iv) at least two (2), but no more than four (4), of Residential Buildings I, II, III, and/or V; (v), up to 200 Affordable Units; (vi) up to 465,000 square feet of space within up to four (4) Office Buildings and associated Parking Structures; and (vii) associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required to be Developed prior to Completion of Construction of the foregoing improvements pursuant to the conditions of approval of the Existing Development Approvals.

1.49 Phase Two. “Phase Two” means the Development of the portions of the Project described in Subsection 5.4.2 of this Development Agreement. Phase Two generally includes, without limitation, Development of the following, including the associated demolition of existing improvements, on the Property: (i) sufficient additional space within Retail Buildings, such that the aggregate total amount of space within Retail Buildings Developed in Phase One and Phase Two, combined, is at least 210,000 square feet, and up to the entire 250,000 square feet of space within Retail Buildings authorized by the Existing Development Approvals; (ii) each of Residential Buildings I, II, III and/or V that are not Developed as part of Phase One and, at Owner’s option, Residential Building IV; (iii) the remainder of the 200 Affordable Units that are not Developed as part of Phase One; (iv) up to the entire 465,000 square feet of space within up to four (4) Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One; and (v) associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required to be Developed prior to Completion of Construction of the foregoing improvements pursuant to the conditions of approval of the Existing Development Approvals.

1.50 Project. The “Project” means those certain improvements described in the Existing Development Approvals, the Subsequent Development Approvals, and any Major Project Modifications. In general, the Project consists of the Development of the Property with a multi-phase, mixed-use project generally consisting of multiple family residential units, retail uses, office uses, a hotel, park and public/communal open space improvements, parking structures and lots, pedestrian pathways, private and public infrastructure improvements, and the public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals. The Project generally includes modifications to the Five Lagunas Project that result in Development of the following on the Property (i) up to

250,000 square feet of space within Retail Buildings; (ii) up to 465,000 square feet of space within Office Buildings and associated Parking Structures; (iii) a Hotel containing between 100 to 150 rooms; (iv) up to five (5) Residential Buildings containing up to 1,500 multiple family residential units, 200 of which shall be Affordable Units; (v) the construction of park and open space improvements within the Village Park; (vi) and the construction of associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure. The approximate locations and/or building envelope of the Residential Buildings, Retail Buildings, Hotel, Office Buildings, Parking Structures, Village Park, and other improvements authorized by the Existing Development Approvals are generally depicted on **Exhibit C** to this Development Agreement.

1.51 Project Trip Budget Allocation. “Project Trip Budget Allocation” means the total aggregate net change in AM and PM peak hour vehicle trips anticipated to be generated as a result of full development of the Project, as determined by the Traffic Impact Analysis and in accordance with Section 5.6. As set forth in the Traffic Impact Analysis, as of the Development Agreement Date, the Project is anticipated to generate 119 total additional AM peak hour vehicle trips and 910 total fewer PM peak hour vehicle trips than the Five Lagunas Project.

1.52 Property. The “Property” means the real property described and depicted in **Exhibit A** to this Development Agreement.

1.53 Public Art. “Public Art” has the meaning ascribed to this term in the “Public Art” provisions of Section V, at pages 39-40, of the Specific Plan. As specified in the Specific Plan, Public Art includes, but is not limited to, sculptures, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources.

1.54 Qualified Hotel Consultant. “Qualified Hotel Consultant” means HVS or another hotel consultant, mutually agreed upon by the Parties, qualified to determine whether market conditions support the operation of an Upscale quality Hotel, as mutually agreed upon by the Parties.

1.55 Residential Building(s). “Residential Building(s)” means the five (5) multiple-family residential structures and associated parking facilities and infrastructure authorized to be Developed pursuant to the Existing Development Approvals. For purposes of this Development Agreement, the Residential Buildings are separately identified as “Residential” or “Residential Building” I, II, III, IV, and V. The approximate locations of the Residential Buildings and the approximate number of residential units currently anticipated to be constructed within each Residential Building are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement.

1.56 Residential Unit. “Residential Unit” means each separate rentable unit which is or will be rented for residential purposes within each Residential Building.

1.57 Retail Buildings. “Retail Buildings” means the commercial structures intended to house retail, restaurant, service, health club, theatre, and similar uses, and associated parking facilities and infrastructure, authorized to be Developed pursuant to the Existing Development Approvals. The Retail Buildings include those ground floor portions of the structures housing the Hotel and Residential Building I which contain retail or service uses that are intended to serve the

general public, but do not include any other portion of the Hotel, any portion of the Office Buildings, or any other portions of Residential Building I or the other Residential Buildings. The approximate size and location of the Retail Buildings are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Retail,” “Shops,” “Anchor,” “Pad,” (E) Restaurant,” and “(E) Building.”

1.58 Quimby Act. “Quimby Act” shall mean California Government Code Section 66477, as it may be amended from time to time.

1.59 Senior(s). “Senior(s)” means an individual(s) that is(are) fifty-five (55) years of age or older.

1.60 Specific Plan. “Specific Plan” means the Urban Village Specific Plan approved by the City Council on November 26, 2002, and amended by the City Council in 2011.

1.61 Specific Plan Area Trip Budget Allocation. “Specific Plan Area Trip Budget Allocation” means the then current number of remaining AM and PM peak hour vehicle trips available to accommodate future new development in the Specific Plan area as calculated by the City in accordance with the vehicle trip budget debiting process contemplated by the General Plan and the Specific Plan.

1.62 Subsequent Development Approvals. “Subsequent Development Approvals” means all Ministerial Actions, Ministerial Approvals, Ministerial Permits, Discretionary Actions, Discretionary Approvals, and Discretionary Permits, which do not constitute Major Project Modifications, that are approved, granted, or issued for the Project after the Development Agreement Date, which are required or permitted by the Existing Land Use Regulations, or by the Subsequent Land Use Regulations to which Owner has consented in writing (which consent shall be in Owner’s sole and absolute discretion), the Existing Development Approvals, and this Development Agreement. Subsequent Development Approvals include, without limitation: (i) Final Maps; (ii) grading, building and other similar permits necessary to implement the Existing Development Approvals; (iii) design, landscaping, lighting, or similar plans expressly contemplated or required by the conditions of approval to the Existing Development Approvals; (iv) design approvals, site plans, site development permits, or similar Discretionary Approvals necessary for the Development of the Village Park, Retail Buildings, Hotel, Residential Buildings, Office Buildings, Parking Structures, and/or associated infrastructure and parking facilities in the locations authorized by the Existing Development Approvals; (v) conditional use permits; (vi) parking use permits; (vii) master sign programs; and (viii) amendments to the Existing Development Approvals that do not constitute Major Project Modifications.

1.63 Subsequent Land Use Regulations. “Subsequent Land Use Regulations” means any change in or addition to the Existing Land Use Regulations adopted or becoming effective after the Development Agreement Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or any other board, agency, commission or department of City, or any officer or employee thereof, or by the

electorate, as the case may be, or changes in state law, which would, absent this Development Agreement, otherwise be applicable to the Project.

1.64 Term. “Term” is defined in Section 2 of this Development Agreement.

1.65 Third Party Challenge. “Third Party Challenge” shall have the meaning ascribed in Subsection 22.1.1(D) of this Development Agreement.

1.66 Traffic Impact Analysis. “Traffic Impact Analysis” means the traffic impact analysis dated September 1, 2020, prepared by Linscott, Law & Greenspan, Engineers pursuant to the Specific Plan and included as Appendix G to the Fifth Addendum, which analyzes the anticipated traffic impacts of the Project and calculates the change in AM and PM peak hour vehicle trips that will be generated by the Project in comparison to the Five Lagunas Project. Pursuant to the Traffic Impact Analysis, the estimated total AM and PM peak hour vehicle trips that will be generated by the Project are calculated utilizing the trip generation rates set forth in the 10th Edition of *Trip Generation*, published by the Institute of Transportation Engineers (ITE).

1.67 Twenty Year Period. “Twenty Year Period” means the period commencing on the Development Agreement Date and terminating on end of the day of the twentieth anniversary of the Development Agreement Date.

1.68 Uniform Codes. “Uniform Codes” means codes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by the City, if applicable City-wide.

1.69 Updated Hotel Feasibility Study. Updated Hotel Feasibility Study is defined in Section 5.4.1(H).

1.70 Upscale. “Upscale” means hotel brands classified as “Upscale,” on the chain scale hotel classification list for North America published by Smith Travel Research or another similar list mutually acceptable to the City and the Owner. By way of example only, hotel brands currently listed as “Upscale” by Smith Travel Research include, but are not limited to, Courtyard by Marriott, Residence Inn, Radisson, and Doubletree.

1.71 Upper-Upscale. Upper-Upscale means hotel brands classified as “Upper-Upscale” on the chain scale hotel classification list published by Smith Travel Research or other similar list mutually acceptable to City and Owner. By way of example, hotel brands currently listed as Upper-Upscale by Smith Travel Research include, but are not limited to Embassy Suites, Sheraton Hotel, and Westin.

1.72 Veteran(s). “Veteran(s)” means an individual(s) that is/are a United States armed forces veteran(s).

1.73 Village Park. “Village Park” means the approximately 2.6 acre private park, inclusive of communal open space improvements and related pathways, features, equipment, and infrastructure authorized and required to be Developed by the Existing Development Approvals.

The approximate location of the Village Park is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement.

1.74 Zoning Code. “Zoning Code” refers to Title 9 of the Laguna Hills Municipal Code.

SECTION 2 TERM

2.1 Duration of Term. The term (“Term”) of this Development Agreement shall be that period of time during which this Development Agreement shall be in effect and bind the Parties hereto. The Term shall commence on the Development Agreement Date and shall extend for an initial period of fifteen (15) years thereafter, terminating at the end of the day on the fifteenth (15th) anniversary of the Development Agreement Date, subject to the mandatory extension provisions of Section 2.2, the termination provisions of Sections 2.3, 2.4, and 10.6, the mutual cancellation provisions of Section 17, the periodic review provisions of Section 18, the Default provisions of Section 19, and the excusable delay tolling provisions of Section 22.1, respectively, of this Development Agreement.

2.2 Extension of Term. The Term of this Development Agreement shall be automatically extended an additional five (5) years if, prior to expiration of the initial Term, as defined in Section 2.1, Owner has Completed Construction of all required portions of Phase One of the Project set forth in Subsection 5.4.1(C) of this Development Agreement and has obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two set forth in Subsection 5.4.2(B) of this Development Agreement, provided however, if the failure to Complete Construction of the Hotel is the only reason that would otherwise prevent the automatic extension, automatic extension shall nonetheless occur if such failure is a result of Excusable Delay re Hotel. Notwithstanding the foregoing, the Parties may mutually agree to extend the Term of the Development Agreement, regardless of whether the mandatory extension provisions of this Section 2.2 are applicable.

2.3 Termination Due to Judicial Order. Subject to Section 22.3, this Development Agreement shall terminate and be of no further force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after all appeals have been exhausted, directed to City as a result of any lawsuit filed against City to set aside, withdraw or abrogate the approval of the City Council of this Development Agreement.

2.4 Automatic Termination upon Completion of Project. If not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement shall automatically terminate and be of no further force and effect upon Completion of Construction of the Project pursuant to the terms of this Development Agreement and any further amendments thereto and the issuance of all occupancy permits and acceptance by City of all dedications and improvements as required by the Development of the Project.

2.5 Effect of Expiration of Term Prior to Completion of Project. Except as otherwise expressly provided in Subsection 5.4.3(D) or any other provision of this Development Agreement, if not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement and the life of all Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications shall

automatically terminate and be of no further force and effect upon expiration of the Term, regardless of whether the Project has been completed, and Owner's rights to proceed with Development of the Project pursuant to this Development Agreement shall also automatically terminate and be of no further force and effect. This Section 2.5 shall not be construed to automatically terminate (i) Owner's right, pursuant to Subsection 5.4.3(D) of this Development Agreement, to Complete Construction of structures it has Commenced Construction of prior to expiration of the Term, or (ii) Owner's rights under applicable law to continue to use any structure or portion of the Project that Owner Completes Construction of pursuant to this Development Agreement.

SECTION 3 BINDING COVENANTS

The provisions of this Development Agreement, to the extent permitted by law, shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Development Agreement shall bind and inure to the benefit of the Parties and all successors in interest to the Parties hereto.

SECTION 4 EFFECT OF AGREEMENT

As a material part of the consideration of this Development Agreement, unless otherwise provided in the Existing Development Approvals or in this Development Agreement, the Parties agree that the Existing Land Use Regulations shall be applicable to Development of the Project. In connection with all Subsequent Development Approvals that are Discretionary Actions, Discretionary Approvals, or Discretionary Permits, which City takes or has the right to take under this Development Agreement relating to the Project, including any review, approval, renewal, conditional approval or denial, City shall exercise its discretion or take action in a manner which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement) and such other standards, terms and conditions expressly contained in this Development Agreement. City shall accept and timely process, in the normal manner for processing such matters as may then be applicable, all applications for Subsequent Development Approvals requested by Owner with respect to the Project called for or required under this Development Agreement.

SECTION 5 DEVELOPMENT OF PROJECT

5.1 Rights to Develop. Subject to and during the Term of this Development Agreement, including Section 10 (Fees), Section 12 (Future Approvals) and Section 16 (Reserved Authority), Owner shall have a vested right to Develop the Project in accordance with, and to the extent of, the Development Plan. No Subsequent Land Use Regulation shall apply to Development of the Project, or shall delay, hinder, or impede the purpose or the effect of this vested right or apply to Development of the Project, except as specifically permitted by this Development Agreement or agreed to in writing by Owner. Subject to Section 12.1, the Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided herein, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes shall be those set forth in the Development Plan. Notwithstanding the foregoing, while this Development

Agreement is in effect, Owner waives any right Owner may have to a density bonus under Government Code Section 65915 through 65918 or the Zoning Code, as they may be amended from time to time. Densities vested hereunder include all densities available as density bonuses under the Zoning Code and Government Code Section 65915 through 65918. In addition, while this Development Agreement is in effect, Owner waives any right Owner may have to approval by the City of any Major Project Modification under California law or the Zoning Code and agrees that the City shall have sole and absolute discretion in determining whether to approve, conditionally approve, or deny any Major Project Modification requested by Owner.

5.2 Vesting of Rights of Developer. The City agrees that the right to Develop the Project consistent with the Development Plan is vested in Owner by this Development Agreement. Owner's right to develop the Project consistent with the Development Plan shall be vested in accordance with this Development Agreement and the Development Agreement Statute. Notwithstanding the foregoing, Owner shall have no vested right to Develop the Project in accordance with any Major Project Modification until and unless such Major Project Modification is approved by the City, in its sole and absolute discretion, and is expressly incorporated into the Development Plan.

5.3 Effect of Development Agreement on Land Use Regulations. Except as otherwise provided in the Existing Development Approvals or under the terms of this Development Agreement, the only rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Project, shall be those set forth in the Existing Land Use Regulations and the Subsequent Land Use Regulations to which Owner has consented in writing in Owner's sole and absolute discretion, subject to the terms of this Development Agreement.

5.4 Timing of Development. For purposes of this Development Agreement, the components of the Project required and/or authorized to be Developed within specified time periods are described by reference to "Phase One," "Phase Two," and "Subsequent Phases." Owner expressly understands and agrees that its commitment to satisfy the Milestones and to Commence and Complete Construction of the various Project components pursuant to this Section 5.4 is a material inducement to City's approval of this Development Agreement.

5.4.1 Phase One. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of Phase One.

(A) First Phase One Final Map. Owner shall submit to the City a complete application for a Final Map for those parcels on which the Village Park, the Hotel, Retail Buildings containing at least one hundred forty thousand (140,000) square feet of space, and at least two (2) Residential Buildings for Phase One shall be Developed by no later than eighteen (18) months from the Development Agreement Date (**Exhibit D**, Milestone Three).

(B) First Building Permit. Owner shall submit to the City a complete application for a building permit for vertical construction of at least one Phase One building on or before the earlier to occur of the following dates: (i) the date that is thirty-six (36) months from

the date a complete application for the first Final Map associated with Phase One is submitted by Owner to City, or (ii) the date that is fifty-four (54) months from the Development Agreement Date (**Exhibit D**, Milestone Five).

(C) Completion of Phase One. Except as otherwise expressly provided herein, Owner shall Complete Construction of the following components of Phase One on or before the date that is seven (7) years from the Development Agreement Date (**Exhibit D**, Milestone Six).

(i) The Village Park.

(ii) At least one hundred forty thousand (140,000) square feet of space within the Retail Buildings. The minimum 140,000 square feet of space within Retail Buildings required for Phase One may include the existing approximately 10,125 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Restaurant” and the approximately 12,970 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Building,” but shall not include any other vacant or occupied structures existing on the Property as of the Development Agreement Date or any space within the Office Buildings. Owner may, but shall not be required, to Develop up to the entire 250,000 square feet of space within the Retail Buildings that is authorized by the Existing Development Approvals as part of Phase One.

(iii) A Hotel that is Upscale in quality and contains no less than one hundred (100) rooms. Owner’s obligation to complete the Hotel shall be subject to Subsection 5.4.1(H), below.

(iv) At least (2) of Residential Buildings I, II, III, and/or V, which shall be subject to Subsections 5.4.1 (D) and (E), below. Owner may, but shall not be required, to Develop either three (3), or all four (4), of Residential Buildings I, II, III, and/or V as part of Phase One, subject to Subsections 5.4.1 (D) and (E).

(v) The Affordable Units required to be Developed within each Residential Building pursuant to the provisions of Section 7.2 (Affordable Housing) and the Affordable Housing Implementation Plan attached at **Exhibit F** to this Development Agreement.

(vi) All public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required by the Development Plan to be Developed prior to Completion of Construction of the improvements described in Subsection 5.4.1(C)(i)-(v).

(D) Assurance of Timely Development of Village Park and Retail Buildings. Owner shall not be entitled to issuance of a certificate of occupancy for more than two (2) Residential Buildings unless it has both: (i) Completed Construction of the Village Park; and (ii) Commenced Construction of Retail Buildings containing at least 140,000 square feet of space.

(E) Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase One, Owner must concurrently Develop the associated Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as “Shops 2 $\pm$ 17,500

SF,” “Retail $\pm$ 14,500 SF,” “Retail $\pm$ 13,500 SF,” and “Retail $\pm$ 12,000 SF.” Owner shall not be entitled to issuance of a Certificate of Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

(F) Development of Office Buildings. Owner may, but is not required to, Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals as part of Phase One. Owner shall use commercially reasonable efforts to market development opportunities for Office Buildings in Phase One, but shall have no obligation to Commence or Complete Construction of any Office Buildings or the Parking Structures as part of Phase One. In no event shall development of Office Buildings be a prerequisite to automatic extension of the Development Agreement pursuant to Section 2.2.

(G) Concurrent Development of Phase One and Phase Two. Provided Owner has Commenced Construction of both the Village Park and Retail Buildings housing at least 140,000 square feet of space, then, except as otherwise specified herein, including, but not limited to, Subsections 5.4.2 (C) and (D), Owner may proceed to Develop any component of Phase Two, as provided in Subsection 5.4.2.

(H) Construction of Hotel. Notwithstanding anything herein to the contrary, and subject to Excusable Delay re Hotel and to the final sentence of this Subsection 5.4.1(H) (describing the City’s exclusive remedies in the event of an Owner Default under this Subsection 5.4.1(H)), Completion of Construction of the Hotel conforming to this Development Agreement shall occur prior to the earlier of (i) the seventh anniversary of the Development Agreement Date or (ii) granting of Certificates of Occupancy for the third Residential Building. In the event that Owner seeks Certificates of Occupancy for the fourth or fifth Residential Building prior to Completion of Construction of the Hotel, City shall withhold Certificates of Occupancy for the fourth and/or fifth Residential Building, as applicable, until Completion of Construction of the Hotel, unless Owner’s obligation to Complete Construction of the Hotel is temporarily excused due to Excusable Delay re Hotel. To demonstrate Excusable Delay re Hotel, Owner must provide City with a Hotel Feasibility Study prepared by a Qualified Hotel Consultant which determines that the Hotel is not feasible as of the date for which Owner seeks a Certificate of Occupancy for the subject Residential Building (“Updated Hotel Feasibility Study”). Upon receipt of the Updated Hotel Feasibility Study, City shall engage an independent Qualified Hotel Consultant to evaluate the Updated Hotel Feasibility Study and to provide an additional opinion on feasibility. If the City’s Qualified Hotel Consultant disagrees with the conclusions of the Updated Hotel Feasibility Study and determines that the Hotel is feasible, Owner and City will seek the opinion of a third Qualified Hotel Consultant, and Owner will be entitled to claim Excusable Delay re Hotel only if at least two out of the three Qualified Hotel Consultants determine that the Hotel is infeasible. In order for Owner to be entitled to continue to claim Excusable Delay re Hotel, the process described in the previous three (3) sentences for demonstrating the existence of Excusable Delay re Hotel shall be repeated at least once every eighteen (18) months following Owner’s initial invocation of Excusable Delay re Hotel until either Completion of Construction of the Hotel or termination of the Development Agreement. Excusable Delay re Hotel shall end, and Owner’s obligation to Complete Construction of the Hotel shall recommence immediately, subject to the limitations on remedies in the final sentence of this Section 5.4.1(H), if (i) Owner fails to submit an Updated Hotel Feasibility Study within eighteen (18) months of the date of the immediately previous

determination that the Hotel is infeasible, (ii) an Updated Hotel Feasibility Study concludes that the Hotel is feasible, or (iii) if at least two out of the three Qualified Hotel Consultants do not determine that the Hotel is infeasible. Excusable Delay re Hotel shall not excuse Owner from its obligation to timely pay Community Benefit Fees described in Subsection 10.5.2. Notwithstanding anything to the contrary in this Development Agreement, the City's exclusive remedies in the event that Owner does not Complete Construction of the Hotel in a timely manner are: (i) the withholding of Certificates of Occupancy for the fourth and fifth Residential Buildings as described in this Subsection 5.4.1(H); (ii) the payment of Community Benefit Fees as described in Subsection 10.5.2; and (iii) the Five Hundred Thousand Dollar (\$500,000) Community Benefit Fee to be paid to City if Owner fails to Complete Construction of the Hotel within seven (7) years of the Development Agreement Date as described in Subsection 10.5.2.

5.4.2 Phase Two. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of Phase Two.

(A) Commencement of Phase Two. Within five (5) years of the City's issuance of the final Certificate of Occupancy for the Retail Buildings, Residential Buildings, and Affordable Units required to be Developed as part of Phase One pursuant to Subsection 5.4.1(C)(ii), (iv), and (v), above, Owner shall have both (i) recorded a Final Map approved by the City for those parcels on which the Retail Buildings and Residential Buildings for Phase Two required to be completed pursuant to Subsection 5.4.2(B), below, shall be Developed, and (ii) obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two (**Exhibit D**, Milestone Seven).

(B) Completion of Phase Two. Owner shall Complete Construction of the following components of Phase Two prior to expiration of the Term of this Development Agreement (**Exhibit D**, Milestones Eight and Nine).

(i) Sufficient additional Retail Buildings such that the aggregate total amount of space within Retail Buildings Developed in Phase One and Phase Two, combined, is no less than 210,000 square feet. In Owner's discretion, Owner may Develop Retail Buildings containing in excess of 210,000 square feet of space, up to 250,000 square feet of space, as part of Phase Two.

(ii) Each of Residential Buildings I, II, III, and/or V that are not Developed as part of Phase One, subject to Subsections 5.4.2 (C) and (D), below.

(iii) The Affordable Units required to be Developed within each Residential Building pursuant to the provisions of Section 7.2 (Affordable Housing) and the Affordable Housing Implementation Plan attached at **Exhibit F** to this Development Agreement.

(iv) All public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required by the Development Plan to be Developed prior to Completion of Construction of the improvements described in Subsections 5.4.2(B)(i)-(iii).

(C) Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase Two, Owner must concurrently Develop the associated ground floor Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as “Shops 2 $\pm$ 17,500 SF,” “Retail $\pm$ 14,500 SF,” “Retail $\pm$ 13,500 SF,” and “Retail $\pm$ 12,000 SF.” Owner shall not be entitled to issuance of a Certificate of Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

(D) Residential Building IV. As part of Phase Two, Owner may, but is not required to, Develop Residential Building IV. However, Owner shall not be entitled to issuance of a certificate of occupancy for Residential Building IV unless it has Completed Construction of Residential Buildings I, II, and V; provided, however, that if Owner has Commenced Construction of the Hotel, then Owner shall be entitled to a certificate of occupancy for Residential Building IV if it has Completed Construction of both Residential Buildings I and V and either of Residential Buildings II or III.

(E) Development of Office Buildings. As part of Phase Two, Owner may, but is not required to, Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One. Owner shall use commercially reasonable efforts to market development opportunities for Office Buildings in Phase Two, but shall have no obligation to Commence or Complete Construction of any Office Buildings or the Parking Structures as part of Phase Two.

5.4.3 Subsequent Phases. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of any Residential Buildings, Retail Buildings, or Office Buildings not Developed as part of Phase One or Phase Two.

(A) Residential Building IV. If Residential Building IV is not developed as part of Phase Two, Owner may proceed to Develop Residential Building IV at any time prior to expiration of the Term, provided Owner has Completed Construction of all the required components of Phase One and Phase Two pursuant to Subsections 5.4.1(C) and 5.4.2(B) of this Development Agreement.

(B) Retail Buildings. Owner may proceed to Develop up to the entire 250,000 square feet of space within Retail Buildings authorized by the Existing Development Approvals that are not Developed as part of Phase One and/or Phase Two at any time prior to expiration of the Term.

(C) Office Buildings. Owner may proceed to Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One and/or Phase Two at any time prior to expiration of the Term.

(D) Right to Complete Development. Owner shall have the right to Complete Construction of each Retail Building, Office Building, Parking Structure, and/or Residential Building it has Commenced Construction of prior to expiration of the Term pursuant to this Subsection 5.4.3 (**Exhibit D**, Milestones Eight and Nine), provided Owner continues to diligently Develop such Retail Building, Office Building, Parking Structure, or Residential Building to completion and no applicable Ministerial Approvals or Ministerial Permits for such use, structure, or building are revoked or expire.

5.4.4 Owner's Discretion in Timing of Development. The Parties acknowledge that Owner cannot at this time predict when or the precise rate at which the Property shall be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand and other similar factors. The California Supreme Court held in *Pardee Construction v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a latter-enacted initiative restricting the timing of development to prevail over such parties' agreement. It is the Parties' intent to cure that deficiency by expressly addressing the timing of Development. Except as expressly set forth in the Development Plan, including, without limitation, this Development Agreement, regardless of any future enactment, whether by initiative or otherwise, Owner shall have the vested right to Develop the various components of the Project in such order, at such rate, and at such times as Owner deems appropriate within the exercise of its subjective business judgment.

5.4.5 Owner's Obligation to Keep City Informed of Development Status. In addition to Owner's obligation to submit information to the City pursuant to Section 18.2 of this Development Agreement, within thirty (30) days of receipt of written request of the City, Owner shall: (i) inform the City in writing regarding the status of, anticipated timeframe for, and actual or potential constraints to Development of the various components of the Project; (ii) inform the City in writing regarding Owner's actual or intended efforts to market development opportunities for Office Buildings and the economic, financial, and other factors that Owner contends makes such efforts commercially reasonable; and (iii) inform the City in writing regarding Owner's actual or intended efforts to reach an agreement with a hotel operator at fair market value for the disposition and development of the Hotel and the economic, financial, and other factors that Owner contends makes such efforts commercially reasonable; and (iv) afford the City the opportunity to provide input to the Owner regarding the foregoing.

5.5 Tentative Subdivision Map and Other Entitlement Extensions. In accordance with California Government Code Sections 65863.9 and 66452.6, the life of all tentative subdivision maps or tentative parcel maps, whether vesting or not, or any other Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications, except for grading and building permits and certificates of occupancy, which may be approved by the City in connection with Development of the Project, is hereby extended to be coterminous with the Term of this Development Agreement. The Parties also agree that up to six (6) phased Final Maps may be processed and recorded. All tentative maps prepared for the Project shall comply with the provisions of Government Code Section 66473.7 to the extent applicable hereto.

5.6 Project Trip Budget Allocation. During the Term of this Development Agreement, the City shall adjust the number of A.M. and P.M. peak hour vehicle trips in the Specific Plan Area

Trip Budget Allocation that are available for other future new development in the Specific Plan area in an amount equal to the Project Trip Budget Allocation. During the Term of this Development Agreement, the Project Trip Budget Allocation shall be automatically adjusted without the need to amend this Development Agreement, to account for future changes in the trip generation rates published in future editions of the ITE's Trip Generation Manual. Prior to issuance or approval of any permits or land use entitlements for the expansion or intensification of existing uses or the construction of new development in the Specific Plan area that would necessitate adjustment to the Specific Plan Area Trip Budget Allocation, the City Manager shall review the trip generation rates published in the then latest edition of the ITE's Trip Generation Manual and determine whether the Project Trip Budget Allocation should be automatically adjusted in accordance therewith. If the City Manager determines, in his or her reasonable discretion, that the Project Trip Budget Allocation should be automatically adjusted due to changes in the published trip generation rates, City shall make corresponding adjustments to the number of A.M. and P.M. peak hour vehicle trips in the Specific Plan Area Trip Budget Allocation available for other future new development in the Specific Plan area.

The purpose of this Section 5.6 is to ensure that sufficient peak hour vehicle trips remain in the Specific Plan Area Trip Budget Allocation during the Term of this Development Agreement to accommodate Development of the Project at the densities and intensities authorized by the Development Plan. The Parties expressly acknowledge and agree that this Section 5.6 and this Development Agreement shall not be interpreted to give Owner a vested right to a specific number of peak hour vehicle trips from the Specific Plan Area Trip Budget Allocation for the purpose of either expanding or limiting Owner's vested rights to Develop the Project at the densities and intensities authorized by the Development Plan in the event that the published trip generation rates in the ITE Trip Generation Manual change. The Parties further expressly acknowledge and agree that no adjustment to the Project Trip Budget Allocation by the City for any reason whatsoever after the Development Agreement Date (including, but not limited to, changes to applicable ITE trip generation rates, changes to surrounding projects' trip budget allocations, or other changed circumstances) shall operate to impede Developer's vested right to develop the Project, including but not limited to the full range of uses and intensities specified in the Existing Development Approvals.

SECTION 6 ENFORCEMENT

Unless this Development Agreement is terminated or cancelled pursuant to the provisions of this Development Agreement, this Development Agreement or any amendment hereto, shall be enforceable by any Party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by City which alters or amends the rules, regulations or policies of Development of the Project as provided in this Development Agreement pursuant to Section 65865.4 of the Development Agreement Statute; provided, however, that the limitations of this Section shall not apply to changes mandated by State or Federal laws or other permissible changes or new regulations as more particularly set forth in Section 16 of this Development Agreement.

SECTION 7 PUBLIC BENEFITS

7.1 Payment of Community Benefit Fees. As material consideration for City's entering into this Development Agreement, Owner shall pay City nonrefundable Community Benefit Fees in accordance with Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not subject to the Mitigation Fee Act or the Quimby Act.

7.2 Affordable Housing. Owner recognizes City's obligations under State law to facilitate the development of housing at various levels of affordability and the policy of the City stated in the General Plan Housing Element to coordinate with the private sector in the development of affordable housing. As material consideration for City's entering into this Development Agreement, Owner agrees to coordinate with the City in the provision of affordable housing by complying with the terms of the Affordable Housing Implementation Plan ("AHIP") attached as **Exhibit F** to this Development Agreement.

The AHIP requires that Owner Develop two hundred (200) Affordable Units at a specified ratio and unit size mix within Residential Buildings I, II, III, and V. The Affordable Housing Implementation Plan further provides that no less than one hundred (100) of these Affordable Units shall be reserved for Lower Income Households, and the balance of the Affordable Units shall be reserved for Moderate Income Households, for an affordability period of at least fifty-five (55) years. The AHIP also requires that Owner market the Affordable Units to Seniors, Veterans, and City residents and that priority for the rental or lease of the Affordable Units must be given to Seniors, Veterans (including Veterans of the City adopted 3rd Battalion, 5th Marines), and City residents.

Pursuant to the AHIP, Owner is required to enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") with the City with respect to each Residential Building containing Affordable Units, in substantially the form as set forth in Attachment 1 to the AHIP, or in a similar form approved by the City Manager and City Attorney, and to record said Regulatory Agreement against the parcel on which the subject Residential Building is proposed prior to the issuance of a vertical building permit for the Residential Building. The City Manager is hereby authorized to approve and execute each such Regulatory Agreement and all amendments thereto and to establish and levy associated fees on behalf of the City, and City shall maintain authority of each Regulatory Agreement and the authority to implement each Regulatory Agreement through the City Manager, as more fully set forth in the AHIP.

Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the requirements and restrictions set forth in the AHIP, and Owner covenants that it shall not enter into any agreement that is inconsistent with such requirements and restrictions without the express written consent of the City. The provisions of the AHIP shall be senior, non-subordinate covenants and an encumbrance running with the land for the full Term of this Development Agreement. In no event shall the provisions of the AHIP be made junior or subordinate to any deed of trust or other documents providing financing for Development or operation of the Project, or any lien or encumbrance whatsoever for the entire Term of this Development Agreement. Nor shall the provisions of the AHIP be made junior or

subordinate to any extension, amendment, or modification of any lien or encumbrance recorded against the Property prior to the Development Agreement Date.

7.3 Provision of the Village Park Improvements. In accordance with the Development Plan, Owner shall Complete Construction of the Village Park in Phase One of the Project pursuant to Subsection 5.4.1 of this Development Agreement. Although the Village Park will be available for public access and will be publicly accessible, the Village Park shall be privately owned, operated, and maintained by Owner. The Covenant Agreement shall contain a provision requiring the Village Park to be accessible and usable by the public, subject to reasonable limitations on public access to address, among other things, public safety, the security of users of the Village Park, reasonable late-night and after-hours restrictions, or occasional private events which provision shall be made enforceable by the City.

7.4 Provision of Public Art and Payment of Public Art In-Lieu Fees. Owner shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of this Development Agreement (“Owner’s Public Art Obligation”). Pursuant to the Specific Plan, the minimum aggregate value of Owner’s Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which shall be based on the valuation as determined by the City’s Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project. The Parties agree that (a) Six Hundred Fifty Thousand Dollars (\$650,000) of Owner’s Public Art Obligation shall be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of this Development Agreement, and (b) that portion of Owner’s Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Property by Owner, as approved by the City, and may not be satisfied through contribution to the City’s Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in the “Public Art” provisions of Section V, at pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The procedures, timing, and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in **Exhibit H** to this Development Agreement.

7.5 Provision of Public Improvements. Owner shall pay for and/or construct and install, and where required, maintain, the public improvements required by the Existing Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in Section 8 of and **Exhibit E** to this Development Agreement.

7.6 Provision of Private Infrastructure Improvements On and Within the Property. To the extent required by, and in accordance with timing and phasing conditions of, the Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications (including, but not limited to the District Sequencing Plan reflected in the conditions of approval to the Existing Development Approvals), Owner shall complete construction and installation of all private infrastructure improvements on or within the Property, including, but not limited to the following: streets; sidewalks and pedestrian walkways; bicycle lanes and pathways; private bus

access improvements; street furniture; pet waste stations; parking improvements; lighting; landscaping; directional signage; entry monuments and features; storm drain lines; debris gates and full capture trash screens for all private catch basin inlets; low impact development, hydromodification, and other structural BMPs described in the approved Water Quality Management Plan for the Project; infrastructure improvements that create coordinated and compatible linkages between the Property and the adjacent Oakbrook Village Shopping Center, including, but not limited to, bicycle and pedestrian connections at the existing vehicular connection between the two properties and a pedestrian walkway that connects the Oakbrook Village property with the Laguna Hills Transportation Center; and other private infrastructure improvements required by the Existing Development Approvals and/or any Subsequent Development Approvals or Major Project Modifications. Although certain private streets, sidewalks, bus stops, street furniture, pedestrian pathways, bicycle lanes and pathways, parking areas, and other developed portions of the Property will be available for public access and will be publicly accessible, all such areas of the Property shall be privately owned, operated, and maintained by Owner. The Covenant Agreement shall contain a provision expressly making the areas described in the previous sentence available for public access, subject to reasonable limitations to public access to address, among other things, public safety, the security of users of the area, reasonable late night and after-hours restrictions, or occasional private events which provision shall be expressly made enforceable by the City.

SECTION 8 PUBLIC IMPROVEMENTS AND SERVICES

8.1 Public Improvements Required to Support the Project. As material consideration for City's entering into this Development Agreement, Owner shall pay for and/or undertake the construction and installation of, public improvements required by the Existing Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in **Exhibit E** to this Development Agreement. **Exhibit E** constitutes a complete list of all required public improvements for the Project, unless the Project is modified, requiring the modification of **Exhibit E**.

8.2 Cooperation by City and Owner for Public Improvements. The required public improvements shall be designed and constructed in phases as required to service the Project or as otherwise required by the Project conditions of approval and/or this Development Agreement. Owner shall design and construct these public improvements in accordance with all applicable federal, state and City laws, ordinances, regulations, codes, standards, and other applicable requirements. These improvements shall be subject to City's approval and acceptance. City shall cooperate with Owner for the purpose of coordinating all public improvements constructed under the Existing Development Approvals, Subsequent Development Approvals, Major Project Modifications, or this Development Agreement to existing or newly constructed public improvements, whether located within or outside of the Property. Owner shall be responsible for and use good faith efforts to acquire any right(s)-of-way necessary to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, the Existing Development Approvals, any Subsequent Development Approvals, and/or any Major Project Modifications. Should it become necessary due to Owner's failure or inability to acquire said right(s)-of-way within four (4) months after Owner begins its efforts to so acquire said right(s)-of-way, City shall negotiate the purchase of the necessary right(s)-of-way to construct the public improvements as required by, or otherwise necessary to

comply with the conditions of, this Development Agreement and, if necessary in accordance with the procedures established by State law, and the limitations hereinafter set forth in this Section, City may use its powers of eminent domain to condemn said required right(s)-of-way. Owner agrees to pay for all costs associated with said acquisition and condemnation proceedings. If City cannot make the proper findings or elects not to exercise its discretion to adopt a resolution of necessity, or if for some other reason under the condemnation laws City is prevented from acquiring the necessary right(s)-of-way to enable Owner to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, then the Parties agree to amend this Development Agreement to modify Owner's obligations accordingly. Any such required modification shall involve the substitution of other considerations or obligations by Owner (of similar value) as are negotiated in good faith between the Parties. Nothing contained in this Section shall be deemed to constitute a determination or resolution of necessity by City to initiate condemnation proceedings.

8.3 Timing, Phasing and Sequence of Public Improvements and Facilities. The timing, phasing and sequence of the construction of public improvements, facilities or the payment of fees therefore shall be constructed or paid in accordance with the timing, phasing and sequence set forth in the Development Plan.

8.4 Maintenance of Public Improvements. City shall not be responsible or liable for the maintenance or care of public improvements, intended to be dedicated to the City, until City approves and accepts them. City shall exercise no control over the public improvements until accepted. Any use by any person of the public improvements, or any portion thereof, shall be at the sole and exclusive risk of the Owner at all times prior to City's acceptance of the public improvements. Owner shall maintain all the public improvements in a state of good repair until they are completed by Owner and approved and accepted by City. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the public improvements or their condition prior to acceptance. Approval and acceptance of public improvements shall not be unreasonably withheld by the City. Notwithstanding the foregoing, to the extent the Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications require Owner to maintain public improvements after acceptance by the City, Owner shall be responsible and liable for the maintenance and care of such public improvements to the standards specified in the therein. If Owner fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Owner under this Development Agreement.

8.5 Acceptance of Improvements; As-Built or Record Drawings. If the public improvements are properly completed by Owner and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City shall accept the public improvements. Prior to the total or partial acceptance of the public improvements by City, Owner shall file with the Recorder's Office of the County of Orange a notice of completion for the accepted public improvements in accordance with California Civil Code section 8182, at which time the accepted public improvements shall become the sole and exclusive property of City without payment therefore. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any public improvements. Notwithstanding the foregoing, City may not accept any public improvements unless and until Owner provides the

required sets of “as built” or record drawings or plans to the City for review and approval for all such public improvements. The drawings shall be certified and shall reflect the condition of the public improvements as constructed, with all changes incorporated therein.

SECTION 9 DEDICATIONS AND EXACTIONS

9.1 Dedications In Conjunction With Public Improvements. Right-of-way or property for required public improvements shall be irrevocably offered for dedication as required by the Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications. These dedications shall be in fee or as an easement at the discretion of City. The City may accept the Owner’s offer of dedication upon Owner’s completion and acceptance by City of the associated improvements in compliance with the specifications as approved by City. Nothing contained in this Development Agreement, however, shall be deemed to preclude City from exercising the power of eminent domain with respect to the Property or the Project, or any part thereof.

9.2 Dedication for Enhanced Parkway Improvements Along Avenida de la Carlota. Owner shall dedicate a landscape and/or pedestrian access easement to the City associated with the enhanced parkway improvements along Avenida de la Carlota described in **Exhibit E**, paragraphs 10 and 11, for any area described therein not already included within the public right of way. Such dedication shall be made by an instrument in a form acceptable to the City’s Public Services Director and City Attorney.

9.3 Dedication of Landscape Maintenance Easement for Entry Monuments. Owner shall dedicate a landscape maintenance easement to City to coincide with and matching the rear curblin of the corner entry monuments at the Property’s entrance on the southerly side of El Toro Road at Regional Center Drive. Such dedication shall be made pursuant to the applicable Final Map or by a separate dedication instrument in a form approved by the City’s Public Services Director and City Attorney, to be recorded prior to the issuance of a certificate of occupancy for any building.

9.4 Dedication of Easement for Traffic Signal Equipment. Owner shall dedicate a traffic signal maintenance easement to City to coincide with any traffic signal equipment, if any, that is installed on the Property in association with construction an installation of the traffic signal at the intersection of Avenida de la Carlotta and the extension of Health Center Drive described in paragraph 5 of **Exhibit E**. Such dedication shall be pursuant to a separate dedication instrument in a form approved by the City’s Public Services Director and City Attorney, to be recorded prior to completion of construction of the traffic signal.

SECTION 10 FEES

10.1 Development Fees Applicable to the Project. Subject to the provisions of this Section 10, Owner shall pay all existing impact and development fees applicable to the Project on the Development Agreement Date charged by City for the purpose of defraying all or a portion of the cost of public facilities related to development of the Project (“Development Fees”). For avoidance of doubt, Community Benefit Fees are not Development Fees and the only Development Fees that shall apply to the Project are those listed in **Exhibit B** to this Development Agreement.

The Parties acknowledge that the following fees, taxes, and charges do not constitute Development Fees and that nothing in this Development Agreement is intended or shall be construed to release Owner from the obligation to pay these fees, taxes, and charges, including increases, if and when they become due:

- (a) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; and
- (b) The annual Development Agreement administration fee required to be paid pursuant to Section 10.7, below.
- (c) Any fees and charges required to be paid by Owner pursuant to the AHIP.
- (d) Fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; and
- (e) Community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, and new water meter fees.

10.2 Fees Applicable for Modified Existing Development Approvals. Notwithstanding Section 10.1 of this Development Agreement, if and to the extent that the Existing Development Approvals are modified or amended after the Development Agreement Date and Owner is authorized under the modified Existing Development Approvals to develop any additional density or intensity of use beyond what is allowed as of the Development Agreement Date, City shall retain the right to require Owner to pay all City fees for such additional density or intensity of use to the extent such fees would be applicable in the absence of this Development Agreement.

10.3 Public Park In-lieu Fees.

10.3.1 Amount of Fee. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to the Project, regardless of whether Owner proposes a subdivision map for each Residential Building. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code.

10.3.2 Nonrefundable Guaranteed Fees. As material consideration for City's entering into this Development Agreement, the Owner expressly agrees that, except as provided in Subsection 10.5.7 and Section 17.4 of this Development Agreement, notwithstanding any provision of Chapter 8-06 of the Laguna Hills Municipal Code, the Quimby Act, or other provisions of law, Eighteen Million One Hundred Sixty Nine Thousand Thirty Two Dollars

(\$18,169,032), which represents an amount equal to the Public Park In-lieu Fees attributable to the first one thousand one hundred sixty two (1,162) residential units anticipated to be Developed by Owner, shall be nonrefundable and guaranteed, and must be paid to City even if no or less than one thousand one hundred sixty two (1,162) residential units are actually constructed. Owner agrees to pay these nonrefundable guaranteed fees at the times set forth in Subsection 10.3.3, below, and **Exhibits B and D**. To the extent any portion of said fees are paid prior to the issuance of a vertical building permit for the Residential Building containing any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E), below, such portion shall constitute Community Benefit Fees when paid, subject to Subsection 10.5.4, but shall be credited against and applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for the Residential Building containing said residential unit, provided a vertical building permit is issued for the Residential Building containing the residential unit during the Term of this Development Agreement and such building permit is not revoked and does not expire. No portion of the nonrefundable, guaranteed fees that are paid or owed pursuant to this Section 10.3 shall be credited or applied to any residential units on the Property for which a vertical building permit is issued after the expiration or termination of this Development Agreement. Said payments shall be subject to Subsection 10.5.4 of this Development Agreement, and Owner expressly agrees that these payments shall be nonrefundable and guaranteed, and that the City may retain and expend that portion, if any, of such nonrefundable guaranteed fees that are paid by Owner to City, which are attributable to residential units which are not actually constructed, or which City would otherwise be required to refund to Owner or other record owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Subsection 10.3.2 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

10.3.3 Timing of Payment of the Community Benefit Fees that may be deemed Credits Against Public Park In-lieu Fees. Notwithstanding any provision of Chapters 8-06 or 8.07 of the Laguna Hills Municipal Code, the Quimby Act, or other law, the Parties expressly agree that the Public Park In-lieu Fees attributable to the residential units constructed, or anticipated to be constructed, as part of the Project, shall be paid in the amounts and at the times specified below:

(A) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(B) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues a vertical building permit for any Retail Buildings or any Office Buildings; or (ii) the date that is four (4) years after the Development Agreement Date (**Exhibit D**, Milestone Four). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development

Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(C) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues the first Certificate of Occupancy for any Retail Buildings or any Office Buildings; or (ii) the date that is seven (7) years after the Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(D) Owner shall pay City Six Million Five Hundred Seventy-One Thousand Three Hundred Forty Four Dollars (\$6,571,344) in increments at the following times: (i) Eight Thousand One Hundred Seventy Three Dollars (\$8,173)¹ per unit for each of the first 804 residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is seven (7) years after the Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the amount of the Public Park In-Lieu Fees applicable to the first 804 residential units that are required to be paid pursuant to this Subsection 10.3.3(D) have been reduced to reflect the three payments of Two Million Dollars (\$2,000,000) required pursuant to Subsections 10.3.3 (A)-(C), above.

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636) per unit for each of the next 358 residential units² prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Eight). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(F) Owner shall pay City Fifteen Thousand Six Hundred Thirty-Six Dollars (\$15,636) per unit for each additional residential unit Owner Develops as part of the Project after the 1,162nd residential unit, prior to the issuance of a vertical building permit for the Residential Building containing the residential unit.

10.3.4 The Parties expressly acknowledge and agree that the Public Park In-lieu Fee payment obligations set forth in this Section 10.3 may be assumed, in whole or in part, by a

¹ This amount is calculated as follows: $[(\$15,636 \text{ per unit} \times 804 \text{ units}) - (\$6,000,000)] / 804 \text{ units}$.

² This amount applies to the 805th residential unit through the 1,162nd residential unit.

residential developer or other person or entity that purchases a portion of the Property on which a Residential Building is designated to be Developed, and agrees to assume such payment obligations in accordance with the provisions of Section 21 of this Development Agreement (Assignment).

10.4 Public Art In-lieu Fees. The Parties expressly agree that Owner's Public Art Obligation shall be subject to the provisions set forth in Subsections 10.4.1 and 10.4.2, below.

10.4.1 Credit. The City acknowledges and agrees that Owner paid a Public Art In-lieu Fee to the City the amount of Three Hundred Thousand Dollars (\$300,000) for improvements authorized by the 2016 Five Lagunas Entitlements that were ultimately not constructed. Accordingly, the City agrees it will credit this payment towards Owner's Public Art Obligation for the Project.

10.4.2 Nonrefundable Advance. Notwithstanding any provision of the Specific Plan, the Mitigation Fee Act, or other provisions of State law, the Parties expressly agree that Owner shall pay City a nonrefundable guaranteed Public Art In-lieu Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), in advance, on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement. The City shall credit this payment against Owner's Public Art Obligation for the Project. However, said payment shall be subject to the provisions of Subsection 10.5.3, below, and Owner expressly agrees that this payment shall be guaranteed and nonrefundable to Owner, and that the City may retain and expend such payment, even if Owner's Public Art Obligation for the Project is less than Three Hundred Fifty Thousand Dollars (\$350,000). Owner acknowledges and agrees that the Three Hundred Thousand Dollar (\$300,000) credit provided for in Subsection 10.4.1, above, shall not be applied to reduce Owner's obligation to pay the nonrefundable guaranteed fee required by this Subsection 10.4.2. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Subsection 10.4.2 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

10.5 Community Benefit Fees. In addition to Development Fees payable by Owner pursuant to the foregoing provisions of this Section 10, as material consideration for City's entering into this Development Agreement, the Owner agrees to pay City, and in addition to the payment of Community Benefit Fees pursuant to Section 10.3, which remain Community Benefit Fees unless and until such fees are credited to Public Park In-lieu Fees nonrefundable guaranteed Community Benefit Fees in accordance with this Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not subject to the Mitigation Fee Act or the Quimby Act, and City may deposit such payments into the City's general fund and expend such funds for any lawful purpose.

10.5.1 Guaranteed Community Benefit Fees. Owner shall pay a nonrefundable guaranteed Community Benefit Fee in the amount of Two Million Two Hundred Twenty-Seven Thousand Sixty-Six Dollars (\$2,227,066) in the amounts and at the times specified below:

(A) Owner shall pay City One Million One Hundred Thirteen Thousand Five Hundred Thirty-Three Dollars (\$1,113,533) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(B) Owner shall pay City One Million One Hundred Thirteen Thousand Five Hundred Thirty-Three Dollars (\$1,113,533) on or before the date that is fifteen (15) months after the Development Agreement Date (**Exhibit D**, Milestone Two). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

10.5.2 Community Benefit Fees with respect to the Hotel. In addition to any other Community Benefit Fees payable pursuant to this Section 10.5, the Owner shall pay to the City the amount of \$396 each year, increased at the rate of three percent (3.0%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement and annually thereafter, for each Residential Unit within a Residential Building for which a Certificate of Occupancy has been issued. Owner's obligation to pay this additional Community Benefit Fee shall terminate upon the earliest to occur of: (i) the date that the Hotel is open for business; (ii) the end of the Twenty Year Period or (iii) Owner's termination of this Development Agreement as a result of the Default by the City. In addition to the above, in the event the Owner has not Completed Construction of the Hotel within seven (7) years of the Development Agreement Date, and notwithstanding Excused Delay and/or Excused Delay re Hotel, the Owner shall pay the City an additional Community Benefit Fee in the amount of Five Hundred Thousand Dollars (\$500,000) on or before the date that is seven (7) years after the Development Agreement Date. Owner's obligation to make these payments by the dates set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) or Subsection 5.4.1(H) (Construction of Hotel) of this Development Agreement.

10.5.3 Nonrefundable Public Art In-lieu Fee Advance Deemed an Additional Community Benefit Fee in Event Project Not Developed. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, that portion, if any, of the nonrefundable guaranteed Public Art In-lieu Fee payment advance made by Owner pursuant to Subsection 10.4.2 of this Development Agreement, which is in excess of Owner's Public Art Obligation for the Project, or which City would otherwise be required to refund to Owner or other record owner(s) of the Property pursuant to the Specific Plan, the Mitigation Fee Act, or other law, shall be deemed a Community Benefit Fee for purposes of this Development Agreement. Notwithstanding any provision of the Mitigation Fee Act or other law, under no circumstances shall the City be obligated to return this Public Art In-Lieu Fee Advance to the Owner or other record owner(s) of the Property.

10.5.4 Nonrefundable Guaranteed Public Park In-lieu Fee Payments Deemed Community Benefit Fees in Event Residential Units Not Timely Developed. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the event the Owner Develops no or fewer than One Thousand One Hundred Sixty-Two (1,162) residential dwelling units during the Term of this Development Agreement, that portion, if any, of the nonrefundable guaranteed Public Park In-lieu Fees paid by Owner to City pursuant to

Subsection 10.3.2 of this Development Agreement, which are attributable to residential units that are not actually constructed, or which City would otherwise be required to refund to Owner or the subsequent owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law, shall be deemed Community Benefit Fees for purposes of this Development Agreement. Notwithstanding any provision of the Mitigation Fee Act, Quimby Act, or other law, under no circumstances shall the City be obligated to return said fees to the Owner or other record owner(s) of the Property.

10.5.5 Community Benefit Fees with respect to Retail. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the event less than sixty thousand (60,000) square feet of New Retail is leased by operating tenants by the date Owner Completes Construction of the third Residential Building, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars (\$120) per year, increased at the rate of three percent (3%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement Date and annually thereafter, for each Residential Unit in the fourth and fifth Residential Buildings for which Owner has received Certificates of Occupancy. For purposes of this Subsection 10.5.5, Owner's execution of a lease with an operating tenant to fill a vacancy that arises after the Development Agreement Date and before Completion of Construction of the third Residential Building in the approximately 10,126 square foot building identified on Exhibit C as "(E) Restaurant" or the approximately 12,970 square foot building identified on Exhibit C as "(E) Building" shall count towards the calculation of the sixty thousand (60,000) square feet of New Retail leasing threshold. Owner's obligation to pay this additional Community Benefit Fee shall commence upon issuance of a Certificate of Occupancy for the third Residential Building containing and shall terminate on the earlier to occur of the following: (i) the date that at least 60,000 square feet of New Retail becomes leased; or (ii) the later to occur of either (x) the end of the Twenty Year Period or (y) expiration of the Term of this Development Agreement.

10.5.6 Additional Community Benefit Fees. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars (\$120) per year, increased at the rate of three percent (3.0%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement and annually thereafter, for each Residential Unit located in a Residential Building for which Owner has received a Certificate of Occupancy. Notwithstanding any other provision of this Development Agreement, Owner's obligation to pay the Community Benefit Fees described in this Subsection 10.5.6 shall terminate upon the expiration of this Development Agreement. Owner shall remain obligated to pay the Community Benefit Fees required in this Subsection 10.5.6 for the period of time that is equivalent to sixteen (16) years from the date of the Development Agreement Date if Owner terminates this Development Agreement for a reason other than City Default or City terminates this Development Agreement for cause under Sections 18 or 19.

10.5.7 Survival of Termination of Development Agreement. Notwithstanding any other provision of this Development Agreement to the contrary, to the extent, and for the period, necessary to implement the provisions hereof, this Section 10.5 shall survive termination of this Development Agreement pursuant to Section 2.4, Section 10.6, Section 18 and/or Section 19 of this Development Agreement and remain enforceable and executory by the Parties notwithstanding

termination of the remainder of this Development Agreement. Notwithstanding the previous sentence, in the event the City exercises its right to unilaterally terminate this Development Agreement pursuant to Section 10.6, Section 18 and/or Section 19 of this Development Agreement before Owner has Completed Construction of the required components of Phase One pursuant to Subsection 5.4.1(C) of this Development Agreement, the City shall be deemed to have waived all rights it may otherwise have pursuant to this Development Agreement to collect from Owner that portion, if any, of the Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in Public Park In-lieu Fees attributable to that portion of the 805th through 1,162nd residential units that Owner does not Develop, which are owed pursuant to Subsection 10.3.3(E)(ii), but which have not yet been paid, and Owner's obligation to pay nonrefundable guaranteed Public Park In-lieu Fees pursuant to Subsections 10.3.2 and 10.5.4 of this Development Agreement that are attributable to Residential Units Owner does not Develop shall be capped at Twelve Million Five Hundred Seventy One Thousand Three Hundred Forty Four Dollars (\$12,571,344) [$\$15,636 \text{ per unit} \times 804 \text{ units} = \$12,571,344$].

10.6 Additional City Remedies for Non-Payment of Fees Owed by Owner. In the event the Owner fails to pay any Development Fees or Community Benefit Fees within the times set forth in this Section 10, in addition to all other legal remedies City may have pursuant to this Development Agreement and applicable law, City shall be entitled to withhold any further Ministerial Actions, Ministerial Approvals, and/or Ministerial Permits until all fees owed are paid in full. In addition to the rights granted City under Sections 17, 18, and 19, or any other provisions of this Development Agreement, and without complying with the provisions of Sections 17, 18, and 19, it is expressly understood and agreed by the Parties that the City Council may unilaterally terminate this Development Agreement if, following notice and a public hearing in accordance with applicable law, the City Council finds that Owner has failed to pay any overdue Development Fees or Community Benefit Fees in full within thirty (30) days of the date the City provides written notice to the Owner stating the type and amount of overdue fees owed. Notwithstanding Section 5.5 of this Development Agreement, this Development Agreement, the Existing Development Approvals, all Subsequent Development Approvals, and all Major Project Modifications shall automatically expire, terminate and be of no further force and effect upon the effective date of an ordinance adopted by the City Council terminating this Development Agreement based on such a finding pursuant to this Section.

10.7 Annual Development Agreement Administration Fee. Commencing July 1, 2022, and annually, on or before July 1st of every year thereafter through and including July 1, 2030, Owner shall pay City a fixed fee to partially offset the costs incurred by the City to administer this Development Agreement (the "DA Administration Fee"). The initial amount of the DA Administration Fee shall be Twenty Thousand Dollars (\$20,000). Commencing July 1, 2022, and on each subsequent July 1st through and including July 1, 2031, the amount of the DA Administration Fee to be paid by Owner to City shall increase by three percent (3.0%).

SECTION 11 EXISTING USES; AUTOMATIC RESCISSION OF 2016 FIVE LAGUNAS ENTITLEMENTS

11.1 Existing Uses. City and Owner agree that those existing legally established uses on the Property may be retained until the Project is implemented.

11.2 Automatic Rescission of 2016 Five Lagunas Entitlements. City and Owner agree that the 2016 Five Lagunas Entitlements, and all of Owner's rights thereunder, whether vested or not, shall terminate and become null, void, and of no further force and effect at such time as all of the following have occurred: (i) the Authorizing Ordinance and this Development Agreement have each taken effect and are no longer subject to referendum; (ii) the times for appeal of the City's approval of the Existing Development Approvals and this Development Agreement have expired; (iii) all appeals, if any, by persons or entities other than Owner of the City's approval of the Existing Development Approvals and this Development Agreement have been heard and denied; (iv) the times in which to bring a legal challenge to the City's approval of the Existing Development Approvals and/or this Development Agreement have expired; and (v) any litigation filed attacking the City's approval of the Existing Development Approvals, the Project, or this Development Agreement has been finally resolved such that the Existing Development Approvals remain in full force and effect and the time in which to appeal has expired.

SECTION 12 FUTURE APPROVALS

12.1 Basis for Denying or Conditionally Granting Future Subsequent Development Approvals. Before Owner can begin Development of the Project, Owner must secure additional Subsequent Development Approvals from City. The Parties agree that to the extent said Subsequent Development Approvals are Ministerial Actions, Ministerial Approvals or Ministerial Permits, City shall not, through the enactment or enforcement of any subsequent ordinances, rules, regulations, initiatives, policies, requirements, guidelines, or other constraints, withhold such approvals as a means of blocking construction or of imposing conditions on the Project which were not imposed during an earlier approval period unless City has been ordered to do so by a court of competent jurisdiction. The Parties further agree that to the extent said Subsequent Development Approvals are Discretionary Actions, Discretionary Approvals or Discretionary Permits, City shall exercise its discretion in a manner consistent with and in recognition of the Development Plan and which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement), those Subsequent Land Use Regulations to which Owner has consented to in writing (which consent shall be in Owner's sole and absolute discretion), and such other standards, terms and conditions expressly contained in this Development Agreement. Notwithstanding the previous two sentences, City and Owner will use reasonable efforts to ensure each other that all applications for and approvals of all required Subsequent Development Approvals necessary for Owner to develop the Project in accordance with this Development Agreement are sought and processed in a timely manner.

12.2 Standard of Review of Subsequent Development Approvals. Except as otherwise provided under the Existing Development Approvals or the terms of this Development Agreement, the rules, regulations and policies that apply to any Subsequent Development Approvals which Owner must secure prior to the Development of the Property shall be the Existing Land Use Regulations, as defined in this Development Agreement.

12.3 City Review of Major Project Modifications. The rules, regulations and policies that apply to any Major Project Modification requested by Owner shall be those rules, regulations and policies in effect on the date Owner submits a complete application for said Major Project Modification. Notwithstanding the foregoing sentence or anything herein to the contrary, Owner expressly agrees that, while this Development Agreement is in effect, City shall have sole and

absolute discretion whether to approve, conditionally approve, or deny any Major Project Modification requested by Owner, and Owner expressly waives any right Owner may otherwise have to approval by the City of any Major Project Modification under California law or the Zoning Code.

SECTION 13 AMENDMENT

13.1 Initiation of Amendment. Either Party may propose an amendment to this Development Agreement.

13.2 Procedure. The procedure for proposing and adopting an amendment to this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance.

13.3 Consent. Except as provided elsewhere within this Development Agreement, any amendment to this Development Agreement shall require the consent of both Parties, each in their sole and absolute discretion. No amendment of this Development Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each Party hereto.

13.4 Effect of Amendment to Development Agreement. The Parties agree that except as expressly set forth in any such amendment, an amendment to this Development Agreement shall not alter, affect, impair, modify, waive or otherwise impact any other rights, duties or obligations of either Party under this Development Agreement.

13.5 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation and flexibility between the City and Owner. The Development of the Project may demonstrate that clarifications to the Development Plan or clarifications or modifications to this Development Agreement are appropriate with respect to the details of performance of the City and Owner. To the extent allowable by law, Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Development Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda (“Operating Memoranda”) approved by the Parties in writing which reference this Section 13.5. City agrees to promptly process Operating Memoranda when requested by Owner. Operating Memoranda are not intended to constitute either a substantive change or an amendment to this Development Agreement, but are ministerial clarification; therefore public notices and hearings shall not be required. Operating Memoranda may be used and thus deemed non-substantive and/or procedural if they do not result in, for example: i) a material changes in fees or costs; ii) an increase in density or intensity of use; iii) a change in permitted uses; iv) an increase in the maximum height and size of buildings; v) a decrease in the amount of land to be dedicated for public purposes; or vi) the reduction of improvement and construction standards and specifications for the Project. The City Attorney shall be authorized, upon consultation with, and approval of, the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute either a substantive change or an

amendment to this Development Agreement which requires compliance with the provisions of Section 13.2 of this Development Agreement.

SECTION 14 NON-CANCELLATION OF RIGHTS

Subject to defeasance pursuant to Sections 2, 10.6, 17, 18, 19, 21 or 22 of this Development Agreement, Owner's rights pursuant to the Existing Development Approvals shall be vested in the Property upon recordation of this Development Agreement.

SECTION 15 UNDERTAKINGS AND ASSURANCES CONTEMPLATED AND PROMOTED BY DEVELOPMENT AGREEMENT STATUTE

The mutual undertakings and assurances described above and provided for in this Development Agreement are for the benefit of City and Owner and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development which was contemplated and promoted by the Development Agreement Statute. City agrees that it will not take any actions which are intended to circumvent this Development Agreement; provided, however, that any action of the electorate shall not be deemed an action for purposes of this Section.

SECTION 16 RESERVED AUTHORITY

16.1 Reservation of Authority With Respect to Subsequent Development Approvals and Major Project Modifications. In addition to the normal and customary discretion exercised by the City in connection with consideration of applications for land use entitlements in accordance with Section 12, Owner expressly understands and agrees that all Subsequent Development Approvals that are Discretionary Actions, Discretionary Approvals, or Discretionary Permits, and all Major Project Modifications, shall also be subject to review by the City pursuant to CEQA, including but not limited to CEQA Guidelines sections 15162-15164. Notwithstanding any other provision set forth in this Development Agreement to the contrary, City reserves the right, after the Development Agreement Date to exercise the same degree of discretion and control in its consideration of Subsequent Development Approvals and Major Project Modifications that it would have in the absence of this Development Agreement to impose conditions under CEQA, and other applicable laws and regulations that apply to all similar development throughout the City, in order to mitigate the Project's impact on the environment. In addition, consistent with Section 5.1 of this Development Agreement, notwithstanding any provision of California law or the Zoning Code to the contrary, City reserves the right after the Development Agreement Date to exercise sole and absolute discretion and control in its consideration of any Major Project Modification requested by Owner.

16.2 State and Federal Laws and Regulations. In the event that the State or Federal laws or regulations enacted after this Development Agreement has been entered into prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of the Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Development Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and

to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

16.3 Uniform Codes. This Development Agreement shall not prevent City from applying new rules, regulations and policies contained in Uniform Codes as long as adoption of the Uniform Codes applies to all development in the City.

16.4 Public Health and Safety. This Development Agreement shall not prevent City from adopting new rules, regulations and policies, including amendments or modifications to Uniform Codes described in Section 16.3 of this Development Agreement, which directly result from findings by City that failure to adopt such rules, regulations or policies would result in a condition injurious or detrimental to the public health and safety.

SECTION 17 CANCELLATION

17.1 Initiation of Cancellation. Either Party may propose cancellation of this Development Agreement.

17.2 Procedure. The procedure for proposing a cancellation of and cancelling this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance. Such procedures are set forth in Section 65868 of the California Government Code.

17.3 Consent of Owner and City. Subject to the Parties' rights and obligations regarding cancellation set forth in Section 22.3, except as otherwise provided in Section 10.6 of this Development Agreement, any cancellation of this Development Agreement shall require the mutual written consent of Owner and City, each in their sole and absolute discretion.

17.4 Fee Payment Obligations. In the event this Development Agreement is cancelled pursuant to the provisions of this Section 17, City shall be entitled to retain and/or seek payment from Owner of all Development Fees and Community Benefit Fees due to be paid pursuant to the terms of this Development Agreement prior to the date cancellation is proposed by a Party; however, Owner shall have no obligation to pay any Development Fees or Community Benefit Fees that are subject to deferral pursuant to Section 22.1.4 as of the date of cancellation or are due to be paid pursuant to the terms of this Development Agreement after the date cancellation is proposed by a Party.

SECTION 18 PERIODIC REVIEW

18.1 Time for Review. In accordance with the procedures set forth in the Development Agreement Ordinance, City shall, at least every twelve (12) months after the Development Agreement Date, review the extent of good faith compliance by Owner with the terms and conditions of this Development Agreement. Such periodic review shall determine compliance with the terms of this Development Agreement pursuant to California Government Code Section 65865.1 and other successor laws and regulations. If City fails to review the Project and the Owner's compliance with the material terms of this Development Agreement, Owner will be deemed to be in compliance with the provisions of this Development Agreement, and the Development Agreement will be deemed in full force and effect. The City's failure to review the

Project or Owner's compliance with the terms of the Development Agreement, or Owner's failure to submit evidence concerning its good faith compliance with the material terms of the Development Agreement as specified in Section 18.2 of this Development Agreement, shall not constitute or be asserted by either Party as a breach of the Development Agreement by the other Party.

18.2 Owner's Submission. Each year, not less than forty-five (45) days nor more than ninety (90) days prior to the anniversary of the Development Agreement Date, Owner shall submit evidence to the City's Community Development Director demonstrating its good faith compliance with the terms and conditions of this Development Agreement.

18.3 Findings. Within sixty (60) days after the submission of Owner's evidence, the City Council shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied in good faith with the terms and conditions of this Development Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds that Owner has so complied, the review for that period shall be deemed concluded. If the City Council finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of this Development Agreement for the period under review, Owner shall be deemed to be in non-compliance of the Development Agreement, and City may proceed in accordance with Section 18.5.

18.4 Initiation of Review by City. In addition to the periodic review set forth in this Development Agreement, the City may at any time initiate a review of this Development Agreement upon the giving of written notice thereof to Owner. Within thirty (30) days following receipt of such notice, Owner shall submit evidence to the City's Community Development Director of Owner's good faith compliance with this Development Agreement and such review and determination shall proceed in the manner as otherwise provided in this Development Agreement.

18.5 Non-Compliance by Owner. If the City Council finds and determines, on the basis of substantial evidence, and subject to limitations on remedies in this Development Agreement, that Owner has not complied in good faith with the terms and conditions of this Development Agreement, City may, by written notice to Owner, specify the manner in which Owner has failed to so comply and state the steps Owner must take to bring itself into compliance. Owner shall be given at least sixty (60) days to cure such non-compliance and if the actions required to cure such non-compliance take more than sixty (60) days, then City shall give Owner additional time provided that Owner is making reasonable progress towards such end. If during the cure period, Owner fails to cure such noncompliance or is not making reasonable good faith progress towards such end, then, the City Council may, at its discretion, proceed to modify or terminate this Development Agreement or establish a time schedule for compliance in accordance with the procedures set forth in Section 18.5 or 18.11 of this Development Agreement.

18.6 Notice to Owner. City shall give notice to Owner of the City Council's intention to proceed to modify or terminate this Development Agreement or establish a time schedule for compliance within ten (10) days of making City's findings.

18.7 Public Hearing. The City Council shall set and give notice of a public hearing on modification, termination or a time schedule for compliance to be held within forty-five (45) days after the City Council gives notice to Owner.

18.8 Decision. The City Council shall announce its findings and decisions on whether this Development Agreement is to be terminated, how this Development Agreement is to be modified or the provisions of the Development Agreement with which Owner must comply and a time schedule therefore not more than ten (10) days following completion of the public hearing.

18.9 Standard of Review. Any determination by City to terminate this Development Agreement because Owner has not complied in good faith with the terms of this Development Agreement must be based upon a finding by the City Council, on the basis of substantial evidence, that Owner is in Default and has not cured that Default in the timeframe permitted by Sections 18 and 19 of this Development Agreement, as applicable.

18.10 Implementation. Modifying or terminating this Development Agreement shall be accomplished by City enacting an ordinance. The ordinance shall recite the reasons which, in the opinion of City, make the modification or termination of this Development Agreement necessary. Not later than ten (10) days following the adoption of the ordinance, one copy thereof shall be forwarded to Owner. This Development Agreement shall be terminated or this Development Agreement as modified shall become effective on the effective date of the ordinance terminating or modifying this Development Agreement.

18.11 Schedule for Compliance. Setting a reasonable time schedule for compliance with this Development Agreement may be accomplished by City enacting a resolution. The resolution shall recite the reasons which, in the opinion of City, make it advisable to set a schedule for compliance and why the time schedule is reasonable. Not later than ten (10) days following adoption of the resolution, one copy thereof shall be forwarded to Owner. Compliance with any time schedule so established as an alternative to modification or termination shall be subject to periodic review as provided in this Development Agreement and lack of good faith compliance by Owner with the time schedule shall be basis for termination or modification of this Development Agreement.

SECTION 19 DEFAULTS AND REMEDIES

19.1 Default. In addition to the rights and remedies described in Section 18, either party may avail itself of the rights and remedies pursuant to this Section 19. Subject to Excusable Delay, Excusable Delay re Hotel, and limitations on remedies in this Development Agreement, as applicable, and compliance with the provisions of this Development Agreement, failure or delay by either party to perform any material term or provision of this Development Agreement (a “Breach”) following notice and failure to cure as described hereafter constitutes a “Default” under this Development Agreement.

19.2 Notice of Default / Cure. The non-defaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the non-defaulting party (“Notice of Default”). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in

Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion (“Cure Period”). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a Default hereunder.

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.

19.3 Remedies. After implementation of the Project, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Development Agreement and will be investing even more significant time in implementing the Project in reliance upon the terms of this Development Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if City fails to carry out its obligations under this Development Agreement. Therefore, specific performance of this Development Agreement is the only remedy which would compensate Owner if City fails to carry out its obligations under this Development Agreement, and City hereby agrees that Owner shall be entitled to specific performance in the event of a Default by City hereunder. City and Owner acknowledge that, if Owner fails to carry out its obligations under this Development Agreement, City shall have the right, subject to Excusable Delay, Excusable Delay re Hotel, limitations on remedies in this Development Agreement, and Notice of Default and Cure Period obligations of the City in this Development Agreement, to refuse to issue any permits or other approvals which Owner would otherwise have been entitled to pursuant to this Development Agreement. If City issues a permit or other approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. Except as expressly provided in the next sentence, City’s right to specific performance shall be limited to those circumstances set forth above, and City shall have no right to seek specific performance to cause Owner to otherwise proceed with the Development of the Project in any manner. Notwithstanding the foregoing, in the event Owner Defaults on an obligation to pay any fee at the time required pursuant to Section 10 of this Development Agreement, City shall be entitled to pursue whatever legal or equitable remedies available to collect any such amounts due subject to Notice of Default and Cure Period provisions elsewhere in this Development Agreement.

SECTION 20 [INTENTIONALLY OMITTED]

SECTION 21 ASSIGNMENT

21.1 Right to Assign. Subject to Section 21.3, Owner shall have the right to sell, mortgage, hypothecate, assign or transfer this Development Agreement, and any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation at any time during the Term of this Development Agreement, provided that any such sale, mortgage, hypothecation, assignment or transfer must be pursuant to a sale, assignment or other transfer of the interest of Owner in the Property, or a portion thereof. In the event of any such sale, mortgage, hypothecation, assignment or transfer, (a) Owner shall notify City of such event and the name of the transferee, together with the corresponding entitlements being transferred to such transferee, and (b) the agreement between Owner and such transferee shall provide that either Owner or the transferee or both shall be liable for the performance of all obligations of Owner pursuant to this Development Agreement, the Existing Development Approvals, the Subsequent Development Approvals, and/or any Major Project Modifications. Such transferee and/or Owner shall notify City in writing which entity shall be liable for the performance of such obligations, and upon the express written assumption of any or all of the obligations of Owner under this Development Agreement by such assignee, transferee or purchaser shall, relieve Owner of its legal duty to perform said obligations under this Development Agreement with respect to the Property or portion thereof, so transferred, except to the extent Owner is in Default under the terms of this Development Agreement and/or City's consent to the assignment is required pursuant to Section 21.3.

21.2 Release upon Transfer. It is understood and agreed by the Parties that the Property may be subdivided following the Development Agreement Date. Subject to Section 21.3, one or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Development Agreement. Effective upon such sale, mortgage, hypothecation, assignment or transfer, the obligations of Owner shall become several and not joint. Upon the sale, transfer, or assignment of Owner's rights and interests under this Development Agreement as permitted pursuant to Section 21.1 of this Development Agreement, Owner shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so transferred, provided that (a) Owner is not then in Default under this Development Agreement, (b) Owner has provided to City the notice of such transfer specified in Section 21.1 of this Development Agreement, and (c) the transferee executes and delivers to City a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all the obligations of Owner under this Development Agreement, the Existing Development Approvals, the Subsequent Development Approvals, and the Major Project Modifications with respect to the property, or portion thereof, so transferred. Non-compliance by any such transferee with the terms and conditions of this Development Agreement shall not be deemed a Default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against the other Party or persons then owning or holding interest in the Property or any portion thereof and not themselves in Default hereunder. The provisions of this Section shall be self-executing and shall not require the execution or recordation of any further document or instrument. Any and all successors, assigns and transferees of Owner shall have all of the same rights, benefits and obligations of Owner as used in this Development Agreement and the term

“Owner” as used in this Development Agreement shall refer to any such successors, assigns and transferees unless expressly provided herein to the contrary.

21.3 City’s Consent. The City’s consent shall not be required to a transfer or assignment between Owner(s). Moreover, the City’s consent to a transfer or assignment pursuant to this Section 21 shall not be required unless, at the time of the transfer or assignment, Owner is in Default under the terms of this Development Agreement. If Owner is in Default under the terms of this Development Agreement, City shall consent in writing to any transfer or assignment which provides adequate security to City, in the reasonable exercise of the City’s discretion, to guarantee the cure of the Default upon completion of the transfer or assignment.

SECTION 22 GENERAL

22.1 Excusable Delay.

22.1.1 Types of Delay. Except as otherwise expressly provided in this Development Agreement, including without limitation Excusable Delay re Hotel, and subject to Subsections 22.1.2 and 22.1.3, below, performance by either Party of its obligations under this Development Agreement shall be excused, and the Term shall be extended, for periods equal to the duration of any of the following:

(A) Economic Delay. A recession, as defined by the National Bureau of Economic Research, excluding the period from the Development Agreement Date through December 31, 2021.

(B) Force Majeure Delay. Except for the Covid-19 epidemic / pandemic existing as of the Development Agreement Date, floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party’s control (including the Party’s employment force), epidemics, pandemics, government regulations, court actions (such as restraining orders or injunctions), or other similar events beyond the Party’s control.

(C) Administrative Delay. Actions of the City or other governmental agency and beyond the control of the Owner that prevent, prohibit, or unreasonably delay the Owner’s ability to proceed with Development of the Project within the time required by this Development Agreement. Delays in processing and acting on applications for the Ministerial Actions, Ministerial Approval, Ministerial Permits, or other permits or approvals by the City or other governmental agencies that are described in **Exhibit G** to this Development Agreement shall be deemed to be unreasonable if they exceed the time periods set forth in **Exhibit G**. Delays in processing and acting on applications for the Ministerial Actions, Ministerial Approval, Ministerial Permits, or other permits or approvals by the City or other governmental agencies that are not described in **Exhibit G** shall be deemed to be unreasonable if they exceed the average time it normally takes the agency to process and act on similar applications by more than thirty (30) days.

(D) Litigation Delay. Pendency of a lawsuit, petition for writ of mandate, or other legal challenge by a third party to this Development Agreement, any of the Existing Development Approvals, or any of the Subsequent Development Approvals (“Third Party Challenge”). For purposes of this Subsection 22.1.1(D), a Third Party Challenge shall be deemed

to be pending from the time it is filed until such time as (a) such Third Party Challenge has been dismissed with prejudice and any period for judicial appeal or other legal challenge in connection with the challenged approvals has expired with no such appeal or legal challenge having been filed; (b) such Third Party Challenge has been finally adjudicated to judgment upholding all challenged approvals and any period for judicial appeal or other legal challenge in connection with the challenged approvals has expires with no such appeal or legal challenge having been filed; or (c) such Third Party Challenge has been otherwise resolved through settlement, release, or similar agreement and accompanying dismissal with prejudice in a manner that allows no further appeal or legal challenge to the challenged approvals. In the event of a Third Party Challenge that results in the setting aside of any portion of this Development Agreement or one or more Existing Development Approvals necessary for Development of the Project, then excusable delay pursuant to this Subsection 22.1.1(D) shall extend until such time as Owner has proposed, and City has approved, modifications or corrective actions to reapprove the challenged Existing Development Approvals in a form that is mutually acceptable to the Parties, each in its sole and absolute discretion, and the time for administrative appeal, judicial appeal, or other legal challenge relating to such corrective actions and/or reapproval has expired with no such appeal or challenge having been filed.

22.1.2 Notice. If City or Owner seeks excuse from performance pursuant to this Section 22.1, it shall provide written notice of such delay to the other Party within thirty (30) days after the Party reasonably becomes aware of the commencement of such delay. If the delay or Default, whether material or immaterial, is beyond the control of the Party seeking excuse from performance, it shall be excused, and extension of time for such cause shall be granted in writing for the period of the Excusable Delay, or longer as may be mutually agreed upon in writing. Any disagreement between the Parties with respect to whether this Section 22.1 applies to a particular delay or Default is subject to the filing by either Party of an action for judicial review of the matter, including requests for declaratory and/or injunctive relief.

22.1.3 Certain Fee Payment Obligations Not Subject to Excusable Delay. Notwithstanding Subsections 22.1.1 and 22.1.2, above, except as otherwise expressly provided in Subsection 22.1.4, below, Owner expressly acknowledges and agrees that it is obligated to pay the nonrefundable guaranteed Development Fees and Community Benefit Fees described in Subsections 10.3.3(A)-(E), 10.4.2, 10.5.1, and 10.5.2 of this Development Agreement, and **Exhibit D**, Milestones One, Two, Four, Six, and Eight, at the times specified in said provisions and **Exhibit D**, and that the excusable delay provisions of this Section 22.1 shall not apply to or operate to extend the time by which Owner is obligated to pay said Development Fees and Community Benefit Fees.

22.1.4 Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay. Notwithstanding Subsection 22.1.3, above, subject to the provisions of this Subsection 22.1.4, Owner may defer payment of those Public Park In-lieu Fees that would otherwise be due to City pursuant to Subsections 10.3.3 (A), (B), (C), and/or (D) and **Exhibit D** Milestones One, Four, and/or Six during the pendency of any Litigation Delay pursuant to Subsection 22.1.1(D). Within ten (10) business days after the date the period of Litigation Delay ends, and provided that this Development Agreement is not terminated pursuant to Subsection 2.3 or cancelled pursuant to Subsections 22.3.2 or 22.3.3 hereof, Owner shall remit all deferred Public Park In-lieu Fees to City. By means of example, if the period of Litigation Delay ends on a date

that is one year from the Development Agreement Date (and this Development Agreement is not terminated or cancelled), Owner will remit to City the first Public Park In-lieu Fee payment of Two Million Dollars (\$2,000,000) corresponding with Milestone One within ten (10) business days; however, if the Development Agreement is terminated pursuant to Subsection 2.3 or cancelled pursuant to Subsection 22.3.2 or 22.3.3 hereof, Owner shall not be required to remit said payment to the City. This Subsection 22.1.4 shall not be interpreted or construed to extend or relieve Owner of the obligation to pay Public Park In-lieu Fees due at the time of issuance of a vertical building permit for a Residential Building.

22.2 Construction of Development Agreement. The language in all parts of this Development Agreement shall in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of constructions. This Development Agreement shall be governed by the laws of the State of California. The Parties understand and agree that this Development Agreement is not intended to constitute, nor shall it be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of City, and in particular, City's police powers. In this regard, the Parties understand and agree that this Development Agreement shall not be deemed to constitute the surrender or abnegation of City's governmental powers over the Property.

22.3 Severability; Court Finding Materially Impairing Consideration; Cancellation For Protracted Litigation Delay or Significant CEQA-Related Costs.

22.3.1 Severability. If any provision of this Development Agreement shall be adjudged to be invalid, void or unenforceable, such provision shall in no way affect, impair or invalidate any other provision hereof, unless such judgment affects a material part of this Development Agreement, and the Parties hereby agree that they would have entered into the remaining portions of this Development Agreement not adjudged to be invalid, void or illegal. In the event that all or any portion of this Development Agreement is found to be unenforceable, this Development Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and, subject to Section 17 and Subsection 22.3.2, below, the Parties further agree that in such event they shall take all steps necessary to comply with such public hearings and/or notice requirements as may be necessary in order to make valid this Development Agreement or that portion which is found to be unenforceable.

22.3.2 Court Finding Materially Impairing Consideration. Notwithstanding any other provisions of this Development Agreement, in the event (i) any material provision of this Development Agreement, any of the Existing Development Approvals approved prior to the Development Agreement Date, and/or any of the Existing Land Use Regulations are found by a court to be unenforceable, void, or voidable, (ii) such court finding materially impairs the bargained-for consideration to be received by either Party under this Development Agreement, including, but not limited to, by preventing Owner from Developing the Project in accordance with the Existing Land Use Regulations and the Existing Development Approvals approved prior to the Development Agreement Date or by reducing or eliminating any of the public benefits, fees, public improvements or services, or dedications to be received by City pursuant to this Development Agreement, and (iii) any provision found to be unenforceable, void or voidable cannot be made valid by the undertaking of additional environmental review pursuant to CEQA, the holding of

additional public hearings, and/or compliance with additional notice requirements, then the Parties agree that they will meet and confer in good faith to attempt to agree, each in its sole and absolute discretion, to modifications and/or other corrective actions consistent with state law; provided, however, that if the Parties are unable to agree to mutually acceptable modifications and/or corrective action within ninety (90) days of the court's finding, then, upon the written request of either Party, Owner and City agree they shall take all steps necessary to mutually cancel this Development Agreement in accordance with the provisions of Section 17 hereof.

22.3.3 Cancellation for Protracted Third-Party Litigation or Significant CEQA-Related Costs. Owner acknowledges that the pendency of any Third Party Challenge shall not give rise to an immediate right to seek cancellation of this Development Agreement. However, Owner shall have the right to initiate cancellation of this Development Agreement pursuant Section 17, and City shall take all necessary steps to mutually cancel this Development Agreement, if either of the following occur: (i) the period of Litigation Delay lasts longer than four (4) consecutive years; or (ii) Owner is required to provide additional mitigation, improvements, or services that have a cost to Owner equal to or in excess of Five Million Dollars (\$5,000,000) as a result of additional environmental review pursuant to CEQA that is undertaken as a result of a successful Third Party Challenge.

22.4 Cumulative Remedies. Subject to express limitations on remedies elsewhere in this Development Agreement, including but not limited to Sections 5.4.1(H), 18.8 and 19.3, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of anyone or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

22.5 Indemnification. Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify and hold City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees harmless from any liability for damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from the construction activities of Owner or Owner's contractors, subcontractors, agents, or employees which relate to the Project whether such activities be by Owner, or by any of Owner's contractors, subcontractors, or by anyone or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Additionally, Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify, and hold harmless City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature whatsoever arising out of City's approval of or its performance under this Development Agreement and/or the Existing Development Approvals, Subsequent Development Approvals and/or Major Project Modifications. City may in its discretion participate in the defense of any such legal action. The provisions of this Subsection shall not be binding on Owner to the extent the liability arises out of the gross negligence or willful misconduct of City, or its elective and appointive councils, boards, commissions, officers,

officials, agents, representatives or employees. Owner's indemnity obligations set forth in this Development Agreement shall survive termination of this Development Agreement.

22.6 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement and/or the Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications, the Parties hereby agree to cooperate fully with each other in defending said action and the validity of each provision of this Development Agreement; however, it is expressly understood and agreed to by Owner that Owner shall be solely liable for all legal expenses and costs incurred in defending any such action. The Parties mutually agree that staff time spent by City employees in relation to any such action does not constitute legal expenses or costs payable by Owner. City shall have the right to approve or select legal counsel to defend against any such legal action. Owner shall pay any attorneys' fees awarded against City or Owner, or both, resulting from any such legal action. Owner shall be entitled to any award of attorneys' fees arising out of any such legal action.

22.7 Public Agency Coordination. City and Owner shall cooperate and use reasonable efforts in coordinating the implementation of the Existing Development Approvals, Subsequent Development Approvals, and/or Major Project Modifications with other public agencies, if any, having jurisdiction over the Property or the Project.

22.8 Initiative Measures. Both City and Owner intend that this Development Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, referendum, statute, ordinance or other limitation (whether relating to the rate, timing or sequencing of the Development or construction of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use approved, issued or granted within City, or portions of City, and which Agreement shall apply to the Project to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation is inconsistent or in conflict with this Development Agreement. Should an initiative, measure, moratorium, referendum, statute, ordinance, or other limitation be enacted by the citizens of City which would preclude construction of all or any part of the Project, and to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Development Agreement, Owner shall have no recourse against City pursuant to the Development Agreement, but shall retain all other rights, claims and causes of action under this Development Agreement not so invalidated and any and all other rights, claims and causes of action at law or in equity which Owner may have independent of this Development Agreement with respect to the Project. The foregoing shall not be deemed to limit Owner's right to appeal any such determination that such initiative, measure, referendum, statute, ordinance or other limitation invalidates or prevails over all or any part of this Development Agreement. City agrees to cooperate with Owner in all reasonable manners in order to keep this Development Agreement in full force and effect, provided Owner shall reimburse City for its out-of-pocket expenses incurred directly in connection with such cooperation and City shall not be obligated to institute a lawsuit or other court proceedings in this connection.

22.9 Attorneys' Fees. In the event of any dispute between the Parties involving the covenants or conditions contained in this Development Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

22.10 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall not be construed as a waiver of any succeeding breach of nonperformance of the same or other covenants and conditions hereof.

22.11 Authority to Execute. The person executing this Development Agreement on behalf of Owner represents and warrants that he/she has the authority to execute this Development Agreement on behalf of his/her partnership and represents and warrants that he/she has the authority to bind Owner to the performance of Owner's obligations hereunder.

22.12 Notice.

22.12.1 To Owner. Any notice required or permitted to be given by City to Owner under or pursuant to this Development Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of Owner or mailed with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed; to Owner as follows:

MGP Fund X Laguna Hills, LLC
4365 Executive Drive, Suite 1400
San Diego, California 92121
Attn: Scott McPherson, Managing Partner

With copies to: Perkins Coie LLP
505 Howard Street Suite 1000
San Francisco, CA 94105
Attn: Matthew Gray

or such changed address as Owner shall designate in writing to City.

22.12.2 To City. Any notice required or permitted to be given to City under or pursuant to this Development Agreement shall be made and given in writing, if by mail addressed to:

City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, California 92653

With copies to: Gregory E. Simonian
City Attorney - City of Laguna Hills
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200

Costa Mesa, California 92626

or such changed address as City shall designate in writing to Owner. Alternatively, notices to City may also be personally delivered to the City Clerk, at the Laguna Hills City Hall, 24035 El Toro Road, Laguna Hills, California 92653, together with copies marked for the City Manager and the City Attorney or, if so addressed and mailed, with postage thereon fully prepaid, registered or certified mail, return receipt requested, to the City Council in care of the City Clerk at the above address with copies likewise so mailed to the City Manager and the City Attorney, respectively and also in care of the City Clerk at the same address. The provisions of this Section shall be deemed permissive only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

22.13 Captions. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Development Agreement.

22.14 Consent. Except as otherwise provided herein, any consent required by the Parties in carrying out the terms of this Development Agreement shall not unreasonably be withheld.

22.15 Further Actions and Instruments. Each of the Parties shall cooperate with and reasonably provide to the other to the extent contemplated hereunder in the performance of all obligations under this Development Agreement and the satisfaction of the conditions of this Development Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

22.16 Subsequent Amendment to Authorizing Statute. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute in effect as of the Development Agreement Date. Accordingly, to the extent that subsequent amendments to the Development Agreement Statute would affect the provisions of this Development Agreement, such amendments shall not be applicable to this Development Agreement unless necessary for this Development Agreement to be enforceable or unless this Development Agreement is modified pursuant to the provisions set forth in this Development Agreement and California Government Code Section 65868 as in effect on the Development Agreement Date.

22.17 Governing Law. This Development Agreement, including, without limitation, its existence, validity, construction and operation, and the rights of each of the Parties shall be determined in accordance with the laws of the State of California.

22.18 Effect on Title. Owner and City agree that this Development Agreement shall not continue as an encumbrance against any portion of the Property as to which this Development Agreement has terminated.

22.19 Mortgagee Protection. Entering into or a breach of this Development Agreement shall not defeat, render invalid, diminish, or impair the lien of Mortgagees having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Development Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu thereof.

22.20 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If the City Clerk timely receives notice from a Mortgagee requesting a copy of any Notice of Default given to Owner under the terms of this Development Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the Notice of Default to Owner. The Mortgagee shall have the right, but not the obligation, for a period up to sixty (60) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy the Default unless a further extension of time to cure is granted in writing by City. If the Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the Default or noncompliance within thirty (30) days after obtaining possession. If any such Default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default or non-compliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

22.21 Bankruptcy. Notwithstanding the foregoing provisions of Section 22.20 of this Development Agreement, if any Mortgagee is prohibited from commencing or pursuing and prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving City, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

22.22 Disaffirmance.

22.22.1 New Development Agreement upon Most Senior Mortgagee's Request. City agrees that in the event of termination of this Development Agreement by reason of any Default by City, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Owner or its property, City, if requested by any Mortgagee, shall enter into a new Development Agreement for the Project with the most senior Mortgagee requesting such new agreement, for the remainder of the Term, effective as of the date of such termination, upon the terms, provisions, covenants and agreements as herein contained to the extent and subject to the law then in effect, and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(a) The Mortgagee shall make written request upon City for the new Development Agreement for the Project within thirty (30) days after the date of termination;

(b) The Mortgagee shall pay to City at the time of the execution and delivery of the new Development Agreement for the Project expenses, including reasonable attorneys' fees, to which City shall have been subjected by reason of Owner's Default; and

(c) The Mortgagee shall perform and observe all covenants herein contained on Owner's part to be performed, and shall further remedy any other conditions which Owner under the terminated agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the Mortgagee.

22.22.2 New Development Agreement Not Required. Nothing herein contained shall require any Mortgagee to enter into a new Development Agreement pursuant to Subsection 22.22.1 of this Development Agreement, nor to cure any Default of Owner referred to above.

22.23 No Third Party Beneficiaries. This Development Agreement and all provisions hereof is made and entered into for the sole protection and benefit of City, Owner and their successors and assigns. No other person shall have right of action based upon any provision in this Development Agreement.

22.24 Jurisdiction and Venue. Any action at law or in equity arising under this Development Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Development Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

22.25 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Development Agreement. No partnership, joint venture or other association of any kind is formed by this Development Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such private property. The Parties mutually acknowledge and agree that this Development Agreement does not confer upon or entitle Owner to any subsidy or reduction in fees from City pertaining to Owner's Development of the Project or the Parties' rights and obligations hereunder.

22.26 Restrictions. Owner shall place in any agreements to sell or convey any interest in the Property or any portion thereof, provisions making the terms of this Development Agreement binding on any successors in interest of Owner and express provision for Owner or City, acting separately or jointly, to enforce the provisions of this Development Agreement and to recover attorneys' fees and costs for such enforcement.

22.27 Recitals. The recitals in this Development Agreement constitute part of this Development Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Development Agreement.

22.28 Recording. The City Clerk shall cause a copy of this Development Agreement to be executed by City and recorded in the Official Records of Orange County no later than ten (10) days after the Development Agreement Date.

22.29 Entire Agreement. This Development Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Development Agreement, and this Development Agreement supersedes all previous negotiations, discussions and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

22.30 Successors and Assigns. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement inure to all successors in interest and assigns of the Parties to the Development Agreement.

22.31 Exhibits. All exhibits, including attachments thereto, are incorporated in this Development Agreement in their entirety by this reference and shall be enforceable by the Parties, except as otherwise expressly provided in this Development Agreement.

22.32 Waiver of Right to Protest. Execution of this Development Agreement is made by Owner without protest. Owner knowingly and willingly waives any rights it may have under Government Code Section 66020 or any other provision of law to protest the imposition of any fees, dedications, reservations, or other exactions which are specifically imposed on the Project by this Development Agreement.

[Signatures appear on the following page]

IN WITNESS WHEREOF, City and Owner have executed this Development Agreement as of the date and year first above written.

“CITY”

CITY OF LAGUNA HILLS, a California
municipal corporation

By: _____
KENNETH H. ROSENFELD,
Interim City Manager

ATTEST:

MELISSA AU-YEUNG,
City Clerk

APPROVED AS TO FORM:

STRADLING YOCCA CARLSON &
RAUTH,
Thomas P. Clark Jr.

“OWNER”

MGP FUND X LAGUNA HILLS, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

All signatures to be acknowledged by a Public Notary

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

Notary Public

(seal)

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

Notary Public

155788992.14

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

Notary Public

155788992.14

EXHIBIT A
PROPERTY DESCRIPTION AND DEPICTION

LEGAL DESCRIPTION

Real property in the City of Laguna Hills, County of Orange, State of California, described as follows:

PARCEL 1: (APNS: 621-221-02, 621-221-03, 621-221-04, 621-221-05, 621-221-06, 621-221-07, 621-221-08, 621-221-09, 621-221-10, 621-221-11, 621-221-12, 621-221-13 AND 621-221-14)

LOTS 1 THROUGH 11 AND LOTS A AND B OF TRACT NO. 18115, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 978, PAGES 1 THROUGH 25 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION GRANTED TO THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, BY GRANT DEED RECORDED SEPTEMBER 23, 2020 AS INSTRUMENT NO. 2020000519057 OF OFFICIAL RECORDS.

EXCEPTING ½ OF ALL GAS, OIL, HYDROCARBONS, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSES WHATSOEVER, AS RESERVED BY FIRST WESTERN BANK AND TRUST COMPANY, A CORPORATION, WHO ACQUIRED TITLE AS FIRST NATIONAL BANK IN SANTA ANA, A CORPORATION, IN THE DEED RECORDED DECEMBER 04, 1961 IN BOOK 5931, PAGE 586 OF OFFICIAL RECORDS AND RE-RECORDED DECEMBER 11, 1961 IN BOOK 5939, PAGE 534, OF OFFICIAL RECORDS.

PARCEL 2: (APN: 621-051-39)

PARCEL "A" OF LOT LINE ADJUSTMENT LLA 3-16-3493, RECORDED AUGUST 04, 2016 AS INSTRUMENT NO. 2016000360834, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION DEEDED TO THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, BY GRANT DEED RECORDED SEPTEMBER 23, 2020 AS INSTRUMENT NO. 2020000519056 OF OFFICIAL RECORDS.

PARCEL 3: (APNS: 621-051-38 AND 621-051-41)

PARCEL D OF LOT LINE ADJUSTMENT LLA 3-16-3493, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED AUGUST 04, 2016 AS INSTRUMENT NO. 2016000360834, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION DEEDED TO THE STATE OF CALIFORNIA AS PER GRANT DEED RECORDED SEPTEMBER 23, 2020 AS INSTRUMENT NO. 2020000519038, OF OFFICIAL RECORDS.

PARCEL 4: (APN: 621-141-058)

LOT 2 OF TRACT NO. 6106, IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 232, PAGES 6 THROUGH 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID LOT 2 LYING SOUTHEASTERLY AND EASTERLY OF THAT CERTAIN LINE DESCRIBED IN "CONSTRUCTION", "OPERATION AND RECIPROCAL EASEMENTS AGREEMENT" ALSO CALLED "REA" EXECUTED BY ROSSMOOR CORPORATION, A CALIFORNIA CORPORATION AND OTHERS, RECORDED FEBRUARY 29, 1972 IN BOOK 10018, PAGE 325 OF OFFICIAL RECORDS, SAID LINE BEING DESCRIBED AS FOLLOWS; "THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH 45° 00' 00" EAST 90.81 FEET TO A TANGENT CURVE CONCAVE, NORTHWESTERLY AND HAVING A RADIUS OF 20.00 FEET; THEREON NORTHEASTERLY 14.86 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 42° 34' 35" TO A TANGENT LINE; THENCE NORTH 02° 25' 25" EAST 153.15 FEET; THENCE NORTH 08° 56' 03" WEST 35.54 FEET RADIALLY TO A POINT ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1260.00 FEET, AND CURVE BEING CONCENTRIC WITH A SAID CURVE SHOWN ON MAP OF LOT 2 OF TRACT NO. 5061, AS SHOWN ON A MAP RECORDED IN BOOK 183, PAGE 4 OF MISCELLANEOUS MAPS OF ORANGE COUNTY, AS HAVING A RADIUS OF 1252.00 FEET AND BEING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF IMPROVEMENTS OF EL TORO ROAD."

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF LAGUNA HILLS, A CALIFORNIA MUNICIPAL CORPORATION, MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED AUGUST 18, 2006 AS INSTRUMENT NO. 2006000554765 OF OFFICIAL RECORDS.

EXCEPTING ½ OF ALL GAS, OIL, HYDROCARBON, MINERALS AND OTHER SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR SUBSURFACE OF THE PROPERTY ABOVE A DEPTH OF 500 FEET FOR ANY PURPOSE WHATSOEVER, AS RESERVED BY FIRST WESTERN BANK AND TRUST COMPANY, A CORPORATION, WHO ACQUIRED TITLE AS FIRST NATIONAL BANK IN SANTA ANA, A CORPORATION, IN THE DEED RECORDED DECEMBER 04, 1961 IN BOOK 5931, PAGE 586 OF OFFICIAL RECORDS AND RE-RECORDED DECEMBER 11, 1961 IN BOOK 5939, PAGE 534 OF OFFICIAL RECORDS.


 PATRICK A. MCMICHAEL, L.S. 6187

3-16-2021
 DATE



BOUNDARY EXHIBIT

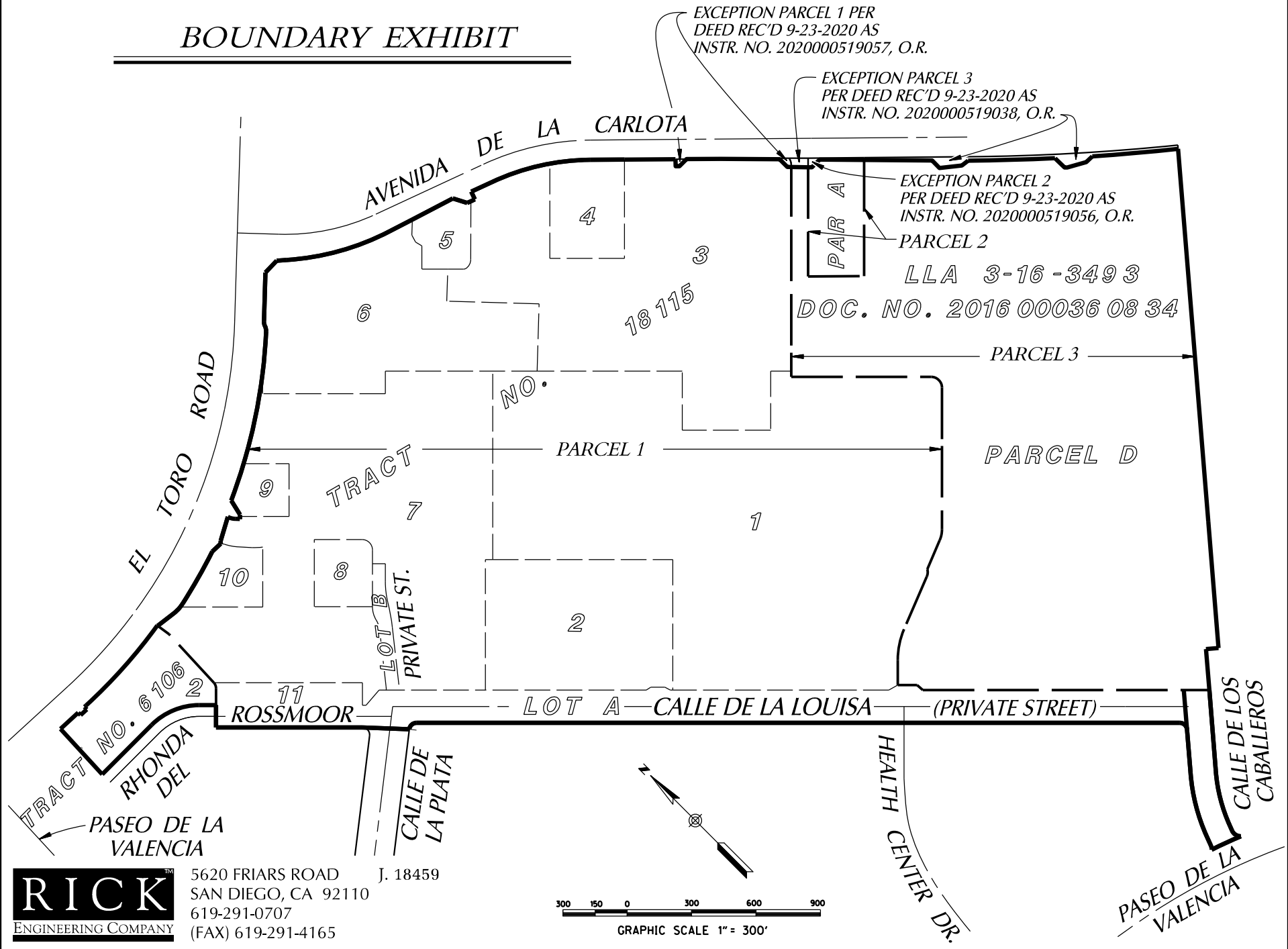


EXHIBIT B

DEVELOPMENT FEES

Public Park In-lieu Fees

Amount of Fee. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to the Project, regardless of whether Owner proposes a subdivision map for each Residential Building. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code.

Nonrefundable Guaranteed Fees. As material consideration for City's entering into this Development Agreement, the Owner expressly agrees that, except as provided in Subsection 10.5.7 and Section 17.4 of this Development Agreement, notwithstanding any provision of Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or other provisions of law, Eighteen Million One Hundred Sixty Nine Thousand Thirty Two Dollars (\$18,169,032), which represents an amount equal to the Public Park In-lieu Fees attributable to the first one thousand one hundred sixty two (1,162) residential units anticipated to be Developed by Owner, shall be nonrefundable, and must be paid to City even if no or less than one thousand one hundred sixty two (1,162) residential units are actually constructed. Owner agrees to pay these nonrefundable fees at the times set forth in Section 10.3.3 and **Exhibits B and D** of this Development Agreement. To the extent any portion of said fees are paid prior to the issuance of a vertical building permit for the Residential Building containing any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E) of this Development Agreement, such portion shall constitute Community Benefit Fees when paid, subject to Section 10.5.4, but shall be credited and applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for the Residential Building containing said residential unit, provided a vertical building permit is issued for the Residential Building containing the residential unit during the Term of this Development Agreement and such building permit is not revoked and does not expire. No portion of the nonrefundable, guaranteed fees that are paid or owed pursuant to Section 10.3 of the Development Agreement shall be credited or applied to any residential units on the Property for which a vertical building permit is issued after the expiration or termination of this Development Agreement. Said payments shall be subject to Section 10.5.4 of this Development Agreement, and Owner expressly agrees that these payments shall be nonrefundable, and that the City may retain and expend that portion, if any, of such nonrefundable fees that are paid by Owner to City, which are attributable to residential units which are not actually constructed, or which City would otherwise be required to refund to Owner or other record owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, Section 10.3.2 of the Development Agreement shall survive termination of this Development Agreement and remain

enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

Timing of Payment of Public Park In-lieu Fees and/or Community Benefit Fees that may be deemed Credits Against Public Park In-lieu Fees. Notwithstanding any provision of Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or other law, the Parties expressly agree that the Public Park In-lieu Fees attributable to the residential units constructed, or anticipated to be constructed, as part of the Project, shall be paid in the amounts and at the times specified below:

(A) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(B) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues a vertical building permit for Retail Buildings, or any new Office Buildings; or (ii) the date that is four (4) years after the Development Agreement Date (**Exhibit D**, Milestone Four). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(C) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues the first certificate of occupancy for any Retail Buildings, or any Office Buildings; or (ii) the date that is seven (7) years after this Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(D) Owner shall pay City Six Million Five Hundred Seventy-One Thousand Three Hundred Forty Four Dollars (\$6,571,344) in increments at the following times: (i) Eight Thousand One Hundred Seventy Three Dollars (\$8,173)¹ per unit for each of the first 804 residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is seven (7) years after this Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided

¹ This amount is calculated as follows: [(\$15,636 per unit X 804 units) – (\$6,000,000)] / 804 units.

in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the amount of the Public Park In-Lieu Fees applicable to the first 804 residential units that are required to be paid pursuant to Subsection 10.3.3(D) of this Development Agreement have been reduced to reflect the three payments of Two Million Dollars (\$2,000,000) required pursuant to Subsections 10.3.3 (A)-(C) of the Development Agreement.

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636) per for each of the next 358 units² residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Nine). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(F) Owner shall pay City Fifteen Thousand Six Hundred Thirty-Six Dollars (\$15,636) per unit for each additional residential unit Owner Develops as part of the Project after the 1,162nd residential unit, prior to the issuance of a vertical building permit for the Residential Building containing the residential unit.

The Parties expressly acknowledge and agree that the Public Park In-lieu Fee payment obligations set forth in Section 10.3 of this Development Agreement may be assumed, in whole or in part, by a residential developer or other person or entity that purchases a portion of the Property on which a Residential Building is designated to be Developed, and agrees to assume such payment obligations in accordance with to the provisions of Section 21 of this Development Agreement (Assignment).

Public Art / Public Art In-Lieu Fees

Owner shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of the Development Agreement ("Owner's Public Art Obligation"). Pursuant to the Specific Plan, the minimum aggregate value of Owner's Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which shall be based on the valuation as determined by the City's Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project. The Parties agree that (a) Six Hundred Fifty Thousand Dollars (\$650,000) of Owner's Public Art Obligation shall be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of the Development Agreement, and (b) that portion of Owner's Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Property, as approved by the City, and may not be satisfied through contribution to the City's Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in the "Public Art" provisions

² This amount applies to the 805th residential unit through the 1,162nd residential unit.

of Section V, at pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The procedures, timing, and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in **Exhibit H** to the Development Agreement.

Credit. The City acknowledges and agrees that Owner paid a Public Art In-lieu Fee to the City the amount of Three Hundred Thousand Dollars (\$300,000) for improvements authorized by the 2016 Five Lagunas Entitlements that were ultimately not constructed. Accordingly, the City agrees it will credit this payment towards Owner's Public Art Obligation for the Project.

Nonrefundable Advance. Notwithstanding any provision of the Specific Plan, the Mitigation Fee Act, or other provisions of State law, the Parties expressly agree that Owner shall pay City a nonrefundable Public Art In-lieu Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), in advance, on or before the date that is ninety (90) days after the Development Agreement Date. Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement. The City shall credit this payment against Owner's Public Art Obligation for the Project. However, said payment shall be subject to the provisions of Section 10.5.3 of this Development Agreement and Owner expressly agrees that this payment shall be nonrefundable to Owner, and that the City may retain and expend such payment, even if Owner's Public Art Obligation for the Project is less than Three Hundred Fifty Thousand Dollars (\$350,000). Owner acknowledges and agrees that the Three Hundred Thousand Dollar (\$300,000) credit provided for in Subsection 10.4.1 of the Development Agreement shall not be applied to reduce Owner's obligation to pay the nonrefundable guaranteed fee required by Subsection 10.4.2 of the Development Agreement. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, Section 10.4.2 of this Development Agreement shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

Traffic Impact Mitigation Fees

The Project, as initially approved pursuant to the Existing Development Approvals, does not trigger payment of the traffic impact mitigation fee in accordance with Chapter 9-102 of the Laguna Hills Municipal Code. If, however, there are future amendments or modifications to the Project, prior to issuance of any building permits, the Owner shall, pursuant to Chapter 9-102, pay a traffic impact mitigation fee, if applicable.

EXHIBIT C
PROJECT SITE PLAN (AT FULL BUILD-OUT)

SITE PLAN GROUND LEVEL

4.5.b

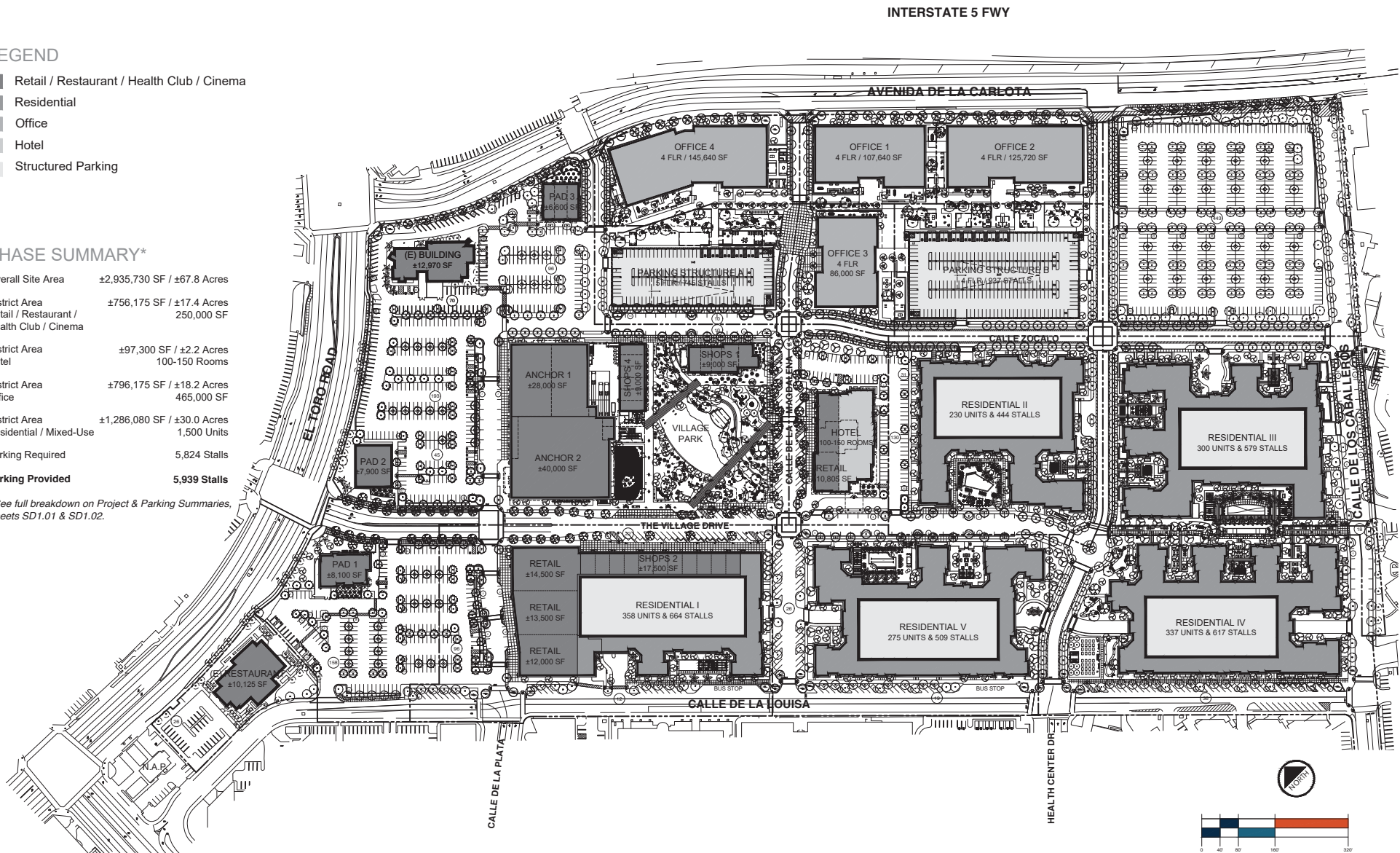
LEGEND

- Retail / Restaurant / Health Club / Cinema
- Residential
- Office
- Hotel
- Structured Parking

PHASE SUMMARY*

Overall Site Area	±2,935,730 SF / ±67.8 Acres
District Area	±756,175 SF / ±17.4 Acres
Retail / Restaurant / Health Club / Cinema	250,000 SF
District Area	±97,300 SF / ±2.2 Acres
Hotel	100-150 Rooms
District Area	±796,175 SF / ±18.2 Acres
Office	465,000 SF
District Area	±1,286,080 SF / ±30.0 Acres
Residential / Mixed-Use	1,500 Units
Parking Required	5,824 Stalls
Parking Provided	5,939 Stalls

* See full breakdown on Project & Parking Summaries, Sheets SD1.01 & SD1.02.



THE VILLAGE AT LAGUNA HILLS

MerloneGeier
Partners

SITE PLAN
Laguna Hills, CA
03/05/2021

SE
1.0

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second

SITE PLAN UPPER FLOOR(S)

4.5.b

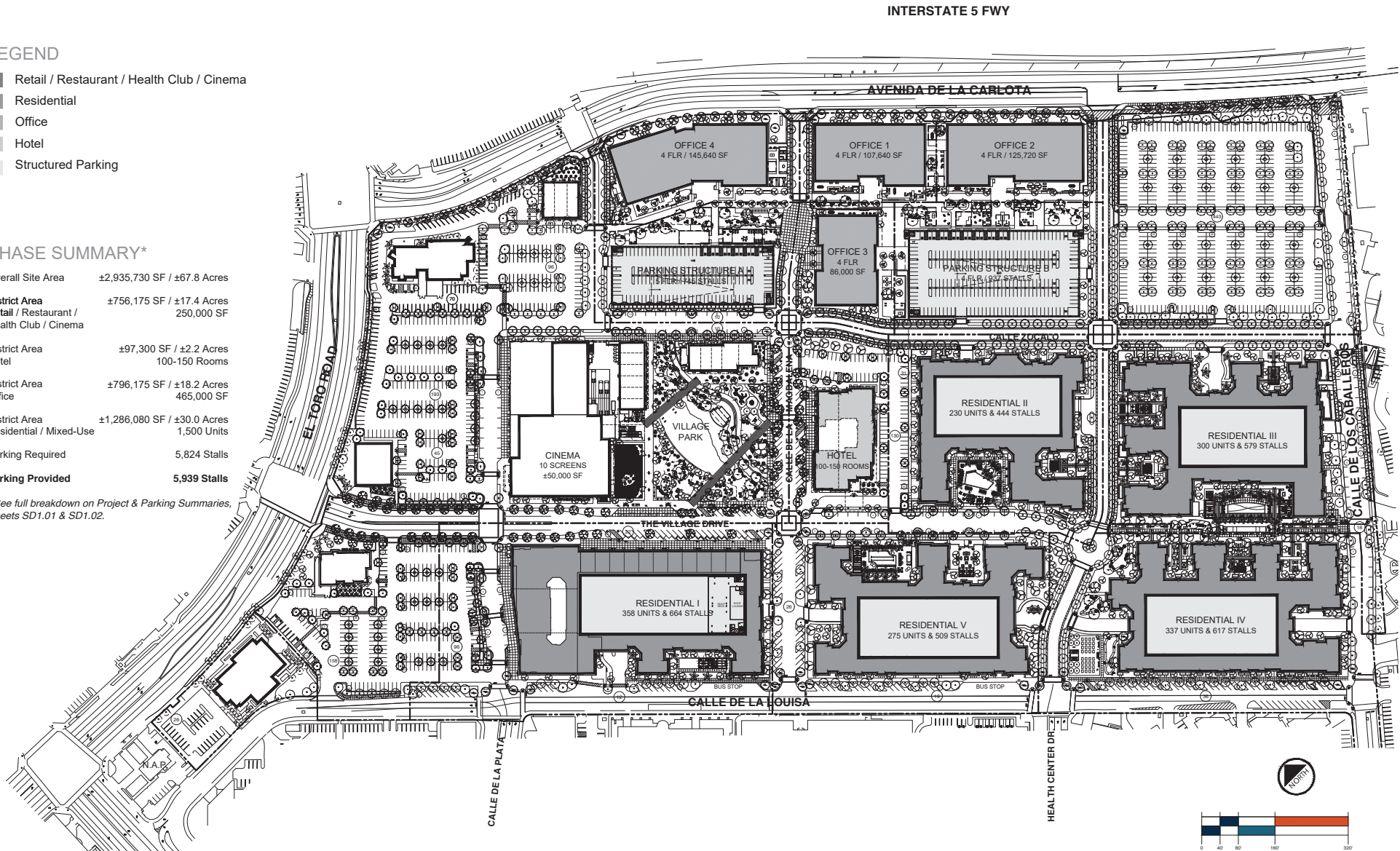
LEGEND

- Retail / Restaurant / Health Club / Cinema
- Residential
- Office
- Hotel
- Structured Parking

PHASE SUMMARY*

Overall Site Area	±2,935,730 SF / ±67.8 Acres
District Area	±756,175 SF / ±17.4 Acres
Retail / Restaurant / Health Club / Cinema	250,000 SF
District Area	±97,300 SF / ±2.2 Acres
Hotel	100-150 Rooms
District Area	±796,175 SF / ±18.2 Acres
Office	465,000 SF
District Area	±1,286,080 SF / ±30.0 Acres
Residential / Mixed-Use	1,500 Units
Parking Required	5,824 Stalls
Parking Provided	5,939 Stalls

* See full breakdown on Project & Parking Summaries, Sheets SD1.01 & SD1.02.



THE VILLAGE AT LAGUNA HILLS

MerloneGeier
Partners

SITE PLAN
Laguna Hills, CA
03/05/2021

SE
1.01

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second
Attachment: Attachment n - Ordinance Approving and Adopting the Development Agreement (2/5/7 :

EXHIBIT D
DEVELOPMENT AGREEMENT MILESTONES

[MODIFY WHEN TEXT IS COMPLETE]

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone One	90 Days From Development Agreement Date	Owner shall have submitted the following Fees to the City: • Public Art In-lieu Fee Advance Payment of \$350,000 (§10.4.2) • 1st Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(A))¹ • 1st Nonrefundable Community Benefit Fee Payment of \$1,113,533 (§10.5.1(A))	No
Milestone Two	15 Months from Development Agreement Date	Owner shall have submitted the following Fees to the City: • 2nd Nonrefundable Community Benefit Fee Payment of \$1,113,533 (§10.5.1(B))	No
Milestone Three	18 Months from Development Agreement Date	Owner shall have submitted a complete application for a Final Map for those parcels on which the Village Park, the Hotel, Retail Buildings containing at least one hundred forty thousand (140,000) square feet of space, and at least two (2) Residential Buildings for Phase One shall be Developed (§5.4.1(A))	Yes

Exhibit D-1

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Four	4 Years (48 Months) from Development Agreement Date	Owner shall have submitted the following Fees to the City: • 2nd Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(B))¹	No
Milestone Five	4.5 Years (54 Months) from Development Agreement Date	Owner shall have submitted a complete application for a building permit for vertical construction of at least one Phase One building (§5.4.1(B))	Yes
Milestone Six	7 Years from Development Agreement Date	Owner shall have Completed Construction of all required Phase One Components (§5.4.1(C))	Yes
		Owner shall have submitted the following Fees to the City: • 3rd Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(C))¹ • Entire Remaining Balance, if any, of \$6,571,344 in Nonrefundable Public Park In-lieu Fees attributable to first 804 residential units (§10.3.3(D))¹ • In the event Owner has not Completed Construction of the Hotel, an additional Community Benefit Fee of \$500,000 (§10.5.2)	No

¹ Owner's obligation to make this nonrefundable guaranteed fee payment is not subject to Excusable Delay; however, Owner may defer payment of this fee during the pendency of Litigation Delay pursuant to Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay) of the Development Agreement.

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Seven	5 Years from Date of City's issuance of the final certificate of occupancy for the Retail Buildings and Residential Buildings required to Developed as part of Phase One pursuant to §§ 5.4.1(C) (ii), (iv), and (v)	Owner shall have recorded a Final Map approved by the City for those parcels on which the Retail Buildings and Residential Buildings for Phase Two required to be completed pursuant to Section 5.4.2(B) shall be Developed (§5.4.2(A))	Yes
		Owner shall have obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two (§5.4.2(A))	Yes
Milestone Eight	15 Years from Development Agreement Date (End of Initial Term)	Owner shall have submitted the following Fees to the City: Entire Remaining Balance, if any, of \$5,597,688 in Nonrefundable Public Park In-lieu Fees attributable to the 805th residential unit through the 1,162nd residential unit (§10.3.3(E))	No

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Nine	20 Years from Development Agreement Date (End of Extended Term) ²	Owner shall have Completed Construction of all required Phase Two Components (§5.4.2(B))	Yes
		Owner shall have Commenced Construction of any Retail Building, Office Building, Parking Structure, and/or Residential Building it did not Develop as part of Phase One or Phase Two but that it intends to Develop in Subsequent Phases (§5.4.3(D))	Yes

² Pursuant to Section 2.2. of the Development Agreement, the initial 15-year Term shall be automatically extended for an additional five (5) years if, prior to expiration of the initial Term, Owner has Completed Construction of all required portions of Phase One of the Project set forth in Section 5.4.1(C) and has obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two set forth in Section 5.4.2(B). If the Term has not been extended 5 years pursuant to Section 2.2 of the Development Agreement, the obligations set forth in Milestone Nine must be completed by Milestone Eight.

EXHIBIT E

ALL REQUIRED PUBLIC IMPROVEMENTS

1. Provision of Bus Stops on Calle de la Louisa. Prior to the construction of street improvements on Calle de la Louisa, Owner shall work with the Orange County Transportation Authority (OCTA) and provide bus stops along Calle de la Louisa, as requested by OCTA or City. Bus stop locations for OCTA facilities shall be constructed in accordance with the OCTA standards. Owner shall provide bus stop furniture to the reasonable satisfaction of the City's Community Development Director and Public Services Director to include, but not be limited to, benches, trash receptacles and shade opportunities that shall be maintained by the Owner.
2. Construction of Perimeter Entrance Feature at Southwest Corner of El Toro Road and Avenida de la Carlota. Prior to the issuance of the first building shell final or certificate of occupancy for new buildings in the El Toro Pad District, the Owner shall design and construct a Perimeter Entry Feature for the southwest corner of El Toro Road and Avenida de la Carlota and on the second entry drive southbound on Avenida de la Carlota as shown on Figures 21 and 25 of the Specific Plan. Ledge stone used for the project shall be Bear Canyon ledge stone, or equivalent. Ledge stone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and reasonable approval of the City's Community Development Director and Public Services Director.
3. Alignment of Intersection of Health Center Drive at Calle de la Louisa. The intersection of Health Center Drive at Calle de la Louisa shall be modified to directly align the centerline of Health Center Drive on either side of Calle de la Louisa, taking into account the existing median island on the westerly side of the intersection, and include one westerly bound left turn lane and one westerly bound through/right turn lane, each with a minimum 100' lane length, not including transitions, to the reasonable satisfaction of the City's Public Services Director.
4. Payment for Debris Gates and Full Trash Capture Devices. Prior to the issuance of the first grading permit, Owner shall pay the City the full cost to purchase and install new debris gates and full capture trash screens to fit into existing catch basins, for all existing catch basin inlets serving Avenida de la Carlota and El Toro Road along the frontage of the Project, as determined by the reasonable discretion of the City's Public Services Director, to include the following:
 - a. Catch Basin #97 located on the southerly side of El Toro Road approximately 152' westerly of the centerline of Avenida de la Carlota.
 - b. Catch Basin #61 located on the westerly side of Avenida de la Carlota approximately 709' southerly of the centerline of Plaza Lane / Project Driveway (private street intersection).
 - c. Catch Basin #178 located on the westerly side of Avenida de la Carlota approximately 448' northerly of the centerline of Oakbrook Village (private street intersection).

5. Installation of New Traffic Signal at Intersection of Avenida de la Carlota and Health Center Drive. Prior to the issuance of the third certificate of occupancy for any combination of three Residential and/or Office Buildings (i.e., three Residential Buildings, two Residential Buildings and one Office Building, three Office Buildings, etc.), Owner shall prepare a current traffic signal warrant analysis following the procedures in the Caltrans Traffic Manual for the proposed new traffic signal at the intersection of Avenida de la Carlota and the extension of Health Center Drive (Intersection 35 referenced in the Traffic Impact Analysis dated September 1, 2020, in Section 6.0 Site Access) and submit it for review and approval by the City's Director of Public Services. If the traffic signal has not yet met warrants, Owner shall repeat the Traffic Signal Warrant Analysis upon the issuance of the certificate of occupancy for each additional Residential or Office Building. If the traffic signal is deemed to be warranted, within six months of said warrant analysis approval, Owner shall prepare the design of the traffic signal by a State of California licensed / registered civil engineer or traffic engineer and submit the plans to the City's Director of Public Services for review and approval. Within six months of the approval of said traffic signal design, the Applicant shall construct and install said traffic signal and all ancillary improvements and equipment to the reasonable satisfaction of the City's Director of Public Services. The design of the traffic signal shall be to the standards of the City of Laguna Hills and Caltrans Standard Plans and Specifications and shall include, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the City's Public Services Director. Owner shall provide the City the full cost to purchase the traffic signal controller, video detection equipment and emergency vehicle preemption equipment in advance of Owner's proposed construction. The schedule for the installation of said signal shall be subject to the reasonable discretion of the City's Public Services Director. Prior to the completion of construction of the Traffic Signal, if needed, Owner shall dedicate a traffic signal maintenance easement to the City for any traffic signal equipment located on the Property.

6. Payment for Installation of New Traffic Signal at Intersection of Paseo de Valencia at Called de los Caballeros. Prior to the issuance of the final certificate of occupancy for the fourth Residential Building, Owner shall cause a traffic signal warrant analysis to be performed by a State of California licensed / registered civil engineer or traffic engineer to determine if the intersection of Paseo de Valencia at Calle de los Caballeros should be converted to a fully operational intersection and be provided with a traffic signal. If said warrant analysis does not meet at least one warrant by this initial analysis, the warrant analysis shall be repeated prior to the issuance of the final certificate of occupancy for the final Residential Building and be submitted to the City's Public Services Director for review. If the traffic signal is now warranted, the City will reasonably evaluate if alternative traffic controls, other than a traffic signal, can be implemented to address the traffic conditions. However, if as reasonably determined by the City's Public Services Director the traffic signal is appropriate to address the traffic conditions, Owner shall contribute a pro-rata share of funding for the full cost of the design and construction of said signal and related ancillary improvements and equipment, including, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City

selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the City's Public Services Director. Prior to the issuance of any further certificates of occupancy, Owner shall deposit with the City an amount equal to the Project's pro-rata share of traffic contribution to the intersection of the cost of such design and construction, as reasonably determined by the City's Public Services Director. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of written request by City. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment is less than the amount of the deposit, City shall refund Owner the difference within thirty (30) days after completion of the construction and installation of the signal and all related improvements and equipment, as evidenced by a notice of completion issued by the City.

7. Payment for Vehicular Video Detection Equipment for Retrofit of Avenida de la Carlota. As reasonably determined by the City's Public Services Director, Owner shall be responsible for funding, in advance, the full cost of the purchase and installation by City of specified vehicular video detection equipment for retrofit of the Avenida de la Carlota at Plaza Lane / Project Driveway traffic signal in accordance with City standards. Owner shall provide the City the full cost to purchase and install the equipment, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
8. Payment for Replacement of Existing Illuminated Street Name Signs. As reasonably determined by the City's Public Services Director, Owner shall fund, in advance, the full cost of the replacement of the existing illuminated street name signs on existing traffic signals to match the new street name designations serving access to the Property. Such illuminated street name signs shall be replaced with LED illuminated street name signs as selected by City. Owner shall provide the City the full cost to purchase and install the signs, as determined in the reasonable discretion of the City's Public Services Director, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
9. Payment for Replacement of City Wayfinding Signage. Owner shall be responsible for funding, in advance, the full cost of replacement of any City Wayfinding signage to be modified from "Laguna Hills Mall" to "Village at Laguna Hills", or any other City approved Project name, at any location at which the name change is required. Owner shall deposit with the City an amount equal to the full cost to manufacture and install all such signs, as reasonably determined by the City's Public Services Director. In the event the full documented cost to manufacture and install said signs exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of a written request by City. In the event the full documented cost to manufacture and install said signs is less than the amount of the deposit, City shall refund Owner the difference within thirty (30) days after installation of the last such sign. Owner's deposit shall be made prior to the issuance of the first certificate of occupancy for any building located within the El Toro Pad District.

10. Construction of Enhanced Parkway Improvements and Dedication of Landscape/Pedestrian Access Easement Along Avenida de la Carlota, From El Toro Road to Plaza Lane. Prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District, or one year from the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, as reasonably determined by the City's Public Services Director, whichever occurs first, Owner shall construct the enhanced parkway along Avenida de la Carlota, from El Toro Road to Plaza Lane / Project Driveway, consistent with the Specific Plan, to the City's standards and specifications. The construction of these improvements shall include, as needed, the construction of retaining walls and pedestrian barriers at the top of the retaining wall and the modification, relocation and/or addition of Southern California Edison (SCE) street lighting, including the payment of fees to SCE. The construction of these improvements shall maintain the current Orange County Transportation Authority (OCTA) bus stop within the limits of this work. Owner shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way by an instrument in a form acceptable to the City's Public Services Director and City Attorney. The electrical meter and water meters serving the landscape areas described herein shall be separated from any other Project landscaping. The enhanced parkway improvements shall be designed and constructed to the reasonable satisfaction of the City's Community Development Director and Public Services Director and shall be maintained for the life of the Project by Owner in a first class condition similar to the condition on the completion of the original construction and/or installation, reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the Specific Plan area, as reasonably determined by the City's Public Services Director.
11. Construction of Enhanced Parkway Improvements and Dedication of Landscape/Pedestrian Access Easement Along Avenida de la Carlota, From Plaza Lane to Southern Project Boundary. Prior to (a) the issuance of the first Office Building certificate of occupancy, or (b) one year of the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, or (c) the completion of the required components of Phase One, whichever occurs first, as reasonably determined by the City's Public Services Director, Owner shall construct the enhanced parkway along the westerly side of Avenida de la Carlota from Plaza Lane / Project Driveway to the southern Project boundary, consisting of a new five (5) foot, six (6) inch wide landscaped area adjacent to the curb and a new six (6) foot wide sidewalk area adjacent to the landscaped area, including the modification, relocation and/or addition of Southern California Edison (SCE) street lighting to the reasonable satisfaction of the City's Public Services Director, including the payment of fees to SCE, within the public right of way, to the City's standards and specifications. Owner shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way, by an instrument in a form acceptable to the City's Public Services Director and City Attorney. The electrical meter and water meters serving the landscaping areas described herein shall be separate from any other Project improvements. The enhanced parkway improvements shall be designed and constructed to the reasonable satisfaction of the City's Community Development Director and Public Services Director and shall be maintained for the life of the Project by Owner in a first class condition similar to the condition on the completion of the original construction and/or installation,

reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the Specific Plan area, as reasonably determined by the City's Public Services Director. In consideration of the existing driveway to/from Avenida de la Carlota (located approximately 300 feet from the south property line) within the Southern Office District being utilized for interim access to the Project, the enhanced parkway improvements impacting the driveway can be deferred until said driveway is removed from service. In addition, the enhanced parkway improvements at the intersection of Avenida de la Carlota and Calle de los Caballeros can be deferred until such time as the intersection is improved as required by any Project condition of approval requiring the construction of the Site Improvements in the Southern Residential District.

12. Construction / Reconstruction of Project Entrances Along Avenida de la Carlotta. All of the existing and new Project entrances to the Property along Avenida De La Carlota shall be reconstructed/constructed such that they are at 90 degrees to the centerline of Avenida de la Carlota and shall be brought up to current ADA ramp and sidewalk standards to the reasonable satisfaction of the City's Public Services Director, utilizing Armor Tile blue cast-in-place detectable warning surfaces at ramps.
13. Construction of Asphalt Concrete Overlay on Avenida de la Carlota, From El Toro Road to Southerly Project Boundary. Within one-year of the completion of the Avenida de la Carlota enhanced parkway improvements described in Paragraphs 10 and 11, above, Owner shall design and construct a 0.15 foot asphalt concrete overlay over the entire width of Avenida de la Carlota, from El Toro Road to the southerly Property boundary. Said design shall include removal and replacement of deteriorated pavement, crack sealing, cold-planing, the pavement overlay, striping and advance traffic signal loop detector replacements as designed by a State of California registered / licensed civil engineer to the reasonable satisfaction of the City's Public Services Director. Owner may, at its option, fund the full cost necessary for the City to perform this work. The terms for payment to City for performance of the work shall be within the reasonable discretion of the City's Public Services Director. Upon completion of the asphalt concrete overlay described herein, no further utility excavations or storm drain modifications shall be allowed within Avenida de la Carlota for a period of five years. Notwithstanding this five-year limitation on excavations, if there is no alternative to a critically necessary excavation as reasonably determined by the City's Director of Public Services, Owner shall construct and implement enhanced pavement repairs to restore the like new condition of the pavement following completion of the excavation. The enhanced pavement repairs shall, at a minimum, consist of the cold plane of 0.17 foot asphalt concrete for a total distance of 100 feet, 50 feet beyond either side of the excavation location, from curb to the closest full lane width of the excavation location to the reasonable satisfaction of the City's Director of Public Services.
14. Upgrade of Adjacent Public Sidewalks, Ramps, and Related Facilities to Current ADA Standards. For every grading permit requested, prior to the issuance of said permit, Owner shall provide an Americans with Disabilities Act (ADA) accessibility review for compliance with all applicable state and federal accessibility statutes, regulations and standards to the reasonable satisfaction of the City's Public Services Director. In addition, the accessibility review shall depict compliance with California Disabled Accessibility requirements as

required by Chapter 11 of the California Building Code (as may be amended, or the applicable California Building Code in effect at the time of a request for building permit application). The accessibility review shall include all existing and future public and private sidewalks, walkways, pathways, access ramps hand rails and all other ADA regulated facilities for the area of the Property for which a grading permit is requested. The public streets to be included in this review are the southerly side of El Toro Road and the westerly side of Avenida de la Carlota coincident with all the Project boundaries. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted as approved by the City's Public Services Director and Community Development Director. Owner shall install, construct or reconstruct to the City's standards and reasonable satisfaction of the City's Public Services Director any existing public and private facilities identified in the accessibility review that are not in compliance with ADA standards, prior to the issuance of any certificate of occupancy. In complying with this condition, Owner may prepare a "CASp Masterplan" subject to the review and approval of the City's Community Development Director and Public Services Director. The Directors shall refer to the CASp Masterplan to determine the extent of existing improvements to be protected in place during construction that should be modified to join with new ADA improvements. Accessibility improvements which are the subject of a grading or building permit shall be constructed and installed prior to grading plan close out, issuance of a building shell final, or certificate of occupancy for a tenant improvement (depending on the type of permit requested by Owner).

15. Reconstruction of El Toro Road Bus Stop. Prior to the issuance of the first certificate of occupancy for the third Residential Building or the first certificate of occupancy for the first Office Building, Owner shall reconstruct the OCTA El Toro Road Bus Stop, on the southerly side of El Toro Road easterly of Paseo de Valencia, to accommodate future projected ridership needs based on full Project buildout, to the reasonable satisfaction of the Public Services Director and OCTA, inclusive of street furniture, benches, waste receptacles, bicycle racks, shade structure, lighting and landscaping.
16. Funding and/or Construction of Other Public Improvements Required by Existing Land Use Regulations and Existing Development Approvals. Owner shall fund and/or construct any and all other public improvements required to be funded or constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

EXHIBIT F

VILLAGE AT LAGUNA HILLS

AFFORDABLE HOUSING IMPLEMENTATION PLAN

VILLAGE AT LAGUNA HILLS AFFORDABLE HOUSING IMPLEMENTATION PLAN

The Village at Laguna Hills Affordable Housing Implementation (“AHIP”) is the affordable housing implementation plan prepared in accordance with the Development Agreement entered into between the City of Laguna Hills and MGP Fund X Laguna Hills, LLC pertaining to the Village at Laguna Hills mixed use project (the “Project”). The AHIP set forth in this **Exhibit F** sets forth requirements for the development, management, and maintenance of two hundred (200) on-site affordable rental units as part of the Project.

1. Definitions. Capitalized terms used in this AHIP shall have the meanings set forth below. Any capitalized term used in this AHIP that is not defined herein shall have the meaning ascribed to it in Section I of the Development Agreement.

A. Adjusted for Family Size Appropriate for the Unit. “Adjusted for Family Size Appropriate for the Unit” means adjusted for a household of one person in the case of a studio unit, two persons in the case of one-bedroom unit, three persons in the case of a two-bedroom unit, and four persons in the case of a three-bedroom unit.

B. Affordability Period. “Affordability Period” means a term of fifty-five (55) years from the date the final certificate of occupancy is issued for a Residential Building containing Affordable Units.

C. Affordable Rent for Lower Income Households. “Affordable Rent for Lower Income Households” means a monthly Rent that does not exceed (a) for those Lower Income Households with a gross income that exceeds sixty percent (60%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, one-twelfth of thirty percent (30%) of the annual gross income of the household; or (b) for other Lower Income Households, one-twelfth of thirty percent (30%) times sixty percent (60%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit.

D. Affordable Rent for Moderate Income Households. “Affordable Rent for Moderate Income Households” means a monthly Rent that does not exceed (a) for those Moderate Income Households with a gross income that exceeds one hundred ten percent (110%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, one-twelfth of thirty percent (30%) of the annual gross income of the household; or (b) for other Moderate Income Households, one-twelfth of thirty percent (30%) times one hundred ten percent (110%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit.

E. Affordable Units. “Affordable Units” means the two hundred (200) units of multi-family residential rental housing located within the Residential Buildings the occupancy of which is restricted to Lower Income Households and Moderate Income Households.

F. Area Median Income. “Area Median Income” or “AMI” means the median income for Orange County, California, adjusted for the actual number of persons in the applicable household, as determined by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time

by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

G. City. “City” means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

H. City Manager. “City Manager” means the City Manager of the City of Laguna Hills or his or her designee.

I. City Resident. “City Resident” means an individual whose domicile was located within the City of Laguna Hills for the twelve (12) month period preceding his or her application for occupancy of an Affordable Unit.

J. Lower Income Households. “Lower Income Households” has the meaning set forth in California Health and Safety Code Section 50079.5.

K. Lower Income Units. “Lower Income Units” means Affordable Units which are reserved for occupancy by and rental to Lower Income Households at an Affordable Rent for Lower Income Households.

L. Market Rate Units. “Market Rate Units” means the multi-family residential rental housing units located within the Residential Buildings that are not Affordable Units.

M. Moderate Income Units. “Moderate Income Units” means the Affordable Units which are reserved for occupancy by and rental to Moderate Income Households at an Affordable Rent for Moderate Income Households.

N. Moderate Income Households. “Moderate Income Households” means persons and families whose income does not exceed one hundred twenty percent (120%) of the Area Median Income, Adjusted for Family Size Appropriate for the Unit, and as further adjusted in accordance with California Health and Safety Code Section 50093.

O. Owner. “Owner” shall have the meaning set forth in Section 1.36 of the Development Agreement. In the event Owner’s obligations set forth in this AHIP with respect to a Parcel on which a Residential Building is, or is planned to be, developed are assumed by another person or entity pursuant to an assignment under Section 21 of the Development Agreement, with respect to such Parcel, “Owner” shall refer to the person or entity that has expressly assumed the obligations set forth in this AHIP.

P. Parcel. “Parcel” means a legal lot on which a Residential Building is, or is proposed to be, developed as part of the Project.

Q. Project. “Project” shall have the meaning set forth in Section 1.42 of the Development Agreement.

R. Regulatory Agreement. “Regulatory Agreement” means the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against each Parcel containing Affordable Units pursuant to this AHIP.

S. Rent. “Rent” means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone, internet, television or digital access services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and real property facilities associated therewith by a public or private entity other than Owner.

T. Residential Buildings. “Residential Buildings” shall have the meaning set forth in Section 1.46 of the Development Agreement. A “Residential Building” means one of the Residential Buildings.

U. Senior. “Senior” means an individual that is fifty-five (55) years of age or older.

V. Veteran. “Veteran” means an individual that is a United States armed forces veteran.

2. Planning Principles for Affordable Units.

A. Number of Affordable Units. Two hundred (200) of all residential units within the Residential Buildings developed by Owner as part of the Project shall be Affordable Units. No less than one hundred (100) of the two hundred (200) Affordable Units shall be Lower Income Units. Those Affordable Units that are not Lower Income Units shall be Moderate Income Units.

B. Distribution of Affordable Units. Except as otherwise expressly provided in this AHIP, all two hundred (200) Affordable Units shall be located within Residential Buildings I, II, III, and V, and shall be constructed concurrently with the Market Rate Units in each Residential Building. The number of Affordable Units within each Residential Building shall be evenly divided between Lower Income Units and Moderate Income Units. Unless otherwise approved by the City Manager, in his or her sole discretion, the distribution of the Affordable Units within Residential Buildings I, II, III, and V shall be as set forth in Table 1, below.

If, for any reason, Owner Commences Construction of Residential Building IV before it Commences Construction of any of Residential Buildings I, II, III, and/or V, the City Manager, in his or her sole discretion, may require as a condition of approval to a vertical building permit for Residential Building IV that some or all of those Affordable Units designated in Table 1 for those Residential Buildings that Owner has not yet Commenced Construction of be developed within Residential Building IV, instead.

TABLE 1

	Residential Building I	Residential Building II	Residential Building III	Residential Building V	Total
Total Housing Units (as Entitled)	358	230	300	275	1163
Total Affordable Units	62	40	50	48	200
Lower Income Units	31	20	25	24	100
Moderate Income Units	31	20	25	24	100

C. Unit Size Mix, Design, and Location For Affordable Units. The Affordable Units located within a Residential Building shall consist of a mix of studio units, one bedroom units, two bedroom units, and three bedroom units that is in approximate proportion to the total number of studio units, one bedroom units, two bedroom units, and three bedroom units developed within that Residential Building, subject to the review and approval of the City Manager, in his or her reasonable discretion. The Affordable Units within a Residential Building shall be “floating” units that are not permanently designated; however, at no time shall all the Affordable Units in a Residential Building be congregated to a certain section of the Residential Building. All Affordable Units shall be of similar design and appearance as Market Rate Units.

D. Deviations Subject to City Manager Approval. In his or her sole discretion, the City Manager may approve deviations from the number of Affordable Units set forth Table 1 for a Residential Building and/or the unit size mix described in Subsection 2(C), above, provided the City receives reasonable assurance that all two hundred (200) required Affordable Units will be timely developed. In conjunction with any such approval, the City Manager may impose conditions on future Subsequent Development Approvals; require Owner to enter into a separate agreement, record a deed restriction, and/or provide a bond or other monetary security, and/or require such other forms of reasonable assurance as he or she deems necessary in his or her sole discretion.

3. Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.

A. Form and Timing of Regulatory Agreements. Prior to issuance of a vertical building permit for a Residential Building required to include Affordable Units, Owner shall enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”) with the City in substantially the same form as Attachment 1 to this AHIP, or in a similar form approved by the City Manager and City Attorney, and record said Agreement against the Parcel. The number, affordability level, unit size mix, and location requirements for the Affordable Units within a Residential Building shall be set forth in the Regulatory Agreement.

B. Delegation of Authority to City Manager. The City Manager is authorized to approve and execute each Regulatory Agreement and any amendments thereto on behalf of the City. City shall maintain authority of each Regulatory Agreement and the authority to implement each Regulatory Agreement through the City Manager. The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of each Regulatory Agreement on behalf of City.

C. Affordability Restrictions for Lower Income Units. Throughout the Affordability Period, all Lower Income Units within a Residential Building shall be leased to Lower Income Households at an Affordable Rent for Lower Income Households in accordance with the terms of the Regulatory Agreement for that Residential Building.

D. Affordability Restrictions for Moderate Income Units. Throughout the Affordability Period, all Moderate Income Units in a Residential Building shall be leased to Moderate Income Households at an Affordable Rent for Moderate Income Households in accordance with the terms of the Regulatory Agreement for that Residential Building.

E. Occupancy Limits. Each Regulatory Agreement shall contain a provision providing that the maximum occupancy for each of the Affordable Units shall not exceed two persons per bedroom, plus one person.

F. Annual Income Verification and Certification. Each Regulatory Agreement shall include uniform provisions requiring the Owner to annually obtain written certifications from, and to verify that, each tenant household occupying an Affordable Unit meets the applicable income and eligibility requirements established for the Affordable Unit.

4. Marketing of Affordable Units. Owner shall market the Affordable Units in each Residential Building to Seniors, Veterans (including Veterans of the City adopted 3rd Battalion, 5th Marines), and City Residents in accordance with the “Marketing and Management Plan” approved by the City pursuant to the Regulatory Agreement for the Residential Building.

5. Priority for Leasing Affordable Units. Throughout the Affordability Period, to the extent permitted by law, within the pool of eligible applicants that qualify as Lower Income Households or Moderate Income Households, as applicable, priority for the leasing of each Affordable Unit shall be given in the following order:

(a) first priority shall be given to qualified households with a member who is both (i) a Senior or a Veteran and (ii) who is a City Resident;

(b) if there are no qualified applicants who meet the foregoing criteria, second priority shall be given to qualified households with a member who is a City Resident that is neither a Senior nor a Veteran;

(c) if there are no qualified applicants who meet the either of the foregoing criteria, third priority shall be given to qualified households with a member who is a Senior and/or a Veteran (including a Veteran of the City adopted 3rd Battalion, 5th Marines), regardless of residency;

(d) if there are no qualified applicants who meet any of the foregoing criteria, the Affordable Unit shall be made available to members of the general public that are qualified Lower Income Households or Moderate Income Households, as applicable.

6. Marketing and Management Plan. The Regulatory Agreement for each Residential Building shall contain uniform provisions regarding property management and management responsibilities. The marketing, leasing, and management of all Affordable Units in a Residential Building shall be in compliance with a “Marketing and Management Plan” for the Residential Building approved by the City, which shall address in detail, without limitation, the following matters:

- i. how Owner plans to market the Affordable Units to prospective Lower Income Households and Moderate Income Households, including a plan for marketing and leasing the Affordable Units to Seniors, Veterans, and City Residents;
- ii. procedures for the selection of tenants, including a description of how Owner plans to certify the eligibility of Lower Income Households and Moderate Income Households, verify the Senior, Veteran, and/or residency status of applicants, and implement the required tenant selection priority provisions;
- iii. procedures for annually verifying income and recertifying the eligibility of tenants of the Affordable Units;
- iv. procedures for ensuring that the required number and unit size mix of Affordable Units is maintained and that the “floating” Affordable Units do not become congregated to a certain section of the Residential Building;
- v. Owner’s procedures for complying with its monitoring and recordkeeping obligations;
- vi. the standard form(s) of rental agreement(s) Owner proposes to enter into with Lower Income Households and Moderate Income Households;
- vii. Owner’s property management duties;
- viii. Owner’s plan to manage and maintain the Parcel and the Affordable Units;
- ix. the identity of the professional property management company, if any, to be contracted with to provide property management services at the Residential Building / Parcel and a description of the management team;
- x. all written management policies with respect to the Affordable Units; and
- xi. a security system and crime prevention program.

The Marketing and Management Plan for a Residential Building must be approved by the City Manager prior to the issuance of a certificate of occupancy for the Residential Building. Any proposed amendment or change to the Marketing and Management Plan during the Affordability Period must be submitted to the City and approved by the City Manager. Owner shall reimburse City for all actual legal and third-party consulting costs incurred by City in reviewing the initial Marketing and Management Plan and any amendments thereto. The Regulatory Agreement for each Residential Building shall contain uniform provisions implementing these requirements.

7. **Reporting and Monitoring of Compliance.**

A. **Annual Compliance Report.** Each Regulatory Agreement shall contain provisions requiring the Owner to submit an annual compliance report containing specified information to the City in a form reasonably satisfactory to City and to annually certify that the Affordable Units are in compliance with the requirements of the Regulatory Agreement.

B. **Recordkeeping Requirements; Access to Information; Inspections.** The Owner shall maintain Affordable Unit tenant leases, income certifications, and other books, documents, and records related to the rental or leasing of the Affordable Units and operation of each Residential Building / Parcel for a period of not less than five (5) years after creation of each such record. In connection with monitoring compliance with each Regulatory Agreement, upon at least three (3) business days' prior written notice, City shall be entitled to inspect any such books, documents, or records and to conduct an independent audit or inspection of such records at a location that is reasonably acceptable to the City Manager. Within forth-eight (48) hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to a Parcel and the right to examine the housing units in a Residential Building and to interview tenants and employees, for the purpose of verifying compliance with each Regulatory Agreement. Each Regulatory Agreement shall contain uniform provisions implementing these requirements and obligating Owner to cooperate with City in making each Parcel and such books, documents, and records available for such inspections or audits.

C. **Annual Monitoring Fee.** Each Regulatory Agreement shall contain a provision requiring Owner to pay an annual monitoring and administration fee to the City to reimburse City for the estimated reasonable costs incurred by the City in monitoring Owner's compliance with, and otherwise administering, the Regulatory Agreement, including, but not limited to, City's review of annual compliance reports and conduct of inspections and/or audits. The amount of such fee shall be the same per Affordable Unit for each Residential Building and shall not exceed such estimated reasonable costs, as determined by the City Manager in his or her reasonable discretion. The City Manager is expressly authorized to establish and adjust the amount of said fee from time to time, as appropriate. City shall provide the basis for calculation of such fee to Owner promptly upon request.

8. **Maintenance Standards for Affordable Units.** Owner shall maintain or cause to be maintained the Affordable Units and the interior or exterior of each Residential Building and Parcel containing Affordable Units in a decent, safe and sanitary manner, and in accordance with the standard of maintenance of first class multifamily rental apartment complexes within Orange County. Owner shall provide adequate security measures for the Parcel and the Residential Building, including without limitation, the installation of adequate lighting and deadbolt locks. Uniform provisions governing Owner's maintenance obligations and the City's rights in the event Owner fails to adhere to its maintenance obligations shall be set forth in the Regulatory Agreement for each Parcel / Residential Building.

EXHIBIT G**REASONABLE APPROVAL PROCESSING TIMES****[Pursuant to Subsection 22.1.1(C) (Administrative Delay)]**

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
City Staff Review of Each Complete Phased Final Subdivision Map Submittal (Including City Plan Check of Map, Closure Calcs, and Title Report)	First Check: 20 Working Days Second Check: 15 Working Days Third and Subsequent Checks: 10 Working Days
County Review and Approval of Each Phased Final Subdivision Map	120 Days (Cumulative) **Includes the cumulative time for County staff review of all submittals and re-submittals of a Phased Final Map. Does not include periods of time Owner is making corrections between submittals.
City Council Consideration / Approval of Each Phased Final Subdivision Map (Following Approval by County and payment of fees)	30 days after approval of Phased Final Map by County, payment of fees, and Owner's execution of City Subdivision Improvement Agreement (if applicable), or at next regularly scheduled City Council meeting if more than 30 days after all of the above. **City approval of a Phased Final Map is contingent upon the Final Map being in compliance with all applicable conditions of approval and/or Owner's execution of a Subdivision Improvement Agreement and provision of acceptable security acceptable to City.

Exhibit G-1

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
Public Property Encroachment Permit (Including City Plan Check of Improvement Plans)	First Check: 15 Working Days Second Check: 10 Working Day Third and Subsequent Checks: 5 Working Days Issuance of Permit: 5 Working Days after approval of plans and payment of fees
On-Site Grading Permits / On-Site Improvements (Including City Plan Check of Rough and/or Precise Grading Plans, Hydrology Study, WQMP, SSWMP, Improvement Plans, Hydraulic Analysis, Storm Drain Plans, etc.)	First Check: 20 Working Days Second Check: 15 Working Day Third and Subsequent Checks: 10 Working Days Issuance of Permit: 5 Working Days after approval of plans and payment of fees
City Engineer Review of Surveyor's Pad Elevation Certificate and the Geotechnical Engineer's Final Soils Certification	First Check: 5 Working Days Second Check: 5 Working Day Third and Subsequent Checks: 5 Working Days Authorization to Work: 5 Working Days after approval of plans, payment of fees, and satisfactory completion of Rough Grading
City Plan Check Completion (Per Plan Type) --Building Plan Check --Construction and Staging Plan Review --Lighting and Photometric Plan Review --Waste Management Plan Review --Outdoor Dining / Patio Plan Review	First Submittal: 20 Working Days Second Submittal: 15 Working Days Third and Subsequent Submittals: 10 Working Days

Exhibit G-2

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
City Building Permit Issuance	5 Working Days **City issuance of building permits is contingent upon (1) Owner's compliance with all applicable Project conditions of approval that are prerequisites to building permit issuance and (2) the prior approval of all other entities required to approve requested permits, including, but not limited to, Orange County Fire Authority, Orange County Health Care Agency, El Toro Water District, Saddleback Valley Unified School District (payment of fees only), State of California (elevators), Southern California Edison, and Southern California Gas Company.
Landscape Plan Compliance Review (LHMC Chapters 9-46 and 9-47)	First Submittal: 20 Working Days Second Submittal: 20 Working Days Third and Subsequent Submittals: 10 Working Days
Waste Reduction and Recycling Plan Review (LHMC Chapter 5-48)	First Submittal: 20 Working Days Second Submittal: 20 Working Days Third and Subsequent Submittals: 10 Working Days

Exhibit G-3

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
All Other Governmental Agency Permits/Approvals (i.e., approvals by governmental agencies other than City) ** County of Orange review of Phased Final Subdivision Maps addressed separately, above. **Other Governmental Agencies may include, but not be limited to, Orange County Fire Authority, Orange County Health Care Agency, El Toro Water District, Saddleback Valley Unified School District (payment of fees only), and the State of California (elevators). **Administrative Delay does not apply to review or approvals of utility companies or other agencies that are not governmental agencies, including, but not limited to, Southern California Edison, Southern California Gas Company, AT&T, etc.	90 Days (Cumulative) **Includes the cumulative time for Agency review following submission of an initial complete application to the Agency for which a permit or ministerial approval is requested. Does not include periods of time Owner is making corrections between submittals.

Exhibit G-4

EXHIBIT H

PROCEDURES AND REQUIREMENTS FOR PREPARATION, SUBMITTAL, REVIEW, APPROVAL, AND INSTALLATION OF PUBLIC ART

This **Exhibit H** sets forth the procedures and requirements for preparation, submittal, review, approval, and installation of Public Art for the Village at Laguna Hills Project (the “**Project**”) in accordance with Section 7.4 of the Development Agreement. The Project an integrated mixed-use development on approximately 68 acres consisting of multiple components, including Public Art installations, which Owner contemplates developing in multiple phases over the Term of the Development Agreement. This **Exhibit H** is intended to establish procedures and requirements to ensure that the Public Art required in conjunction with the Project is installed in an integrated, thought-out, and cohesive manner consistent with the goals, objectives, and standards of the Specific Plan’s “Public Art” provisions.

I. Owner’s Public Art Obligation

A. **Owner’s Public Art Obligation.** Section 7.4 of the Development Agreement provides that Owner shall furnish Public Art in connection with the Project and/or pay a Public Art In-lieu Fee with a combined minimum aggregate value of one-half percent (0.5%) of the total aggregate construction costs of the Project (“**Owner’s Public Art Obligation**”). For this purpose, construction costs are based on the valuation as determined by the City’s Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of all of the Project components. City will determine the portion of Owner’s Public Art Obligation attributable to each discreet Project component at the time City receives an application for permits for construction such Project component by multiplying the construction cost of such Project component, as determined by City, by one-half percent (0.5%) (“**Component Public Art Obligation**”). The sum at any point in time of the Component Public Art Obligation for each building permit that has been approved and/or applied for is referred to herein as “**Owner’s Accrued Public Art Obligation.**”

B. **In-Lieu Payment Contribution.** Pursuant to Section 7.4 of the Development Agreement, the Parties have agreed that Six Hundred Fifty Thousand Dollars (\$650,000) of Owner’s Public Art Obligation will be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of the Development Agreement (collectively, “**Owner’s In-Lieu Payment Contribution**”). Owner and City agree that Owner’s In-Lieu Payment Contribution correlates to a total aggregate construction cost of One Hundred Thirty Million Dollars (\$130,000,000) [$\$650,000 / 0.5\% = \$130,000,000$].

C. **Actual Art Obligation.** Pursuant to Section 7.4 of the Development Agreement, the Parties have agreed that that portion of Owner’s Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the actual provision of Public Art on the Property (“**Owner’s Actual Art Obligation**”). Unless otherwise proposed by Owner and included as a requirement within the Conceptual Project Art Program approved pursuant to Section

Exhibit H-1

II, Owner and City agree that Owner's Actual Art Obligation will not be triggered until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000). Consistent with the Specific Plan, expenses that may be attributed to Owner's Actual Art Obligation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs. That portion of Owner's Accrued Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) is referred to herein as "**Owner's Accrued Actual Art Obligation.**"

II. Conceptual Project Art Program

A. Conceptual Project Art Program Required. Before the first building permit for any building in the Project is issued, Owner shall prepare, submit, and obtain City approval of a concept Public Art program for the entire Project (the "**Conceptual Project Art Program**"). All Public Art that is thereafter constructed and installed on the Property must be consistent with the approved Conceptual Project Art Program.

B. Conceptual Project Art Program Components. The Conceptual Project Art Program shall include the following components:

1. Goals and Objectives. A description of the goals and objectives of the Conceptual Project Art Program.
2. Theme. A description of the proposed theme of the Public Art to be installed on the Property.
3. Standards. Standards governing type, media, materials, size, scope, and content of Public Art to be installed on the Property. All standards should be consistent with the Specific Plan provisions for Public Art. Owner shall consider the following when developing proposed standards for Public Art installations:
 - a. Relevance of the artwork to the City, its values, culture, and people;
 - b. Suitability of the artwork for outdoor display, including its maintenance and conservation requirements.
 - c. Relationship of the artwork to the site, especially how it serves to activate or enhance public space.
 - d. Appropriateness of the scale of the artwork.
 - e. Community standards of decency;
 - f. Construction and material standards for Public Art set forth in the "Public Art" provisions of Section V of the Specific Plan. Pursuant to the Specific Plan, permissible types of Public Art include, but are not limited to, sculptures,

Exhibit H-2

paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources. The Specific Plan also requires that artwork be constructed of durable, long-lasting materials that can withstand outdoor display and require low maintenance. Recommended materials include bronze, stainless steel, high-grade aluminum or hard stones. In addition, the Specific Plan states that artworks incorporating water features must be designed so that the artwork can stand on its own should the water cease to function properly.

4. Location. A description and depiction of the locations where Public Art is anticipated to be installed and standards for locating Public Art. Consistent with the Specific Plan, Public Art installations (i) should be located in places that are open and easily accessible to the public; (ii) should be prominently placed within the Property; (iii) should be oriented toward the pedestrian experience of the Project and/or located within the Village Park; and (iv) should not be sited near monument signs, walls, benches, or utility boxes, since these structures may block viewing the art and diminish the aesthetic value of the artwork.

5. Criteria for Selection of Artists. A description of how artists commissioned to create or fabricate original art for the Project shall be selected and the criteria that shall be used to select artists. Pursuant to the Specific Plan, artists selected must have experience in design concepts, fabrication, installation and long-term durability of large-scale outdoor artworks, and be approved by the City's Planning Agency prior to selection. Owner may, but is not required, to include a list of proposed artists and their qualifications as part of the Conceptual Project Art Program.

6. Drawings and Illustrations. Owner is encouraged to include concept drawings, illustrations, and/or visual examples depicting the type, nature, size, scale, and location of the types of Public Art envisioned by the Conceptual Project Art Program. At Owner's option, Owner may include illustrations of specific proposed Public Art installations.

7. Phasing Plan. A phasing plan for the funding and installation of Public Art.

a. The phasing plan shall provide for the funding and installation of Public Art on the Property within timeframes consistent with the anticipated phasing of the Project components and infrastructure and shall establish outside dates within the Term of the Development Agreement by which Public Art installations at specified locations or areas of the Property shall be completed. At a minimum, the phasing plan shall ensure that Public Art with a minimum value equal to or exceeding the amount of Owner's Accrued Actual Art Obligation attributable to the Project components Owner is required to Develop in Phase One shall be installed prior to the date Owner is required to Complete Construction of such required Phase One components pursuant to Subsection 5.4.1 of the Development Agreement.

b. If the phasing plan contemplates that funds will be accumulated within a Public Art Fund established pursuant to Section V to facilitate the

Exhibit H-3

financing and planning of larger, Project-serving Public Art installations, it shall address the anticipated amounts needed to fund such Public Art installations, the anticipated timing of completion of such Public Art installations, and any applicable requirements or limitations with respect to deposits to or withdrawals from the Public Art Fund for such Public Art installations.

c. The phasing plan shall address how Owner's In-Lieu Payment Contribution shall be applied to satisfy Owner's Public Art Obligation in relation to the sequence of issuance of building permits for construction of Project components. Unless otherwise proposed by Owner and included as a requirement within the approved Conceptual Project Art Program, Owner is not required to install any Public Art until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000). Notwithstanding the foregoing, at Owner's option, the phasing plan may require the installation of Public Art in conjunction with the construction of Project components before the estimated total aggregate construction cost of the Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000).

d. At Owner's option, the phasing plan may include requirements for the funding and/or installation of Public Art in conjunction with the development of specific parcels of the Property and/or components of the Project, which shall be binding on and enforceable against future transferees, assignees, and developers.

7. Maintenance Standards. Proposed minimum maintenance standards for Public Art that is installed on the Property.

8. O&M Funding and Implementation. A description of the mechanism through which operation and maintenance of Public Art installed on the Property shall be funded and implemented for the life of the Project.

C. Review and Approval by Planning Agency. The Conceptual Project Art Program shall be subject to review by the City's Planning Agency for conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of Owner's submitted Conceptual Project Art Program is subject to the discretionary approval of the City's Planning Agency, subject to applicable limits of state and federal law.

D. Amendments. The Conceptual Project Art Program may be amended from time to time with the approval of the City's Planning Agency.

III. Final Art Submittals

A. Final Art Submittal Required. Before fabricating and installing any piece of Public Art, Owner must prepare, submit, and obtain City approval of final plans and specifications for such Public Art ("**Final Art Submittal**").

Exhibit H-4

B. Required Content of Final Art Submittals. Each Final Art Submittal shall describe and demonstrate how the proposed Public Art is consistent with the approved Conceptual Project Art Program and the Specific Plan and shall include, without limitation, detailed plans and specifications, schematics, and descriptions of the type, size, medium/material, location, content, and value of the proposed Public Art, a description of the proposed artist(s), a proposed timeline for installation of the Public Art, and a complete application for any Subsequent Development Approvals required for installation of the Public Art. More than one Public Art installation may be combined in a single Final Art Submittal.

C. Review and Approval by Planning Agency. The design, artist, type, size, medium, location, content, estimated value, and timeline for installation of each Public Art installation shall be subject to review the City's Planning Agency for consistency with the Conceptual Project Art Program and conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of each Final Art Submittal is subject to the discretionary approval of the City's Planning Agency, subject to the applicable limits of state and federal law; provided, however, that Planning Agency may not deny or impose conditions on a proposed Final Art Submittal based on aspects of the proposed Public Art that conform to the Conceptual Project Art Program approved by the Planning Agency.

IV. Installation of Approved Public Art

A. Obligation. Owner shall install approved Public Art within the timeframes set forth in the Conceptual Project Art Program phasing plan and each Final Art Submittal approved by the City's Planning Agency.

B. Time Extensions. Time extensions not exceeding six (6) months may be approved by the City Manager, in his or her reasonable discretion. Time extensions exceeding six (6) months shall require approval of the Planning Agency, in its reasonable discretion.

C. Excusable Delay. The timeframes in which Owner is required to install Public Art shall be subject to extension for periods equal to the duration of any excusable delay pursuant to Section 22.1 of the Development Agreement.

D. Withholding of Permits for Noncompliance. In addition to any other remedies available to City, Owner's failure to complete installation of Public Art within required timeframes shall entitle City to withhold future building permits or certificates of occupancy for the Project until Public Art of a value equal or exceeding the amount of Owner's Accrued Actual Art Obligation has been installed.

V. Public Art Fund

A. Establishment of Public Art Fund. Rather than installing a separate Public Art installation in conjunction with the construction of each building to satisfy Owner's Actual Art Obligation, Owner may accumulate funds in a fund held in trust by the City (the "Public Art

Fund”) to facilitate the financing and planning of larger, Project-serving Public Art installations as provided in the approved Conceptual Project Art Program.

B. Effect of Deposits into Public Art Fund. Subject to any applicable requirements or limitations set forth in the approved Conceptual Project Art Program, deposits by Owner into the Public Art Fund in an amount equal to one-half percent (0.5%) of the estimated construction cost of any discreet Project component, as determined by City, shall permit Owner to obtain building permits and/or certificates of occupancy for such Project component prior to approval of Final Art Submittals for, and/or installation of, specified Public Art installations. Such deposits into the Public Art Fund shall not be deemed to satisfy or excuse Owner’s obligation under the Development Agreement to install actual Public Art.

C. Withdrawals from Public Art Fund. Following approval by the City’s Planning Agency of a Final Art Submittal for a Public Art installation intended to be financed with funds held in the Public Art Fund, Owner may withdraw funds from the Public Art Fund in an amount up to the estimated value of the Public Art installation, as determined by the Planning Agency in conjunction with approval of the Final Art Submittal. Consistent with the Specific Plan, allowable expenses attributable to the value of a Public Art installation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs.

D. Forfeiture in the Event of Expiration, Termination, or Cancellation of Development Agreement. In the event the Development Agreement expires or is terminated or cancelled pursuant to the terms of the Development Agreement, and Owner’s Accrued Actual Art Obligation has not been satisfied by the date of such expiration, termination or cancellation, that portion of the funds, if any, held in the Public Art Fund equal to the difference between Owner’s Accrued Actual Art Obligation and the value of Public Art that has actually been installed shall be forfeited to the City and deposited into City’s Public Art In-Lieu Fund.

VI. Project Building and Occupancy Permits

A. Building Permits. In order to be entitled to issuance of a building permit for any discreet Project component, Owner must demonstrate that the combination of (1) the value of specific Public Art installations already approved by the City’s Planning Agency, and (2) the amount deposited by Owner into a Public Art Fund to fund larger, Project-serving Public Art installations pursuant to the approved Conceptual Project Art Program, equals or exceeds the amount of Owner’s Accrued Public Art Obligation.

B. Certificates of Occupancy. In order to be entitled to issuance of a final certificate of occupancy for any building, Owner must demonstrate that it is in compliance with the timeframes for installation of Public Art set forth in the Conceptual Project Art Program phasing plan and all approved Final Art Submittals.

Exhibit H-6

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

(Space Above Line for Recorder's Use)
Exempt from Recorder's Fees Pursuant to
Government Code §§ 6103 and 27383

**DEVELOPMENT AGREEMENT
(Village at Laguna Hills Mixed Use Project)**

BY AND BETWEEN

**THE CITY OF LAGUNA HILLS, a municipal corporation, duly organized and existing
under the Constitution and laws of the State of California**

AND

MGP FUND X LAGUNA HILLS, LLC, a Delaware limited liability company

THIS DEVELOPMENT AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF ITS EFFECTIVE DATE
PURSUANT TO THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

1569768.3
~~4890-4517-3512v1/200305-0005~~
[155788992.14](#)

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

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**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAGUNA HILLS
AND
MGP FUND X LAGUNA HILLS, LLC**

This Development Agreement (“Development Agreement”) is made and entered into this _____ day of _____, ~~2021~~2022 (“Development Agreement Date”), by and between the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California (“City”) and MGP FUND X Laguna Hills, LLC, a Delaware limited liability company (“Owner”), pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division I of Title 7, Sections 65864 through 65869.5 of the California Government Code (the “Development Agreement Statute”).

RECITALS

This Development Agreement is predicated upon the following facts:

A. City is authorized, pursuant to California Government Code §§65864 through 65869.5 (the “Development Agreement Statute”) and Chapter 9-84 of the Laguna Hills Municipal Code (the “Development Agreement Ordinance”) to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in project costs and to encourage investment in and commitment to comprehensive land use planning, which will make maximum efficient utilization of resources at the least economic cost to the public; provide assurance to the applicants of development projects: (i) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements, and (ii) encourage private participation in comprehensive planning and reduce the private and public economic costs of development.

B. These Recitals refer to and utilize certain terms which are defined in this Development Agreement. The Parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

C. Owner represents that it owns in fee the approximately 68-acre former Laguna Hills Mall site (the “Property”) located in the City of Laguna Hills, within the Specific Plan area, which is more particularly described and depicted in **Exhibit A** to this Development Agreement.

D. City desires that the approximately 240 acre area bounded by Paseo de Valencia on the north and west, Los Alisos Boulevard on the south, and I-5 on the east be developed in a manner consistent with the Village Commercial land use designation of the City’s General Plan, which generally envisions the development of this area as a community core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to create an “urban village” with enhanced pedestrian areas conveniently linking commercial, residential, and civic areas.

E. In order to carry out the goals and policies of the General Plan for the Village Commercial area, on November 26, 2002, the Laguna Hills City Council adopted the Urban Village Specific Plan (the “Specific Plan”), establishing a land use concept, plans for additional public open space and pedestrian pathways, design guidelines, and development standards for new developments in the Specific Plan area aimed at creating an urban village identity. The allowed development intensity in the Specific Plan area is determined based upon vehicle trip generation limits, rather than land use type or size, and the Specific Plan provides for flexibility in development options and the mixture of land uses, provided established anticipated aggregate vehicle trip limits generated by new development are not exceeded. The City implements this aspect of the Specific Plan through a vehicle trip budget debiting process pursuant to which additional peak hour vehicle trips generated by each new development or redevelopment project are subtracted from the current aggregate total additional peak hour vehicle trips available to accommodate future new development in the Specific Plan area (the “Specific Plan Area Trip Budget Allocation”). Pursuant to the Specific Plan, applicants for new development projects are authorized to develop to the maximum intensity of their plans, otherwise consistent with the Specific Plan, upon verification that the vehicle trip generation impacts created by the new development ~~will~~shall not exceed the remaining Specific Plan Area Trip Budget Allocation. In July 2009, the Laguna Hills City Council adopted a comprehensive update to the City’s General Plan, which authorized increased development intensity, and a corresponding increased number of authorized aggregate additional vehicle trips to accommodate future development projects, within the Specific Plan area. In April 2011, the Laguna Hills City Council approved amendments to the Specific Plan in order to implement the General Plan update.

F. In March 2016, the City Council approved Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 for the Property, which authorized redevelopment of the Laguna Hills Mall and the Property with a mixed-use retail and residential project, branded ~~“the~~ Five Lagunas Project.”

G. Owner now desires to modify the ~~2016~~ Five Lagunas Project ~~through implementation of~~and, ultimately replace it with revised land use entitlements ~~in order to continue to redevelop~~permit redevelopment of the Property through the demolition and removal of the former Laguna Hills Mall structure and the construction on the Property of a new retail and entertainment core, perimeter commercial pads, office buildings, a hotel, multifamily housing, parking structures, a central communal open space (Village Park) and related amenities branded as the Villages at Laguna Hills, all as more particularly defined herein (hereinafter collectively referred to as the “Project”).

H. The City has evaluated the Project’s environmental potential impacts and, on _____, ~~2021~~2022 adopted Resolution No. _____ making corresponding findings regarding the Project’s compliance with the California Environmental Quality Act pursuant to Public Resources Code Section 21166 and California Code of Regulations, Title 14, Sections 15162 and 15164, and adopting a Fifth Addendum to the Laguna Hills General Plan Program Environmental Impact Report for the Project.

I. In order to implement the Project, Owner has submitted, and City has approved, Case No. USE-010-2019 for the Project, which includes the following discretionary permits: a

Site Development Permit, a Precise Plan, a Master Sign Program, a Vesting Tentative Tract Map, a Parking Use Permit, a Conditional Use Permit for a hotel, and a Conditional Use Permit for a health club, along with associated conditions of approval.

J. City desires to accomplish the goals and objectives set forth in City's General Plan and the Specific Plan and finds that the Project will accomplish said goals and objectives. The City has determined that the Project is consistent with the General Plan, the Specific Plan and the Existing Land Use Regulations, as defined below.

K. In accordance with the Specific Plan, a traffic impact analysis dated September 1, 2020 (the "Traffic Impact Analysis") was prepared by Linscott, Law & Greenspan, Engineers, which analyzes the potential traffic impacts of the Project in comparison to the Five Lagunas Project, calculates the net change in peak hour vehicle trips that will be generated as a result of the Project, and demonstrates that there are sufficient remaining additional peak hour vehicle trips available in the current Specific Plan Area Trip Budget Allocation to accommodate the Project.

L. As consideration for the benefits gained by Owner from the vested rights acquired pursuant to the Development Agreement Statute and to conform with the requirements of the Specific Plan, City is requiring that Owner construct and install as part of Development of the Project certain public improvements and provide other public benefits.

M. In order to avoid any misunderstandings or disputes which may arise from time to time between Owner and City concerning the proposed Development of the Project and to assure each party of the intention of the other as to the processing of any land use entitlements which now or hereafter may be required for such development, the Parties believe it is desirable to set forth their intentions and understandings in this Development Agreement. In order for both City and Owner to achieve their respective objectives, it is imperative that each be as certain as possible that Owner will develop and that City will permit Owner to proceed with Development of the Project and public improvements and other public benefits as approved by City within the time periods provided in this Development Agreement, except as otherwise indicated herein.

N. ~~On April 2, 2021 and April 5, 2021, as required by Section 65867 of the Development Agreement Statute, the~~ City caused public notice to be given of the City Council's intention to consider adoption of a development agreement for the Project as required by Section 65867 of the Development Agreement Statute.

O. ~~On _____, 2021, The City Council held public hearings on the Development Agreement as required by Section 65867 of the Development Agreement Statute; the City Council held a public hearing on the Development Agreement.~~

P. The City Council hereby finds and determines that this Development Agreement: (i) is consistent with the objectives, policies, general land uses, and programs contained City's General Plan and Urban Village Specific Plan; (ii) is compatible with the uses authorized in the Village Commercial land use district; (iii) provides for the orderly development of the Property; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

Q. In preparing and adopting the General Plan and in granting the Existing Development Approvals, City considered the health, safety and general welfare of the residents of City and prepared in this regard an extensive environmental impact report and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and in granting the Existing Development Approvals, the City Council carefully considered and determined the projected needs (taking into consideration the planned development of the Project and all other areas within the City) for water service, sewer service, storm drains, electrical facilities, traffic/circulation infrastructure, police and fire services, paramedic and similar improvements, facilities and services within the Specific Plan area, and the appropriateness of the density and intensity of the development comprising the Project and the needs of City and surrounding areas for other infrastructure.

R. On _____, ~~2021~~2022, the City Council adopted the Authorizing Ordinance approving and authorizing the execution of this Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and pursuant to the Development Agreement Ordinance, and pursuant to the mutual promises and covenants herein contained, the Parties hereto agree as follows:

SECTION 1 ~~SECTION 1~~ DEFINITIONS

The following words and phrases are used as defined terms throughout this Development Agreement, and each defined term shall have the meaning set forth below.

1.1 Affordable Housing Implementation Plan. “Affordable Housing Implementation Plan” or “AHIP” means the Village at Laguna Hills Affordable Housing Implementation Plan attached as **Exhibit F** to this Development Agreement.

1.2 Affordable Unit(s). “Affordable Unit(s)” means a unit or units of housing that is/are located within a Residential Building and is/are affordable to Moderate Income Households or Lower Income Households, as those terms are defined herein.

1.3 Authorizing Ordinance. The “Authorizing Ordinance” means Ordinance No. ORD ~~2021-1~~2022- approving and authorizing this Development Agreement.

1.4 CEQA. “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and the regulations adopted pursuant thereto (Title 14 of the California Code of Regulations, Section 15000 *et seq.*), as they may be amended from time to time.

1.5 Certificate(s) of Occupancy. “Certificate(s) of Occupancy” means certificate(s) of occupancy granted by the building department of the City in accordance with the Uniform Building Code.

1.6 ~~1.5~~ Commence Construction or Commenced Construction. With respect to Residential Buildings, Retail Buildings, and Office Buildings, “Commence Construction” or “Commenced Construction” means Owner has begun actual construction of vertical components of buildings. With respect to the Village Park, “Commence Construction” or “Commenced

Construction” means Owner has completed precise grading of the portion of the Property designated for the Village Park and begun actual installation of the landscaping and irrigation required to be included in the Village Park pursuant to the Existing Development Approvals. Once the Owner has Commenced Construction of each of the Residential Buildings, Retail Buildings, Office Buildings, Hotel, and/or Village Park, the Owner shall Complete Construction, as hereinafter defined, with commercially reasonable diligence.

1.7 ~~1.6~~ Complete Construction, Completed Construction, or Completion of Construction. With respect to Residential Buildings, Retail Buildings, ~~and~~ Office Buildings, and the Hotel, “Complete Construction,” “Completed Construction,” or “Completion of Construction” means that the Owner (i) has requested and is entitled to issuance of ~~a certificate or certificates~~ Certificate(s) of ~~occupancy~~ Occupancy, and (ii) has obtained written approval from the appropriate City officials for all Public Improvements required to be completed prior to issuance of the relevant ~~certificate~~ Certificate(s) of ~~occupancy~~ Occupancy pursuant to the Existing Development Approvals. With respect to the Village Park, “Complete Construction,” “Completed Construction,” or “Completion of Construction” means that Owner has installed all landscaping, irrigation, lighting, pedestrian pathways, water features, shade structures, seating, equipment, and/or other infrastructure required to be included in the Village Park pursuant to the Existing Development Approvals.

1.8 ~~1.7~~ City. “City” means the City of Laguna Hills, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

1.9 ~~1.8~~ City Manager. “City Manager” means the City Manager of the City of Laguna Hills or his or her designee.

1.10 ~~1.9~~ Community Benefit Fees. “Community Benefit Fees” shall have the meaning ascribed in Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not Development Fees and subject to the Mitigation Fee Act or the Quimby Act, and City may deposit such payments into the City’s general fund and expend such funds for any lawful purpose.

1.11 Covenant Agreement. “Covenant Agreement” means the covenant agreement with the City as required by the existing Development Approvals.

1.12 ~~1.10~~ Develop, Developed, or Development. “Develop,” “Developed,” or “Development” means the improvement or renovation of the Property for the purposes of completing the structures, improvements and facilities comprising the Project, including, without limitation: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of buildings, structures, and other facilities; the installation of landscaping; and the construction of other facilities and improvements necessary or appropriate for the Project. “Develop,” “Developed,” or “Development” does not mean the maintenance, repair or reconstruction of any building, structure, improvement, landscaping or facility after the ~~initial construction and completion thereof~~ Completion of Construction.

~~1.11~~ ~~Development Agreement.~~ “

1.13 Development Agreement. “Development Agreement” means this Development Agreement and any subsequent amendments to this Development Agreement which have been made in compliance with the provisions of this Development Agreement, the Development Agreement Statute, and the Development Agreement Ordinance.

1.14 ~~1.12~~ Development Agreement Date. The “Development Agreement Date” means the effective date of the Authorizing Ordinance, which date is shown on page 1, paragraph 1 of this Development Agreement.

1.15 ~~1.13~~ Development Agreement Ordinance. The “Development Agreement Ordinance” means Chapter 9-84 of the Laguna Hills Municipal Code.

1.16 ~~1.14~~ Development Agreement Statute. The “Development Agreement Statute” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Development Agreement Date.

1.17 ~~1.15~~ Development Fees. “Development Fees” shall have the meaning ascribed in Section 10.1 of this Development Agreement, as specified in **Exhibit B** to this Development Agreement.

1.18 ~~1.16~~ Development Plan. “~~Development Plan~~” means Development of the Property pursuant to Plan” means this Development Agreement, the Existing Development Approvals, and the Existing Land Use Regulations, as well as all Subsequent Development Approvals, and all Subsequent Land Use Regulations to which Owner has consented to in writing, which consent shall be in Owner’s sole and absolute discretion. Depending on the context, “Development Plan” may also mean Development of the Project in accordance with the Development Plan.

1.19 ~~1.17~~ Discretionary Action(s), Discretionary Approval(s), or Discretionary Permit(s). “Discretionary Action(s)”, “Discretionary Approval(s)”, or “Discretionary Permit(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Action, Ministerial Approval, or Ministerial Permit.

~~1.18~~ ~~Existing Development Approvals.~~ “

1.20 Excusable Delay. “Excusable Delay” is defined in Section 22.1.

1.21 Excusable Delay re Hotel. “Excusable Delay re Hotel” means a delay in the construction of the Hotel which results from the failure of the market to support an Upscale hotel as demonstrated by an Updated Hotel Study. Owner shall demonstrate the existence of Excusable Delay re Hotel pursuant to those procedures described in Subsection 5.4.1(H). Notwithstanding anything herein to the contrary, “Excusable Delay,” as described in Section 22.1, is not applicable to the Development of the Hotel.

1.22 Existing Development Approvals. “Existing Development Approvals” means those certain land use entitlements associated with Case No. USE-010-2019, which were approved for the Project by the City on _____, ~~2021~~2022, and which include a Site Development Permit, a Precise Plan, a Master Sign Program, a Vesting Tentative Tract Map, a Parking Use Permit, a Conditional Use Permit for a Hotel, and a Conditional Use Permit for a health club, along with all conditions of approval with respect thereto. To the extent any of the land use entitlements approved for the Project are amended from time to time upon application by Owner, “Existing Development Approvals” shall include such matters as so amended. If this Development Agreement is required by law to be amended in order for “Existing Development Approvals” to include any such amendments, “Existing Development Approvals” shall not include such amendments unless and until this Development Agreement is so amended.

1.23 ~~1.19~~ Existing Land Use Regulations. “Existing Land Use Regulations” means all ordinances, laws, resolutions, codes, rules, regulations, moratoria, initiatives, policies, requirements, or guidelines of the City in effect on the Development Agreement Date, which govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, the Specific Plan, Mitigation Monitoring Program, and all other ordinances of City establishing subdivision standards, park regulations, impact or Development Fees and building and improvement standards. Existing Land Use Regulations do not include non-land use regulations, which include, without limitation, all City ordinances, resolutions, rules, regulations or official policies governing: business licenses issued by the City for the conduct of businesses, professions, and occupations; taxes and assessments; the control and abatement of nuisances; the granting of encroachment permits and the conveyance of rights and interests which provide for the use of the entry upon public property; and/or the exercise of the power of eminent domain.

1.24 ~~1.20~~ Final Map(s). “Final Map(s)” refers to one or more final maps which may be filed with respect to the vesting tentative tract map approved as part of the Project Approvals, as provided in Government Code Sections 66456 et. seq.

1.25 ~~1.21~~ Five Lagunas Project. “Five Lagunas Project” means development of the Property in the manner authorized by the Five Lagunas Entitlements.

1.26 ~~1.22~~ Five Lagunas Entitlements. “Five Lagunas Entitlements” mean that certain Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 approved by the City on March 22, 2016, as amended, and all permits and approvals implementing the foregoing granted by the City.

1.27 ~~1.23~~ General Plan. “General Plan” means the General Plan of the City.

1.28 ~~1.24~~ Hotel. “Hotel” means the hotel structure and related use(s) and associated parking facilities and infrastructure authorized to be Developed pursuant to the Existing Development Approvals. The quality of the Hotel shall be not less than Upscale. The approximate size and location of the Hotel is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Hotel.”

1.29 Hotel Feasibility Study. “Hotel Feasibility Study” means a study conducted by a “Qualified Hotel Consultant” determining whether or not the operation of an Upscale Hotel of approximately 100-150 rooms is supported by market data.

1.30 HVS. “HVS” means HVS Consulting & Valuation, a division of TS Worldwide, LLC.

1.31 Initial Hotel Feasibility Study. “Initial Hotel Feasibility Study” means the study dated December 13, 2021, as supplemented by letter dated December 14, 2021, conducted by HVS evaluating the market feasibility of an Upper-Upscale hotel and Upscale hotel within the Property and determining that an Upscale select-serve hotel would be feasible and that an Upper-Upscale hotel would be infeasible.

1.32 ~~1.25~~ Litigation Delay. “Litigation Delay” means any period of excusable delay described in Subsection 22.1.1(D) of this Development Agreement.

1.33 ~~1.26~~ Lower Income Households. “Lower Income Households” has the meaning set forth in California Health and Safety Code Section 50079.5.

1.34 ~~1.27~~ Major Project Modification(s). “Major Project Modification(s)” means any Discretionary Approval or Discretionary Permit requested by Owner that is approved, granted, or issued after the Development Agreement Date, which would result in the authorization for any of the following: (i) the Development of more than five (5) Residential Buildings and/or more than 1,500 residential units on the Property; (ii) the Development of fewer than four (4) Residential Buildings on the Property; (iii) the Development of fewer than 200 Affordable Units on the Property; (iv) the Development of fewer than one hundred (100) hotel rooms on the Property; (v) the Development of less than 210,000 square feet of space within Retail Buildings on the Property; (vi) the Development of more than four (4) Office Buildings and/or 465,000 square feet of space within Office Buildings on the Property; (vii) the Development of a Village Park that is less than two (2) acres in size; and/or (viii) the construction or relocation of any Residential Building, Retail Building, Office Building, or Parking Structure to a location on the Property different from that authorized by the Existing Development Approvals, provided, however, that a minor change to the orientation, location, and/or building footprint of such a structure within the boundaries of the same legal lot shall not be deemed to be a Major Project Modification. Notwithstanding anything herein to the contrary, Major Project Modifications may be granted, denied, or conditionally approved by the City acting in its sole and absolute discretion.

1.35 ~~1.28~~ Milestones. “Milestones” means the outside dates by which specified obligations of Owner under this Development Agreement are required to have been performed. The Milestones are summarized in **Exhibit D** to this Development Agreement, with reference to the section of the Development Agreement stating each obligation. **Exhibit D** shall be incorporated into this Development Agreement and considered an enforceable part thereof.

1.36 ~~1.29~~ Ministerial Action(s), Ministerial Approval(s), or Ministerial Permit(s). “Ministerial Action(s)”, “Ministerial Approval(s)”, and “Ministerial Permit(s)” means a permit approval or clearance in conformance with the Existing Land Use Regulations, including,

without limitation, conformance maps for tentative maps, determinations of compliance with the Project conditions of approval of the Existing Development Approvals, grading plans, improvement plans, buildings plans and specifications, and ministerial issuance of one or more Final Maps, zoning clearances, grading permits, improvement permits, wall permits, building permits, demolition permits, lot line adjustments, encroachment permits, temporary use permits, and certificates of use and occupancy as necessary for completion of the Development of the Property in accordance with the Development Plan, as distinguished from an activity which is defined herein as a Discretionary Action, Discretionary Approval, or Discretionary Permit.

1.37 ~~1.30~~ Mitigation Fee Act. “Mitigation Fee Act” shall mean California Government Code Section 66000 et. seq., as it may be amended from time to time.

1.38 Mitigation Monitoring Program~~1.31~~. “Mitigation Monitoring Program” means those portions of the Mitigation Monitoring and Reporting Program adopted by the City Council on July 14, 2009 in conjunction with certification of the Program Environmental Impact Report prepared in connection with the 2009 Comprehensive Update of the City’s General Plan (“PEIR”) and as made applicable to the Five Lagunas Project. The Five Lagunas Project’s mitigation measures apply to the Project as indicated in the Fifth Addendum to the PEIR and Exhibit B of Resolution No. _____ approving the Existing Development Approvals.

1.39 ~~1.32~~ Moderate Income Households. “Moderate Income Households” means persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current median income of the County of Orange adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time.

1.40 ~~1.33~~ Mortgage. “Mortgage” means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security.

1.41 ~~1.34~~ Mortgagee. “Mortgagee” means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

~~1.35~~ ~~Office Buildings.~~ “

1.42 New Retail. “New Retail” means that portion of the minimum one hundred forty thousand (140,000) square feet of space within Retail Buildings required to be Developed in Phase One other than the existing approximately 10,125 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Restaurant” and the approximately 12,970 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Building.”

1.43 Office Buildings. “Office Buildings” means the office structures intended to house business, medical, and professional office, financial institution, and ancillary office-serving supportive retail and service uses, and associated parking facilities and infrastructure, authorized to be Developed pursuant to the Existing Development Approvals.

1.44 ~~1.36~~ Owner. “Owner” is MGP FUND X Laguna Hills, LLC and any person or entity with which or into which MGP FUND X Laguna Hills, LLC may merge, and any person or entity who may acquire substantially all of the assets of MGP FUND X Laguna Hills, LLC and any person or entity who receives any of the rights or obligations under this Development Agreement in accordance with the provisions of Section 21 (Assignment) of this Development Agreement.

1.45 ~~1.37~~ Parking Structure(s). “Parking Structure(s)” means the two (2) parking structures authorized to be Developed pursuant to the Existing Development Approvals. The approximate size and location of the Parking Structures are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Parking Structure.”

1.46 ~~1.38~~ Owner’s Public Art Obligation. “Owner’s Public Art Obligation” shall have the meaning ascribed in Section 7.4 of this Development Agreement.

1.47 ~~1.39~~ Parties; Party. “Parties” means the Owner and the City. A “Party” refers to either the Owner or the City.

1.48 ~~1.40~~ Phase One. “Phase One” means the Development of the portions of the Project described in Subsection 5.4.1 of this Development Agreement. Phase One generally includes, without limitation, Development of the following, including the associated demolition of existing improvements, on the Property: (i) the Village Park; (ii) at least 140,000 square feet of space within Retail Buildings, and up to 250,000 square feet of space within Retail Buildings; (iii) a Hotel, of Upscale quality, containing between 100 and 150 rooms; (iv) at least two (2), but no more than four (4), of Residential Buildings I, II, III, and/or V; (v), up to 200 Affordable Units; (vi) up to 465,000 square feet of space within up to four (4) Office Buildings and associated Parking Structures; and (vii) associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required to be Developed prior to Completion of Construction of the foregoing improvements pursuant to the conditions of approval of the Existing Development Approvals.

1.49 ~~1.41~~ Phase Two. “Phase Two” means the Development of the portions of the Project described in Subsection 5.4.2 of this Development Agreement. Phase Two generally includes, without limitation, Development of the following, including the associated demolition of existing improvements, on the Property: (i) sufficient additional space within Retail Buildings, such that the aggregate total amount of space within Retail Buildings Developed in Phase One and Phase Two, combined, is at least 210,000 square feet, and up to the entire 250,000 square feet of space within Retail Buildings authorized by the Existing Development Approvals; (ii) each of Residential Buildings I, II, III and/or V that are not Developed as part of Phase One and, at Owner’s option, Residential Building IV; (iii) the remainder of the 200 Affordable Units that are not Developed as part of Phase One; (iv) up to the entire 465,000 square feet of space within up to four (4) Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One; and (v) associated public

improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required to be Developed prior to Completion of Construction of the foregoing improvements pursuant to the conditions of approval of the Existing Development Approvals.

1.50 ~~1.42~~ Project. The “Project” means those certain improvements described in the Existing Development Approvals, the Subsequent Development Approvals, and any Major Project Modifications ~~approved by the City in its sole discretion~~. In general, the Project consists of the Development of the Property with a multi-phase, mixed-use project generally consisting of multiple family residential units, retail uses, office uses, a hotel, park and public/communal open space improvements, parking structures and lots, pedestrian pathways, private and public infrastructure improvements, and the public improvements required to be constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals. The Project generally includes modifications to the Five Lagunas Project that result in Development of the following on the Property (i) up to 250,000 square feet of space within Retail Buildings; (ii) up to 465,000 square feet of space within Office Buildings and associated Parking Structures; (iii) a Hotel containing between 100 to 150 rooms; (iv) up to five (5) Residential Buildings containing up to 1,500 multiple family residential units, 200 of which ~~will~~shall be Affordable Units; (v) the construction of park and open space improvements within the Village Park; (vi) and the construction of associated public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure. The approximate locations and/or building envelope of the Residential Buildings, Retail Buildings, Hotel, Office Buildings, Parking Structures, Village Park, and other improvements authorized by the Existing Development Approvals are generally depicted on **Exhibit C** to this Development Agreement.

1.51 ~~1.43~~ Project Trip Budget Allocation. “Project Trip Budget Allocation” means the total aggregate net change in AM and PM peak hour vehicle trips anticipated to be generated as a result of full development of the Project, as determined by the Traffic Impact Analysis and in accordance with Section 5.6. As set forth in the Traffic Impact Analysis, as of the Development Agreement Date, the Project is anticipated to generate 119 total additional AM peak hour vehicle trips and 910 total fewer PM peak hour vehicle trips than the Five Lagunas Project.

1.52 ~~1.44~~ Property. The “Property” means the real property described and depicted in **Exhibit A** to this Development Agreement.

1.53 ~~1.45~~ Public Art. “Public Art” has the meaning ascribed to this term in the “Public Art” provisions of Section V, at pages 39-40, of the Specific Plan. As specified in the Specific Plan, Public Art includes, but is not limited to, sculptures, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources.

~~1.46 Residential Buildings.~~“

1.54 Qualified Hotel Consultant. “Qualified Hotel Consultant” means HVS or another hotel consultant, mutually agreed upon by the Parties, qualified to determine whether market conditions support the operation of an Upscale quality Hotel, as mutually agreed upon by the Parties.

1.55 ~~Residential Buildings~~ Building(s). “Residential Building(s)” means the five (5) multiple-family residential structures and associated parking facilities and infrastructure authorized to be Developed pursuant to the Existing Development Approvals. For purposes of this Development Agreement, the Residential Buildings are separately identified as “Residential” or “Residential Building” I, II, III, IV, and V. The approximate locations of the Residential Buildings and the approximate number of residential units currently anticipated to be constructed within each Residential Building are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement.

1.56 Residential Unit. “Residential Unit” means each separate rentable unit which is or will be rented for residential purposes within each Residential Building.

1.57 ~~1.47~~ Retail Buildings. “Retail Buildings” means the commercial structures intended to house retail, restaurant, service, health club, theatre, and similar uses, and associated parking facilities and infrastructure, authorized to be Developed pursuant to the Existing Development Approvals. The Retail Buildings include those ground floor portions of the structures housing the Hotel and Residential Building I which contain retail or service uses that are intended to serve the general public, but do not include any other portion of the Hotel, any portion of the Office Buildings, or any other portions of Residential Building I or the other Residential Buildings. The approximate size and location of the Retail Buildings are depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as “Retail,” “Shops,” “Anchor,” “Pad,” (E) Restaurant,” and “(E) Building.”

1.58 ~~1.48~~ Quimby Act. “Quimby Act” shall mean California Government Code Section 66477, as it may be amended from time to time.

1.59 ~~1.49~~ Senior(s). “Senior(s)” means an individual(s) that is(are) fifty-five (55) years of age or older.

1.60 ~~1.50~~ Specific Plan. “Specific Plan” means the Urban Village Specific Plan approved by the City Council on November 26, 2002, and amended by the City Council in 2011.

1.61 ~~1.51~~ Specific Plan Area Trip Budget Allocation. “Specific Plan Area Trip Budget Allocation” means the then current number of remaining AM and PM peak hour vehicle trips available to accommodate future new development in the Specific Plan area as calculated by the City in accordance with the vehicle trip budget debiting process contemplated by the General Plan and the Specific Plan.

1.62 ~~1.52~~ Subsequent Development Approvals. “Subsequent Development Approvals” means all Ministerial Actions, Ministerial Approvals, Ministerial Permits, Discretionary Actions, Discretionary Approvals, and Discretionary Permits, which do not constitute Major Project Modifications, that are approved, granted, or issued for the Project after the Development Agreement Date, which are required or permitted by the Existing Land Use Regulations, or by the Subsequent Land Use Regulations to which Owner has consented in writing (which consent shall be in Owner’s sole and absolute discretion), the Existing Development Approvals, and this Development Agreement. Subsequent Development Approvals include, without limitation: (i) Final Maps; (ii) grading, building and other similar permits

necessary to implement the Existing Development Approvals; (iii) design, landscaping, lighting, or similar plans expressly contemplated or required by the conditions of approval to the Existing Development Approvals; (iv) design approvals, site plans, site development permits, or similar Discretionary Approvals necessary for the Development of the Village Park, Retail Buildings, Hotel, Residential Buildings, Office Buildings, Parking Structures, and/or associated infrastructure and parking facilities in the locations authorized by the Existing Development Approvals; (v) conditional use permits; (vi) parking use permits; (vii) master sign programs; and (vii) amendments to the Existing Development Approvals that do not constitute Major Project Modifications.

1.63 ~~1.53~~ Subsequent Land Use Regulations. “Subsequent Land Use Regulations” means any change in or addition to the Existing Land Use Regulations adopted or becoming effective after the Development Agreement Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, or changes in state law, which would, absent this Development Agreement, otherwise be applicable to the Project.

1.64 ~~1.54~~ Term. “Term” is defined in Section 2 of this Development Agreement.

1.65 ~~1.55~~ Third Party Challenge. “Third Party Challenge” shall have the meaning ascribed in Subsection 22.1.1(D) of this Development Agreement.

1.66 ~~1.56~~ Traffic Impact Analysis. “Traffic Impact Analysis” means the traffic impact analysis dated September 1, 2020, prepared by Linscott, Law & Greenspan, Engineers pursuant to the Specific Plan and included as Appendix G to the Fifth Addendum, which analyzes the anticipated traffic impacts of the Project and calculates the change in AM and PM peak hour vehicle trips that will be generated by the Project in comparison to the Five Lagunas Project. Pursuant to the Traffic Impact Analysis, the estimated total AM and PM peak hour vehicle trips that will be generated by the Project are calculated utilizing the trip generation rates set forth in the 10th Edition of *Trip Generation*, published by the Institute of Transportation Engineers (ITE).

1.67 Twenty Year Period. “Twenty Year Period” means the period commencing on the Development Agreement Date and terminating on end of the day of the twentieth anniversary of the Development Agreement Date.

1.68 Uniform Codes ~~1.57~~. “Uniform Codes” ~~“Uniform Codes”~~ means codes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by the City, if applicable City-wide.

~~1.58~~ —

1.69 Updated Hotel Feasibility Study. Updated Hotel Feasibility Study is defined in Section 5.4.1(H).

1.70 Upscale. “Upscale” means hotel brands classified as “~~upseale~~Upscale,” on the chain scale hotel classification list for North America published by Smith Travel Research, or another similar list mutually acceptable to the City and the Owner. By way of example only, hotel brands currently listed as “~~upseale~~Upscale” by Smith Travel Research include, but are not limited to, Courtyard by Marriott, Residence Inn, Radisson, and Doubletree.

~~1.59 Veteran(s).~~ “

1.71 Upper-Upscale. Upper-Upscale means hotel brands classified as “Upper-Upscale” on the chain scale hotel classification list published by Smith Travel Research or other similar list mutually acceptable to City and Owner. By way of example, hotel brands currently listed as Upper-Upscale by Smith Travel Research include, but are not limited to Embassy Suites, Sheraton Hotel, and Westin.

1.72 Veteran(s). “Veteran(s)” means an individual(s) that is/are a United States armed forces veteran(s).

~~1.60 Village Park.~~ “

1.73 Village Park. “Village Park” means the approximately 2.6 acre private park, inclusive of communal open space improvements and related pathways, features, equipment, and infrastructure authorized and required to be Developed by the Existing Development Approvals. The approximate location of the Village Park is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement.

1.74 ~~1.61~~ Zoning Code. “Zoning Code” refers to Title 9 of the Laguna Hills Municipal Code.

SECTION 2 ~~SECTION 2~~ TERM

2.1 Duration of Term. The term ("Term") of this Development Agreement shall be that period of time during which this Development Agreement shall be in effect and bind the Parties hereto. The Term shall commence on the Development Agreement Date and shall extend for an initial period of fifteen (15) years thereafter, terminating at the end of the day on the fifteenth (15th) anniversary of the Development Agreement Date, subject to the mandatory extension provisions of Section 2.2, the termination provisions of Sections 2.3, 2.4, and 10.6, the mutual cancellation provisions of Section 17, the periodic review provisions of Section 18, the ~~default~~Default provisions of Section 19, and the ~~modification or termination provisions of Section 20, and the~~ excusable delay tolling provisions of Section 22.1, respectively, of this Development Agreement.

2.2 Extension of Term. The Term of this Development Agreement shall be automatically extended an additional five (5) years if, prior to expiration of the initial Term, as defined in Section 2.1, Owner has Completed Construction of all required portions of Phase One of the Project set forth in Subsection 5.4.1(C) of this Development Agreement and has obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two set forth in Subsection 5.4.2(B) of this Development Agreement, provided however, if the failure to Complete Construction of the Hotel is the only reason that would otherwise prevent the automatic extension, automatic extension shall nonetheless occur if such failure is a result of Excusable Delay re Hotel. Notwithstanding the foregoing, the Parties may mutually agree to extend the Term of the Development Agreement, regardless of whether the mandatory extension provisions of this Section 2.2 are applicable.

2.3 Termination Due to Judicial Order. Subject to Section 22.3, this Development Agreement shall terminate and be of no further force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after all appeals have been exhausted, directed to City as a result of any lawsuit filed against City to set aside, withdraw or abrogate the approval of the City Council of this Development Agreement.

2.4 Automatic Termination upon Completion of Project. If not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement shall automatically terminate and be of no further force and effect upon Completion of Construction of the Project pursuant to the terms of this Development Agreement and any further amendments thereto and the issuance of all occupancy permits and acceptance by City of all dedications and improvements as required by the Development of the Project.

2.5 Effect of Expiration of Term Prior to Completion of Project. Except as otherwise expressly provided in Subsection 5.4.3(D) or any other provision of this Development Agreement, if not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement and the life of all Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications shall automatically terminate and be of no further force and effect upon expiration of the Term, regardless of whether the Project has been completed, and Owner's rights to proceed with Development of the Project pursuant to this Development Agreement shall also automatically terminate and be of no further force and effect. This Section 2.5 shall not be construed to

automatically terminate (i) Owner's right, pursuant to Subsection 5.4.3(D) of this Development Agreement, to Complete Construction of structures it has Commenced Construction of prior to expiration of the Term, or (ii) Owner's rights under applicable law to continue to use any structure or portion of the Project that Owner Completes Construction of pursuant to this Development Agreement.

SECTION 3 ~~SECTION 3~~ BINDING COVENANTS

The provisions of this Development Agreement, to the extent permitted by law, shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Development Agreement shall bind and inure to the benefit of the Parties and all successors in interest to the Parties hereto.

SECTION 4 ~~SECTION 4~~ EFFECT OF AGREEMENT

As a material part of the consideration of this Development Agreement, unless otherwise provided in the Existing Development Approvals or in this Development Agreement, the Parties agree that the Existing Land Use Regulations shall be applicable to Development of the Project. In connection with all Subsequent Development Approvals that are Discretionary Actions, Discretionary Approvals, or Discretionary Permits, which City takes or has the right to take under this Development Agreement relating to the Project, including any review, approval, renewal, conditional approval or denial, City shall exercise its discretion or take action in a manner which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement) and such other standards, terms and conditions expressly contained in this Development Agreement. City shall accept and timely process, in the normal manner for processing such matters as may then be applicable, all applications for Subsequent Development Approvals requested by Owner with respect to the Project called for or required under this Development Agreement.

SECTION 5 ~~SECTION 5~~ DEVELOPMENT OF PROJECT

5.1 Rights to Develop. Subject to and during the Term of this Development Agreement, including Section 10 (Fees), Section 12 (Future Approvals) and Section 16 (Reserved Authority), Owner shall have a vested right to Develop the Project in accordance with, and to the extent of, the Development Plan. No Subsequent Land Use Regulation shall apply to Development of the Project, or shall delay, hinder, or impede the purpose or the effect of this vested right or apply to Development of the Project, except as specifically permitted by this Development Agreement or agreed to in writing by Owner. Subject to Section 12.1, the Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided herein, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes shall be those set forth in the Development Plan. Notwithstanding the foregoing, while this Development Agreement is in effect, Owner waives any right Owner may have to a density bonus under Government Code Section 65915 through 65918 or the Zoning Code, as they may be amended from time to time. Densities vested hereunder include all densities available as density bonuses under the Zoning Code and Government Code Section 65915 through 65918. In addition, while

and absolute discretion in determining whether to approve, conditionally approve, or deny any Major Project Modification requested by Owner.

5.2 Vesting of Rights of Developer. The City agrees that the right to Develop the Project consistent with the Development Plan is vested in Owner by this Development Agreement. Owner's right to develop the Project consistent with the Development Plan shall be vested in accordance with this Development Agreement and the Development Agreement Statute. Notwithstanding the foregoing, Owner shall have no vested right to Develop the Project in accordance with any Major Project Modification until and unless such Major Project Modification is approved by the City, in its sole and absolute discretion, and is ~~thereby~~expressly incorporated into the Development Plan.

5.3 Effect of Development Agreement on Land Use Regulations. Except as otherwise provided in the Existing Development Approvals or under the terms of this Development Agreement, the only rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Project, shall be those set forth in the Existing Land Use Regulations and the Subsequent Land Use Regulations to which Owner has consented in writing in Owner's sole and absolute discretion, subject to the terms of this Development Agreement.

5.4 Timing of Development. For purposes of this Development Agreement, the components of the Project required and/or authorized to be Developed within specified time periods are described by reference to "Phase One," "Phase Two," and "Subsequent Phases." Owner expressly understands and agrees that its commitment to satisfy the Milestones and to Commence and Complete Construction of the various Project components pursuant to this Section 5.4 is a material inducement to City's approval of this Development Agreement.

5.4.1 ~~5.4.1~~ Phase One. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of Phase One.

(A) ~~(A)~~ First Phase One Final Map. Owner shall submit to the City a complete application for a Final Map for those parcels on which the Village Park, the Hotel, Retail Buildings containing at least one hundred forty thousand (140,000) square feet of space, and at least two (2) Residential Buildings for Phase One ~~will~~shall be Developed by no later than eighteen (18) months from the Development Agreement Date (**Exhibit D**, Milestone Three).

(B) ~~(B)~~ First Building Permit. Owner shall submit to the City a complete application for a building permit for vertical construction of at least one Phase One building on or before the earlier to occur of the following dates: (i) the date that is thirty-six (36) months from the date a complete application for the first Final Map associated with Phase One is submitted by Owner to City, or (ii) the date that is fifty-four (54) months from the Development Agreement Date (**Exhibit D**, Milestone Five).

(C) ~~(C)~~ Completion of Phase One. Except as otherwise expressly provided herein, Owner shall Complete Construction of the following components of Phase One on or before the date that is seven (7) years from the Development Agreement Date (**Exhibit D**, Milestone Six).

(i) ~~(i)~~ The Village Park.

(ii) ~~(ii)~~ At least one hundred forty thousand (140,000) square feet of space within the Retail Buildings. The minimum 140,000 square feet of space within Retail Buildings required for Phase One may include the existing approximately 10,125 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Restaurant” and the approximately 12,970 square foot building identified on the Site Plan attached as **Exhibit C** as “(E) Building,” but shall not include any other vacant or occupied structures existing on the Property as of the Development Agreement Date or any space within the Office Buildings. Owner may, but shall not be required, to Develop up to the entire 250,000 square feet of space within the Retail Buildings that is authorized by the Existing Development Approvals as part of Phase One.

(iii) ~~(iii)~~ A Hotel that is Upscale in quality and contains no less than one hundred (100) rooms. Owner’s obligation to complete the Hotel shall be subject to Subsection 5.4.1(~~F~~H), below.

(iv) ~~(iv)~~ At least (2) of Residential Buildings I, II, III, and/or V, which shall be subject to Subsections 5.4.1 (D) and (E), below. Owner may, but shall not be required, to Develop either three (3), or all four (4), of Residential Buildings I, II, III, and/or V as part of Phase One, subject to Subsections 5.4.1 (D) and (E).

(v) ~~(v)~~ The Affordable Units required to be Developed within each Residential Building pursuant to the provisions of Section 7.2 (Affordable Housing) and the Affordable Housing Implementation Plan attached at **Exhibit F** to this Development Agreement.

(vi) ~~(vi)~~ All public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required by the Development Plan to be Developed prior to Completion of Construction of the improvements described in Subsection 5.4.1(C)(i)-(v).

(D) ~~(D)~~ Assurance of Timely Development of Village Park and Retail Buildings. Owner shall not be entitled to issuance of a certificate of occupancy for more than two (2) Residential Buildings unless it has both: (i) Completed Construction of the Village Park; and (ii) Commenced Construction of Retail Buildings containing at least 140,000 square feet of space.

(E) ~~(E)~~ Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase One, Owner must concurrently Develop the associated Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as “Shops 2 ± 17,500 SF,” “Retail ± 14,500 SF,” “Retail ± 13,500 SF,” and “Retail ± 12,000 SF.” Owner shall not be

entitled to issuance of a ~~certificate~~Certificate of ~~occupancy~~Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

~~(F) Extension of Time to Complete Hotel. Notwithstanding Subsection 5.4.1(C)(iii), above, if Owner cannot, despite having made commercially reasonable efforts to do so, reach an agreement with a hotel operator at fair market value for the disposition and development of the Hotel, upon Owner providing City with evidence of its commercially reasonable efforts, Owner's obligation to Complete Construction of the Hotel shall be extended by one (1) additional year. If Owner has not Completed Construction of the Hotel within eight (8) years of the Development Agreement Date, Owner shall pay an additional Community Benefit Fee to the City in the amount of Five Hundred Thousand Dollars (\$500,000) pursuant to Subsection 10.5.2 of this Development Agreement (Exhibit D, Milestone Seven). Payment of this additional Community Benefit Fee pursuant to Subsection 10.5.2 of this Development Agreement does not excuse Owner's obligation to Complete Construction of the Hotel, and, in the event this payment is made, Owner shall still Complete Construction of the Hotel prior to expiration of the Term of this Development Agreement.~~

~~(G)~~

(F) Development of Office Buildings. Owner may, but is not required to, Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals as part of Phase One. Owner shall use commercially reasonable efforts to market development opportunities for Office Buildings in Phase One, but shall have no obligation to Commence or Complete Construction of any Office Buildings or the Parking Structures as part of Phase One. In no event shall development of Office Buildings be a prerequisite to automatic extension of the Development Agreement pursuant to Section 2.2.

(G) ~~(H)~~ Concurrent Development of Phase One and Phase Two. Provided Owner has Commenced Construction of both the Village Park and Retail Buildings housing at least 140,000 square feet of space, then, except as otherwise specified herein, including, but not limited to, Subsections 5.4.2 (C) and (D), Owner may proceed to Develop any component of Phase Two, as provided in Subsection 5.4.2.

~~5.4.2 Phase Two:~~

(H) Construction of Hotel. Notwithstanding anything herein to the contrary, and subject to Excusable Delay re Hotel and to the final sentence of this Subsection 5.4.1(H) (describing the City's exclusive remedies in the event of an Owner Default under this Subsection 5.4.1(H)), Completion of Construction of the Hotel conforming to this Development Agreement shall occur prior to the earlier of (i) the seventh anniversary of the Development Agreement Date or (ii) granting of Certificates of Occupancy for the third Residential Building. In the event that Owner seeks Certificates of Occupancy for the fourth or fifth Residential Building prior to Completion of Construction of the Hotel, City shall withhold Certificates of Occupancy for the fourth and/or fifth Residential Building, as applicable, until Completion of

Construction of the Hotel, unless Owner's obligation to Complete Construction of the Hotel is temporarily excused due to Excusable Delay re Hotel. To demonstrate Excusable Delay re Hotel, Owner must provide City with a Hotel Feasibility Study prepared by a Qualified Hotel Consultant which determines that the Hotel is not feasible as of the date for which Owner seeks a Certificate of Occupancy for the subject Residential Building ("Updated Hotel Feasibility Study"). Upon receipt of the Updated Hotel Feasibility Study, City shall engage an independent Qualified Hotel Consultant to evaluate the Updated Hotel Feasibility Study and to provide an additional opinion on feasibility. If the City's Qualified Hotel Consultant disagrees with the conclusions of the Updated Hotel Feasibility Study and determines that the Hotel is feasible, Owner and City will seek the opinion of a third Qualified Hotel Consultant, and Owner will be entitled to claim Excusable Delay re Hotel only if at least two out of the three Qualified Hotel Consultants determine that the Hotel is infeasible. In order for Owner to be entitled to continue to claim Excusable Delay re Hotel, the process described in the previous three (3) sentences for demonstrating the existence of Excusable Delay re Hotel shall be repeated at least once every eighteen (18) months following Owner's initial invocation of Excusable Delay re Hotel until either Completion of Construction of the Hotel or termination of the Development Agreement. Excusable Delay re Hotel shall end, and Owner's obligation to Complete Construction of the Hotel shall recommence immediately, subject to the limitations on remedies in the final sentence of this Section 5.4.1(H), if (i) Owner fails to submit an Updated Hotel Feasibility Study within eighteen (18) months of the date of the immediately previous determination that the Hotel is infeasible, (ii) an Updated Hotel Feasibility Study concludes that the Hotel is feasible, or (iii) if at least two out of the three Qualified Hotel Consultants do not determine that the Hotel is infeasible. Excusable Delay re Hotel shall not excuse Owner from its obligation to timely pay Community Benefit Fees described in Subsection 10.5.2. Notwithstanding anything to the contrary in this Development Agreement, the City's exclusive remedies in the event that Owner does not Complete Construction of the Hotel in a timely manner are: (i) the withholding of Certificates of Occupancy for the fourth and fifth Residential Buildings as described in this Subsection 5.4.1(H); (ii) the payment of Community Benefit Fees as described in Subsection 10.5.2; and (iii) the Five Hundred Thousand Dollar (\$500,000) Community Benefit Fee to be paid to City if Owner fails to Complete Construction of the Hotel within seven (7) years of the Development Agreement Date as described in Subsection 10.5.2.

5.4.2 Phase Two. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of Phase Two.

(A) ~~(A)~~ Commencement of Phase Two. Within five (5) years of the City's issuance of the final ~~certificate~~ Certificate of ~~occupancy~~ Occupancy for the Retail Buildings, Residential Buildings, and Affordable Units required to be Developed as part of Phase One pursuant to Subsection 5.4.1(C)(ii), (iv), and (v), above, Owner shall have both (i) recorded a Final Map approved by the City for those parcels on which the Retail Buildings and Residential Buildings for Phase Two required to be completed pursuant to Subsection 5.4.2(B), below, ~~will~~ shall be Developed, and (ii) obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two (**Exhibit D**, Milestone ~~Eight~~ Seven).

(B) ~~(B)~~ Completion of Phase Two. Owner shall Complete Construction of the following components of Phase Two prior to expiration of the Term of this Development Agreement (**Exhibit D**, Milestones ~~Nine~~Eight and ~~Ten~~Nine).

(i) ~~(i)~~ Sufficient additional Retail Buildings such that the aggregate total amount of space within Retail Buildings Developed in Phase One and Phase Two, combined, is no less than 210,000 square feet. In Owner's discretion, Owner may Develop Retail Buildings containing in excess of 210,000 square feet of space, up to 250,000 square feet of space, as part of Phase Two.

(ii) ~~(ii)~~ Each of Residential Buildings I, II, III, and/or V that are not Developed as part of Phase One, subject to Subsections 5.4.2 (C) and (D), below.

(iii) ~~(iii)~~ The Affordable Units required to be Developed within each Residential Building pursuant to the provisions of Section 7.2 (Affordable Housing) and the Affordable Housing Implementation Plan attached at **Exhibit F** to this Development Agreement.

(iv) ~~(iv)~~ All public improvements, parking facilities, streets, pedestrian pathways, and other infrastructure required by the Development Plan to be Developed prior to Completion of Construction of the improvements described in Subsections 5.4.2(B)(i)-(iii).

(C) ~~(C)~~ Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase Two, Owner must concurrently Develop the associated ground floor Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as "Shops 2 ± 17,500 SF," "Retail ± 14,500 SF," "Retail ± 13,500 SF," and "Retail ± 12,000 SF." Owner shall not be entitled to issuance of a ~~certificate~~Certificate of ~~occupancy~~Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

(D) ~~(D)~~ Residential Building IV. As part of Phase Two, Owner may, but is not required to, Develop Residential Building IV. However, Owner shall not be entitled to issuance of a certificate of occupancy for Residential Building IV unless it has Completed Construction of Residential Buildings I, II, and V; provided, however, that if Owner has Commenced Construction of the Hotel, then Owner shall be entitled to a certificate of occupancy for Residential Building IV if it has Completed Construction of both Residential Buildings I and V and either of Residential Buildings II or III.

(E) ~~(E)~~ Development of Office Buildings. As part of Phase Two, Owner may, but is not required to, Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One. Owner shall use commercially reasonable efforts to market development opportunities for Office Buildings in Phase Two, but shall have no obligation to Commence or Complete Construction of any Office Buildings or the Parking Structures as part of Phase Two.

5.4.3 ~~5.4.3~~ Subsequent Phases. Except as otherwise expressly provided herein, Owner shall be subject to the following provisions pertaining to the scope and timing of Development of any Residential Buildings, Retail Buildings, or Office Buildings not Developed as part of Phase One or Phase Two.

(A) ~~-(A)~~ Residential Building IV. If Residential Building IV is not developed as part of Phase Two, Owner may proceed to Develop Residential Building IV at any time prior to expiration of the Term, provided Owner has Completed Construction of all the required components of Phase One and Phase Two pursuant to Subsections 5.4.1(C) and 5.4.2(B) of this Development Agreement.

(B) ~~-(B)~~ Retail Buildings. Owner may proceed to Develop up to the entire 250,000 square feet of space within Retail Buildings authorized by the Existing Development Approvals that are not Developed as part of Phase One and/or Phase Two at any time prior to expiration of the Term.

(C) ~~-(C)~~ Office Buildings. Owner may proceed to Develop up to the entire 465,000 square feet of space within Office Buildings and the associated Parking Structures authorized by the Existing Development Approvals that are not Developed as part of Phase One and/or Phase Two at any time prior to expiration of the Term.

(D) ~~-(D)~~ Right to Complete Development. Owner shall have the right to Complete Construction of each Retail Building, Office Building, Parking Structure, and/or Residential Building it has Commenced Construction of prior to expiration of the Term pursuant to this Subsection 5.4.3 (**Exhibit D**, Milestones ~~Nine~~Eight and ~~Ten~~Nine), provided Owner continues to diligently Develop such Retail Building, Office Building, Parking Structure, or Residential Building to completion and no applicable Ministerial Approvals or Ministerial Permits for such use, structure, or building are revoked or expire.

5.4.4 ~~5.4.4~~ Owner's Discretion in Timing of Development. The Parties acknowledge that Owner cannot at this time predict when or the precise rate at which the Property ~~will~~shall be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand and other similar factors. The California Supreme Court held in *Pardee Construction v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a latter-enacted initiative restricting the timing of development to prevail over such parties' agreement. It is the Parties' intent to cure that deficiency by expressly addressing the timing of Development. Except as expressly set forth in the Development Plan, including, without limitation, ~~Section 5.4 of~~ this Development Agreement, regardless of any future enactment, whether by initiative or otherwise, Owner shall have the vested right to Develop the various components of the Project in such order, at such rate, and at such times as Owner deems appropriate within the exercise of its subjective business judgment.

5.4.5 ~~5.4.5~~ Owner's Obligation to Keep City Informed of Development Status. In addition to Owner's obligation to submit information to the City pursuant to Section 18.2 of this Development Agreement, within thirty (30) days of receipt of written request of the City, Owner shall: (i) inform the City in writing regarding the status of, anticipated timeframe for, and

actual or potential constraints to Development of the various components of the Project; (ii) inform the City in writing regarding Owner's actual or intended efforts to market development opportunities for Office Buildings and the economic, financial, and other factors that Owner contends makes such efforts commercially reasonable; and (iii) inform the City in writing regarding Owner's actual or intended efforts to reach an agreement with a hotel operator at fair market value for the disposition and development of the Hotel and the economic, financial, and other factors that Owner contends makes such efforts commercially reasonable; and (iv) afford the City the opportunity to provide input to the Owner regarding the foregoing.

5.5 Tentative Subdivision Map and Other Entitlement Extensions. In accordance with California Government Code Sections 65863.9 and 66452.6, the life of all tentative subdivision maps or tentative parcel maps, whether vesting or not, or any other Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications, except for grading and building permits and certificates of occupancy, which may be approved by the City in connection with Development of the Project, is hereby extended to be coterminous with the Term of this Development Agreement. The Parties also agree that up to six (6) phased Final Maps may be processed and recorded. All tentative maps prepared for the Project shall comply with the provisions of Government Code Section 66473.7 to the extent applicable hereto.

5.6 Project Trip Budget Allocation. During the Term of this Development Agreement, the City shall adjust the number of A.M. and P.M. peak hour vehicle trips in the Specific Plan Area Trip Budget Allocation that are available for other future new development in the Specific Plan area in an amount equal to the Project Trip Budget Allocation. During the Term of this Development Agreement, the Project Trip Budget Allocation shall be automatically adjusted without the need to amend this Development Agreement, to account for future changes in the trip generation rates published in future editions of the ITE's Trip Generation Manual. Prior to issuance or approval of any permits or land use entitlements for the expansion or intensification of existing uses or the construction of new development in the Specific Plan area that would necessitate adjustment to the Specific Plan Area Trip Budget Allocation, the City Manager shall review the trip generation rates published in the then latest edition of the ITE's Trip Generation Manual and determine whether the Project Trip Budget Allocation should be automatically adjusted in accordance therewith. If the City Manager determines, in his or her reasonable discretion, that the Project Trip Budget Allocation should be automatically adjusted due to changes in the published trip generation rates, City shall make corresponding adjustments to the number of A.M. and P.M. peak hour vehicle trips in the Specific Plan Area Trip Budget Allocation available for other future new development in the Specific Plan area.

The purpose of this Section 5.6 is to ensure that sufficient peak hour vehicle trips remain in the Specific Plan Area Trip Budget Allocation during the Term of this Development Agreement to accommodate Development of the Project at the densities and intensities authorized by the Development Plan. The Parties expressly acknowledge and agree that this Section 5.6 and this Development Agreement shall not be interpreted to give Owner a vested right to a specific number of peak hour vehicle trips from the Specific Plan Area Trip Budget Allocation for the purpose of either expanding or limiting Owner's vested rights to Develop the Project at the densities and intensities authorized by the Development Plan in the event that the published trip generation rates in the ITE Trip Generation Manual change. The Parties further expressly acknowledge and agree that no adjustment to the Project Trip Budget Allocation by the

City for any reason whatsoever after the Development Agreement Date (including, but not limited to, changes to applicable ITE trip generation rates, changes to surrounding projects' trip budget allocations, or other changed circumstances) shall operate to impede Developer's vested right to develop the Project, including but not limited to the full range of uses and intensities specified in the Existing Development Approvals.

SECTION 6 ~~SECTION 6~~ ENFORCEMENT

Unless this Development Agreement is terminated or cancelled pursuant to the provisions of this Development Agreement, this Development Agreement or any amendment hereto, shall be enforceable by any Party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by City which alters or amends the rules, regulations or policies of Development of the Project as provided in this Development Agreement pursuant to Section 65865.4 of the Development Agreement Statute; provided, however, that the limitations of this Section shall not apply to changes mandated by State or Federal laws or other permissible changes or new regulations as more particularly set forth in Section 16 of this Development Agreement.

SECTION 7 ~~SECTION 7~~ PUBLIC BENEFITS

7.1 Payment of Community Benefit Fees. As material consideration for City's entering into this Development Agreement, Owner shall pay City nonrefundable Community Benefit Fees in accordance with Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not subject to the Mitigation Fee Act or the Quimby Act.

7.2 Affordable Housing. ~~4.-~~ Owner recognizes City's obligations under State law to facilitate the development of housing at various levels of affordability and the policy of the City stated in the General Plan Housing Element to coordinate with the private sector in the development of affordable housing. As material consideration for City's entering into this Development Agreement, Owner agrees to coordinate with the City in the provision of affordable housing by complying with the terms of the Affordable Housing Implementation Plan ("AHIP") attached as **Exhibit F** to this Development Agreement.

The AHIP requires that Owner Develop two hundred (200) Affordable Units at a specified ratio and unit size mix within Residential Buildings I, II, III, and V. The Affordable Housing Implementation Plan further provides that no less than one hundred (100) of these Affordable Units shall be reserved for Lower Income Households, and the balance of the Affordable Units shall be reserved for Moderate Income Households, for an affordability period of at least fifty-five (55) years. The AHIP also requires that Owner market the Affordable Units to Seniors, Veterans, and City residents and that priority for the rental or lease of the Affordable Units must be given to Seniors, Veterans (including Veterans of the City adopted 3rd Battalion, 5th Marines), and City residents.

Pursuant to the AHIP, Owner is required to enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") with the City with respect to each Residential Building containing Affordable Units, in substantially the form

as set forth in Attachment 1 to the AHIP, or in a similar form approved by the City Manager and City Attorney, and to record said Regulatory Agreement against the parcel on which the subject Residential Building is proposed prior to the issuance of a vertical building permit for the Residential Building. The City Manager is hereby authorized to approve and execute each such Regulatory Agreement and all amendments thereto and to establish and levy associated fees on behalf of the City, and City shall maintain authority of each Regulatory Agreement and the authority to implement each Regulatory Agreement through the City Manager, as more fully set forth in the AHIP.

Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the requirements and restrictions set forth in the AHIP, and Owner covenants that it shall not enter into any agreement that is inconsistent with such requirements and restrictions without the express written consent of the City. The provisions of the AHIP shall be senior, non-subordinate covenants and an encumbrance running with the land for the full Term of this Development Agreement. In no event shall the provisions of the AHIP be made junior or subordinate to any deed of trust or other documents providing financing for Development or operation of the Project, or any lien or encumbrance whatsoever for the entire Term of this Development Agreement. Nor shall the provisions of the AHIP be made junior or subordinate to any extension, amendment, or modification of any lien or encumbrance recorded against the Property prior to the Development Agreement Date.

7.3 Provision of the Village Park Improvements. In accordance with the Development Plan, Owner shall ~~complete the construction and improvement~~Complete Construction of the Village Park in Phase One of the Project pursuant to Subsection 5.4.1 of this Development Agreement. Although the Village Park will be available for public access and will be publicly accessible, the Village Park shall be privately owned, operated, and maintained by Owner. The Covenant Agreement shall contain a provision requiring the Village Park to be accessible and usable by the public, subject to reasonable limitations on public access to address, among other things, public safety, the security of users of the Village Park, reasonable late-night and after-hours restrictions, or occasional private events which provision shall be made enforceable by the City.

7.4 Provision of Public Art and Payment of Public Art In-Lieu Fees. Owner shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of this Development Agreement ("Owner's Public Art Obligation"). Pursuant to the Specific Plan, the minimum aggregate value of Owner's Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which ~~will~~shall be based on the valuation as determined by the City's Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project. The Parties agree that (a) Six Hundred Fifty Thousand Dollars (\$650,000) of Owner's Public Art Obligation ~~will~~shall be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of this Development Agreement, and (b) that portion of Owner's Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Property by Owner, as approved by the City, and may not be satisfied through contribution to the City's Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in

the “Public Art” provisions of Section V, at pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The procedures, timing, and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in **Exhibit H** to this Development Agreement.

7.5 Provision of Public Improvements. Owner shall pay for and/or construct and install, and where required, maintain, the public improvements required by the Existing Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in Section 8 of and **Exhibit E** to this Development Agreement.

7.6 Provision of Private Infrastructure Improvements On and Within the Property. To the extent required by, and in accordance with timing and phasing conditions of, the Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications (including, but not limited to the District Sequencing Plan reflected in the conditions of approval to the Existing Development Approvals), Owner shall complete construction and installation of all private infrastructure improvements on or within the Property, including, but not limited to the following: streets; sidewalks and pedestrian walkways; bicycle lanes and pathways; private bus access improvements; street furniture; pet waste stations; parking improvements; lighting; landscaping; directional signage; entry monuments and features; storm drain lines; debris gates and full capture trash screens for all private catch basin inlets; low impact development, hydromodification, and other structural BMPs described in the approved Water Quality Management Plan for the Project; infrastructure improvements that create coordinated and compatible linkages between the Property and the adjacent Oakbrook Village Shopping Center, including, but not limited to, bicycle and pedestrian connections at the existing vehicular connection between the two properties and a pedestrian walkway that connects the Oakbrook Village property with the Laguna Hills Transportation Center; and other private infrastructure improvements required by the Existing Development Approvals and/or any Subsequent Development Approvals or Major Project Modifications. Although certain private streets, sidewalks, bus stops, street furniture, pedestrian pathways, bicycle lanes and pathways, parking areas, and other developed portions of the Property will be available for public access and will be publicly accessible, all such areas of the Property shall be privately owned, operated, and maintained by Owner. The Covenant Agreement shall contain a provision expressly making the areas described in the previous sentence available for public access, subject to reasonable limitations to public access to address, among other things, public safety, the security of users of the area, reasonable late night and after-hours restrictions, or occasional private events which provision shall be expressly made enforceable by the City.

SECTION 8 ~~SECTION 8~~ PUBLIC IMPROVEMENTS AND SERVICES

8.1 Public Improvements Required to Support the Project. As material consideration for City’s entering into this Development Agreement, Owner shall pay for and/or undertake the construction and installation of, public improvements required by the Existing Development Approvals, the Existing Land Use Regulations, this Development Agreement, and the Specific Plan to support the Project as specified in **Exhibit E** to this Development Agreement. **Exhibit E** constitutes a complete list of all required public improvements for the Project, unless the Project is modified, requiring the modification of **Exhibit E**.

8.2 Cooperation by City and Owner for Public Improvements. The required public improvements ~~will~~shall be designed and constructed in phases as required to service the Project or as otherwise required by the Project conditions of approval and/or this Development Agreement. Owner shall design and construct these public improvements in accordance with all applicable federal, state and City laws, ordinances, regulations, codes, standards, and other applicable requirements. These improvements shall be subject to City's approval and acceptance. City shall cooperate with Owner for the purpose of coordinating all public improvements constructed under the Existing Development Approvals, Subsequent Development Approvals, Major Project Modifications, or this Development Agreement to existing or newly constructed public improvements, whether located within or outside of the Property. Owner shall be responsible for and use good faith efforts to acquire any right(s)-of-way necessary to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, the Existing Development Approvals, any Subsequent Development Approvals, and/or any Major Project Modifications. Should it become necessary due to Owner's failure or inability to acquire said right(s)-of-way within four (4) months after Owner begins its efforts to so acquire said right(s)-of-way, City shall negotiate the purchase of the necessary right(s)-of-way to construct the public improvements as required by, or otherwise necessary to comply with the conditions of, this Development Agreement and, if necessary in accordance with the procedures established by State law, and the limitations hereinafter set forth in this Section, City may use its powers of eminent domain to condemn said required right(s)-of-way. Owner agrees to pay for all costs associated with said acquisition and condemnation proceedings. If City cannot make the proper findings or elects not to exercise its discretion to adopt a resolution of necessity, or if for some other reason under the condemnation laws City is prevented from acquiring the necessary right(s)-of-way to enable Owner to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, then the Parties agree to amend this Development Agreement to modify Owner's obligations accordingly. Any such required modification shall involve the substitution of other considerations or obligations by Owner (of similar value) as are negotiated in good faith between the Parties. Nothing contained in this Section shall be deemed to constitute a determination or resolution of necessity by City to initiate condemnation proceedings.

8.3 Timing, Phasing and Sequence of Public Improvements and Facilities. The timing, phasing and sequence of the construction of public improvements, facilities or the payment of fees therefore shall be constructed or paid in accordance with the timing, phasing and sequence set forth in the Development Plan.

8.4 Maintenance of Public Improvements. City shall not be responsible or liable for the maintenance or care of public improvements, intended to be dedicated to the City, until City approves and accepts them. City shall exercise no control over the public improvements until accepted. Any use by any person of the public improvements, or any portion thereof, shall be at the sole and exclusive risk of the Owner at all times prior to City's acceptance of the public improvements. Owner shall maintain all the public improvements in a state of good repair until they are completed by Owner and approved and accepted by City. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the public improvements or their condition prior to acceptance. Approval and acceptance of public improvements shall not be unreasonably withheld by the City. Notwithstanding the foregoing, to

the extent the Existing Development Approvals, Subsequent Development Approvals, and Major Project Modifications require Owner to maintain public improvements after acceptance by the City, Owner shall be responsible and liable for the maintenance and care of such public improvements to the standards specified in the therein. If Owner fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Owner under this Development Agreement.

8.5 Acceptance of Improvements; As-Built or Record Drawings. If the public improvements are properly completed by Owner and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City shall accept the public improvements. Prior to the total or partial acceptance of the public improvements by City, Owner shall file with the Recorder's Office of the County of Orange a notice of completion for the accepted public improvements in accordance with California Civil Code section 8182, at which time the accepted public improvements shall become the sole and exclusive property of City without payment therefore. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any public improvements. Notwithstanding the foregoing, City may not accept any public improvements unless and until Owner provides the required sets of "as built" or record drawings or plans to the City for review and approval for all such public improvements. The drawings shall be certified and shall reflect the condition of the public improvements as constructed, with all changes incorporated therein.

SECTION 9 ~~SECTION 9~~-DEDICATIONS AND EXACTIONS

9.1 Dedications In Conjunction With Public Improvements. Right-of-way or property for required public improvements shall be irrevocably offered for dedication as required by the Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications. These dedications shall be in fee or as an easement at the discretion of City. The City may accept the Owner's offer of dedication upon Owner's completion and acceptance by City of the associated improvements in compliance with the specifications as approved by City. Nothing contained in this Development Agreement, however, shall be deemed to preclude City from exercising the power of eminent domain with respect to the Property or the Project, or any part thereof.

9.2 Dedication for Enhanced Parkway Improvements Along Avenida de la Carlota. Owner shall dedicate a landscape and/or pedestrian access easement to the City associated with the enhanced parkway improvements along Avenida de la Carlota described in **Exhibit E**, paragraphs 10 and 11, for any area described therein not already included within the public right of way. Such dedication shall be made by an instrument in a form acceptable to the City's Public Services Director and City Attorney.

9.3 Dedication of Landscape Maintenance Easement for Entry Monuments. Owner shall dedicate a landscape maintenance easement to City to coincide with and matching the rear curbline of the corner entry monuments at the Property's entrance on the southerly side of El Toro Road at Regional Center Drive. Such dedication shall be made pursuant to the applicable Final Map or by a separate dedication instrument in a form approved by the City's Public

Services Director and City Attorney, to be recorded prior to the issuance of a certificate of occupancy for any building.

9.4 Dedication of Easement for Traffic Signal Equipment. Owner shall dedicate a traffic signal maintenance easement to City to coincide with any traffic signal equipment, if any, that is installed on the Property in association with construction an installation of the traffic signal at the intersection of Avenida de la Carlotta and the extension of Health Center Drive described in paragraph 5 of **Exhibit E**. Such dedication shall be pursuant to a separate dedication instrument in a form approved by the City's Public Services Director and City Attorney, to be recorded prior to completion of construction of the traffic signal.

SECTION 10 ~~SECTION 10~~ FEES

10.1 Development Fees Applicable to the Project. Subject to the provisions of this Section 10, Owner shall pay all existing impact and development fees applicable to the Project on the Development Agreement Date charged by City for the purpose of defraying all or a portion of the cost of public facilities related to development of the Project (“Development Fees”). For avoidance of doubt, Community Benefit Fees are not Development Fees and the only Development Fees that shall apply to the Project are those listed in **Exhibit B** to this Development Agreement.

The Parties acknowledge that the following fees, taxes, and charges do not constitute Development Fees and that nothing in this Development Agreement is intended or shall be construed to release Owner from the obligation to pay these fees, taxes, and charges, including increases, if and when they become due:

(a) ~~(a)~~ City’s normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City’s costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; and

(b) ~~(b)~~ The annual Development Agreement administration fee required to be paid pursuant to Section 10.7, below.

(c) ~~(c)~~ Any fees and charges required to be paid by Owner pursuant to the AHIP.

(d) ~~(d)~~ Fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; and

(e) ~~(e)~~ Community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, and new water meter fees, ~~and the property development tax payable under the Laguna Hills Municipal Code.~~

10.2 Fees Applicable for Modified Existing Development Approvals. Notwithstanding Section 10.1 of this Development Agreement, if and to the extent that the Existing Development Approvals are modified or amended after the Development Agreement Date and Owner is authorized under the modified Existing Development Approvals to develop any additional density or intensity of use beyond what is allowed as of the Development Agreement Date, City shall retain the right to require Owner to pay all City fees for such additional density or intensity of use to the extent such fees would be applicable in the absence of this Development Agreement.

10.3 Public Park In-lieu Fees.

10.3.1 ~~10.3.1~~ Amount of Fee. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to the Project, regardless of whether Owner proposes a subdivision map for each Residential Building. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code.

10.3.2 ~~10.3.2~~ Nonrefundable Guaranteed Fees. As material consideration for City's entering into this Development Agreement, the Owner expressly agrees that, except as provided in Subsection ~~10.5.5~~ 10.5.7 and Section 17.4 of this Development Agreement, notwithstanding any provision of Chapter 8-06 of the Laguna Hills Municipal Code, the Quimby Act, or other provisions of law, Eighteen Million One Hundred Sixty Nine Thousand Thirty Two Dollars (\$18,169,032), which represents ~~the an~~ amount ~~of equal to the~~ Public Park In-lieu Fees attributable to the first one thousand one hundred sixty two (1,162) residential units anticipated to be Developed by Owner, shall be nonrefundable and guaranteed, and must be paid to City even if no or less than one thousand one hundred sixty two (1,162) residential units are actually constructed. Owner agrees to pay these nonrefundable guaranteed fees at the times set forth in Subsection 10.3.3, below, and **Exhibits B and D**. To the extent any portion of said fees are paid prior to the issuance of a vertical building permit for the Residential Building containing any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E), below, such portion shall ~~be constitute Community Benefit Fees when paid, subject to Subsection 10.5.4, but shall be credited against and~~ applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for the Residential Building containing said residential unit, provided a vertical building permit is issued for the Residential Building containing the residential unit during the Term of this Development Agreement and such building permit is not revoked and does not expire. No portion of the nonrefundable, guaranteed fees that are paid or owed pursuant to this Section 10.3 shall be credited or applied to any residential units on the Property for which a vertical building permit is issued after the expiration or termination of this Development Agreement. Said payments shall be subject to Subsection 10.5.4 of this Development Agreement, and Owner expressly agrees that these payments shall be nonrefundable and guaranteed, and that the City may retain and expend that portion, if any, of such nonrefundable guaranteed fees that are paid by Owner to City, which are attributable to residential units which are not actually constructed, or which City would otherwise be required to refund to Owner or other record owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Subsection 10.3.2 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

10.3.3 ~~10.3.3~~ Timing of Payment of the Community Benefit Fees that may be deemed Credits Against Public Park In-lieu Fees. Notwithstanding any provision of Chapters

8-06 or 8.07 of the Laguna Hills Municipal Code, the Quimby Act, or other law, the Parties expressly agree that the Public Park In-lieu Fees attributable to the residential units constructed, or anticipated to be constructed, as part of the Project, shall be paid in the amounts and at the times specified below:

(A) ~~(A)~~ Owner shall pay City Two Million Dollars (\$2,000,000) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(B) ~~(B)~~ Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues a vertical building permit for any ~~new~~ Retail Buildings or any ~~new~~ Office Buildings; or (ii) the date that is four (4) years after the Development Agreement Date (**Exhibit D**, Milestone Four). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection ~~22.1.4~~ 422.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(C) ~~(C)~~ Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues the first ~~certificate~~ Certificate of ~~occupancy~~ Occupancy for any ~~new~~ Retail Buildings or any Office Buildings; or (ii) the date that is seven (7) years after the Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection ~~22.1.4~~ 422.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(D) ~~(D)~~ Owner shall pay City Six Million Five Hundred Seventy-One Thousand Three Hundred Forty Four Dollars (\$6,571,344) in increments at the following times: (i) Eight Thousand One Hundred Seventy Three Dollars (\$8,173)¹ per unit for each of the first 804 residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is seven (7) years after the Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the amount of the Public Park In-Lieu Fees applicable to the first 804 residential units that are required to be paid pursuant

¹ This amount is calculated as follows: $[(\$15,636 \text{ per unit} \times 804 \text{ units}) - (\$6,000,000)] / 804 \text{ units}$.

to this Subsection 10.3.3(D) have been reduced to reflect the three payments of Two Million Dollars (\$2,000,000) required pursuant to Subsections 10.3.3 (A)-(C), above.

(E) ~~(E)~~ Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636) per unit for each of the next 358 residential units² prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone ~~Nine~~Eight). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(F) ~~(F)~~ Owner shall pay City Fifteen Thousand Six Hundred Thirty-Six Dollars (\$15,636) per unit for each additional residential unit Owner Develops as part of the Project after the 1,162nd residential unit, prior to the issuance of a vertical building permit for the Residential Building containing the residential unit.

10.3.4 ~~10.3.4~~ The Parties expressly acknowledge and agree that the Public Park In-lieu Fee payment obligations set forth in this Section 10.3 may be assumed, in whole or in part, by a residential developer or other person or entity that purchases a portion of the Property on which a Residential Building is designated to be Developed, and agrees to assume such payment obligations in accordance with the provisions of Section 21 of this Development Agreement (Assignment).

10.4 Public Art In-lieu Fees. The Parties expressly agree that Owner's Public Art Obligation shall be subject to the provisions set forth in Subsections 10.4.1 and 10.4.2, below.

10.4.1 ~~10.4.1~~ Credit. The City acknowledges and agrees that Owner paid a Public Art In-lieu Fee to the City the amount of Three Hundred Thousand Dollars (\$300,000) for improvements authorized by the 2016 Five Lagunas Entitlements that were ultimately not constructed. Accordingly, the City agrees it will credit this payment towards Owner's Public Art Obligation for the Project.

10.4.2 ~~10.4.2~~ Nonrefundable Advance. Notwithstanding any provision of the Specific Plan, the Mitigation Fee Act, or other provisions of State law, the Parties expressly agree that Owner shall pay City a nonrefundable guaranteed Public Art In-lieu Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), in advance, on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement. The City shall credit this payment against Owner's Public Art Obligation for the Project. However, said payment shall be subject to the provisions of Subsection 10.5.3, below, and Owner expressly agrees that this payment shall be guaranteed and nonrefundable to Owner, and that the City may retain and expend such payment, even if Owner's Public Art Obligation for the

² This amount applies to the 805th residential unit through the 1,162nd residential unit.

Project is less than Three Hundred Fifty Thousand Dollars (\$350,000). Owner acknowledges and agrees that the Three Hundred Thousand Dollar (\$300,000) credit provided for in Subsection 10.4.1, above, shall not be applied to reduce Owner's obligation to pay the nonrefundable guaranteed fee required by this Subsection 10.4.2. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, this Subsection 10.4.2 shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

10.5 Community Benefit Fees. In addition to Development Fees payable by Owner pursuant to the foregoing provisions of this Section 10, as material consideration for City's entering into this Development Agreement, the Owner agrees to pay City, and in addition to the payment of Community Benefit Fees pursuant to Section 10.3, which remain Community Benefit Fees unless and until such fees are credited to Public Park In-lieu Fees nonrefundable guaranteed Community Benefit Fees in accordance with this Section 10.5 of this Development Agreement. Because Community Benefit Fees are an obligation arising from this Development Agreement, they are not subject to the Mitigation Fee Act or the Quimby Act, and City may deposit such payments into the City's general fund and expend such funds for any lawful purpose.

10.5.1 ~~10.5.1~~ Guaranteed Community Benefit Fees. Owner shall pay a nonrefundable guaranteed Community Benefit Fee in the amount of Two Million Two Hundred Twenty-Seven Thousand Sixty-Six Dollars (\$2,227,066) in the amounts and at the times specified below:

(A) ~~(A)~~ Owner shall pay City One Million One Hundred Thirteen Thousand Five Hundred Thirty-Three Dollars (\$1,113,533) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(B) ~~(B)~~ Owner shall pay City One Million One Hundred Thirteen Thousand Five Hundred Thirty-Three Dollars (\$1,113,533) ~~on or before the date that is fifteen (15) months after the Development Agreement Date (Exhibit D, Milestone Two). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.~~

~~10.5.2 Additional Community Benefit Fee Payment for Failure to Timely Develop Hotel.~~ In addition to any other Community Benefit Fees payable pursuant to this Section 10.5, in the event the Owner has not Completed Development of the Hotel within eight (8) years of the Development Agreement Date, the Owner shall pay the City an additional Community Benefit Fee in the amount of Five Hundred Thousand Dollars (\$500,000) on or before the date that is ~~eight~~fifteen (8~~15~~) ~~years~~months after the Development Agreement Date (**Exhibit D**, Milestone ~~Seven~~Two). Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

10.5.2 Community Benefit Fees with respect to the Hotel. In addition to any other Community Benefit Fees payable pursuant to this Section 10.5, the Owner shall pay to the City the amount of \$396 each year, increased at the rate of three percent (3.0%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement and annually thereafter, for each Residential Unit within a Residential Building for which a Certificate of Occupancy has been issued. Owner's obligation to pay this additional Community Benefit Fee shall terminate upon the earliest to occur of: (i) the date that the Hotel is open for business; (ii) the end of the Twenty Year Period or (iii) Owner's termination of this Development Agreement as a result of the Default by the City. In addition to the above, in the event the Owner has not Completed Construction of the Hotel within seven (7) years of the Development Agreement Date, and notwithstanding Excused Delay and/or Excused Delay re Hotel, the Owner shall pay the City an additional Community Benefit Fee in the amount of Five Hundred Thousand Dollars (\$500,000) on or before the date that is seven (7) years after the Development Agreement Date. Owner's obligation to make these payments by the dates set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) or Subsection 5.4.1(H) (Construction of Hotel) of this Development Agreement.

10.5.3 ~~10.5.3~~ Nonrefundable Public Art In-lieu Fee Advance Deemed an Additional Community Benefit Fee in Event Project Not Developed. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, that portion, if any, of the nonrefundable guaranteed Public Art In-lieu Fee payment advance made by Owner pursuant to Subsection 10.4.2 of this Development Agreement, which is in excess of Owner's Public Art Obligation for the Project, or which City would otherwise be required to refund to Owner or other record owner(s) of the Property pursuant to the Specific Plan, the Mitigation Fee Act, or other law, shall be deemed a Community Benefit Fee for purposes of this Development Agreement. Notwithstanding any provision of the Mitigation Fee Act or other law, under no circumstances shall the City be obligated to return this Public Art In-Lieu Fee Advance to the Owner or other record owner(s) of the Property.

10.5.4 ~~10.5.4~~ Nonrefundable Guaranteed Public Park In-lieu Fee Payments Deemed Community Benefit Fees in Event Residential Units Not Timely Developed. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the event the Owner Develops no or fewer than One Thousand One Hundred Sixty-Two (1,162) residential dwelling units during the Term of this Development Agreement, that portion, if any, of the nonrefundable guaranteed Public Park In-lieu Fees paid by Owner to City pursuant to Subsection 10.3.2 of this Development Agreement, which are attributable to residential units that are not actually constructed, or which City would otherwise be required to refund to Owner or the subsequent owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law, shall be deemed Community Benefit Fees for purposes of this Development Agreement. Notwithstanding any provision of the Mitigation Fee Act, Quimby Act, or other law, under no circumstances shall the City be obligated to return said fees to the Owner or other record owner(s) of the Property.

10.5.5 Community Benefit Fees with respect to Retail. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the

event less than sixty thousand (60,000) square feet of New Retail is leased by operating tenants by the date Owner Completes Construction of the third Residential Building, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars (\$120) per year, increased at the rate of three percent (3%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement Date and annually thereafter, for each Residential Unit in the fourth and fifth Residential Buildings for which Owner has received Certificates of Occupancy. For purposes of this Subsection 10.5.5, Owner's execution of a lease with an operating tenant to fill a vacancy that arises after the Development Agreement Date and before Completion of Construction of the third Residential Building in the approximately 10,126 square foot building identified on Exhibit C as "(E) Restaurant" or the approximately 12,970 square foot building identified on Exhibit C as "(E) Building" shall count towards the calculation of the sixty thousand (60,000) square feet of New Retail leasing threshold. Owner's obligation to pay this additional Community Benefit Fee shall commence upon issuance of a Certificate of Occupancy for the third Residential Building containing and shall terminate on the earlier to occur of the following: (i) the date that at least 60,000 square feet of New Retail becomes leased; or (ii) the later to occur of either (x) the end of the Twenty Year Period or (y) expiration of the Term of this Development Agreement.

10.5.6 Additional Community Benefit Fees. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars (\$120) per year, increased at the rate of three percent (3.0%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement and annually thereafter, for each Residential Unit located in a Residential Building for which Owner has received a Certificate of Occupancy. Notwithstanding any other provision of this Development Agreement, Owner's obligation to pay the Community Benefit Fees described in this Subsection 10.5.6 shall terminate upon the expiration of this Development Agreement. Owner shall remain obligated to pay the Community Benefit Fees required in this Subsection 10.5.6 for the period of time that is equivalent to sixteen (16) years from the date of the Development Agreement Date if Owner terminates this Development Agreement for a reason other than City Default or City terminates this Development Agreement for cause under Sections 18 or 19.

10.5.7 ~~10.5.5~~ Survival of Termination of Development Agreement. ~~Except as expressly provided in the next sentence, notwithstanding~~ Notwithstanding any other provision of this Development Agreement to the contrary, to the extent, and for the period, necessary to implement the provisions hereof, this Section 10.5 shall survive termination of this Development Agreement pursuant to Section 2.4, Section 10.6, Section 18 and/or Section ~~2019~~ of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement. Notwithstanding the previous sentence, in the event the City exercises its right to unilaterally terminate this Development Agreement pursuant to ~~either~~ Section 10.6 ~~or~~, Section ~~2018 and/or Section or Section 19~~ of this Development Agreement before Owner has Completed Construction of the required components of Phase One pursuant to Subsection 5.4.1(C) of this Development Agreement, the City shall be deemed to have waived all rights it may otherwise have pursuant to this Development Agreement to collect from Owner that portion, if any, of the Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in Public Park In-lieu Fees attributable to that portion of the 805th through 1,162nd residential units that Owner does

not Develop, which are owed pursuant to Subsection 10.3.3(E)(ii), but which have not yet been paid, and Owner's obligation to pay nonrefundable guaranteed Public Park In-lieu Fees pursuant to Subsections 10.3.2 and 10.5.4 of this Development Agreement that are attributable to ~~residential units~~ Residential Units Owner does not Develop shall be capped at Twelve Million Five Hundred Seventy One Thousand Three Hundred Forty Four Dollars (\$12,571,344) [$\$15,636$ per unit x 804 units = \$12,571,344].

10.6 Additional City Remedies for Non-Payment of Fees Owed by Owner. In the event the Owner fails to pay any Development Fees or Community Benefit Fees within the times set forth in this Section 10, in addition to all other legal remedies City may have pursuant to this Development Agreement and applicable law, City shall be entitled to withhold any further Ministerial Actions, Ministerial Approvals, and/or Ministerial Permits until all fees owed are paid in full. In addition, ~~notwithstanding to the rights granted City under~~ Sections 17, 18, ~~and 19, 20~~, or any other provisions of this Development Agreement, and without complying with the provisions of Sections 17, 18, ~~19~~, and ~~20~~ 19, it is expressly understood and agreed by the Parties that the City Council may unilaterally terminate this Development Agreement if, following notice and a public hearing in accordance with applicable law, the City Council finds that Owner has failed to pay any overdue Development Fees or Community Benefit Fees in full within thirty (30) days of the date the City provides written notice to the Owner stating the type and amount of overdue fees owed. Notwithstanding Section 5.5 of this Development Agreement, this Development Agreement, the Existing Development Approvals, all Subsequent Development Approvals, and all Major Project Modifications shall automatically expire, terminate and be of no further force and effect upon the effective date of an ordinance adopted by the City Council terminating this Development Agreement based on such a finding pursuant to this Section.

10.7 Annual Development Agreement Administration Fee. Commencing July 1, 2022, and annually, on or before July 1st of every year thereafter through and including July 1, 2030, Owner shall pay City a fixed fee to partially offset the costs incurred by the City to administer this Development Agreement (the "DA Administration Fee"). The initial amount of the DA Administration Fee shall be Twenty Thousand Dollars (\$20,000). Commencing July 1, 2022, and on each subsequent July 1st through and including July 1, 2031, the amount of the DA Administration Fee to be paid by Owner to City shall increase by three percent (3.0%).

SECTION 11 ~~SECTION 11~~ **EXISTING USES; AUTOMATIC RESCISSION OF 2016 FIVE LAGUNAS ENTITLEMENTS**

11.1 Existing Uses. City and Owner agree that those existing legally established uses on the Property may be retained until the Project is implemented.

11.2 Automatic Rescission of 2016 Five Llagunas Entitlements. City and Owner agree that the 2016 Five Llagunas Entitlements, and all of Owner's rights thereunder, whether vested or not, shall terminate and become null, void, and of no further force and effect at such time as all of the following have occurred: (i) the Authorizing Ordinance and this Development Agreement have each taken effect and are no longer subject to referendum; (ii) the times for appeal of the City's approval of the Existing Development Approvals and this Development Agreement have expired; (iii) all appeals, if any, by persons or entities other than Owner of the City's approval of the Existing Development Approvals and this Development Agreement have been heard and

denied; (iv) the times in which to bring a legal challenge to the City's approval of the Existing Development Approvals and/or this Development Agreement have expired; and (v) any litigation filed attacking the City's approval of the Existing Development Approvals, the Project, or this Development Agreement has been finally resolved such that the Existing Development Approvals remain in full force and effect and the time in which to appeal has expired.

SECTION 12 ~~SECTION 12~~-FUTURE APPROVALS

12.1 Basis for Denying or Conditionally Granting Future Subsequent Development Approvals. Before Owner can begin Development of the Project, Owner must secure additional Subsequent Development Approvals from City. The Parties agree that to the extent said Subsequent Development Approvals are Ministerial Actions, Ministerial Approvals or Ministerial Permits, City shall not, through the enactment or enforcement of any subsequent ordinances, rules, regulations, initiatives, policies, requirements, guidelines, or other constraints, withhold such approvals as a means of blocking construction or of imposing conditions on the Project which were not imposed during an earlier approval period unless City has been ordered to do so by a court of competent jurisdiction. The Parties further agree that to the extent said Subsequent Development Approvals are Discretionary Actions, Discretionary Approvals or Discretionary Permits, City shall exercise its discretion in a manner consistent with and in recognition of the Development Plan and which complies and is consistent with the Existing Land Use Regulations (as same may be modified in accordance with this Development Agreement), those Subsequent Land Use Regulations to which Owner has consented to in writing (which consent shall be in Owner's sole and absolute discretion), and such other standards, terms and conditions expressly contained in this Development Agreement. Notwithstanding the previous two sentences, City and Owner will use reasonable efforts to ensure each other that all applications for and approvals of all required Subsequent Development Approvals necessary for Owner to develop the Project in accordance with this Development Agreement are sought and processed in a timely manner.

12.2 Standard of Review of Subsequent Development Approvals. Except as otherwise provided under the Existing Development Approvals or the terms of this Development Agreement, the rules, regulations and policies that apply to any Subsequent Development Approvals which Owner must secure prior to the Development of the Property shall be the Existing Land Use Regulations, as defined in this Development Agreement.

12.3 City Review of Major Project Modifications. The rules, regulations and policies that apply to any Major Project Modification requested by Owner shall be those rules, regulations and policies in effect on the date Owner submits a complete application for said Major Project Modification. Notwithstanding the foregoing sentence or anything herein to the contrary, Owner expressly agrees that, while this Development Agreement is in effect, City shall have sole and absolute discretion whether to approve, conditionally approve, or deny any Major Project Modification requested by Owner, and Owner expressly waives any right Owner may otherwise have to approval by the City of any Major Project Modification under California law or the Zoning Code.

SECTION 13 ~~SECTION 13~~-AMENDMENT

13.1 Initiation of Amendment. Either Party may propose an amendment to this Development Agreement.

13.2 Procedure. The procedure for proposing and adopting an amendment to this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance.

13.3 Consent. Except as provided elsewhere within this Development Agreement, any amendment to this Development Agreement shall require the consent of both Parties, each in their sole and absolute discretion. No amendment of this Development Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each Party hereto.

13.4 Effect of Amendment to Development Agreement. The Parties agree that except as expressly set forth in any such amendment, an amendment to this Development Agreement ~~will~~shall not alter, affect, impair, modify, waive or otherwise impact any other rights, duties or obligations of either Party under this Development Agreement.

13.5 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation and flexibility between the City and Owner. The Development of the Project may demonstrate that clarifications to the Development Plan or clarifications or modifications to this Development Agreement are appropriate with respect to the details of performance of the City and Owner. To the extent allowable by law, Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Development Agreement. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda ("Operating Memoranda") approved by the Parties in writing which reference this Section 13.5. City agrees to promptly process Operating Memoranda when requested by Owner. Operating Memoranda are not intended to constitute either a substantive change or an amendment to this Development Agreement, but are ministerial clarification; therefore public notices and hearings shall not be required. Operating Memoranda may be used and thus deemed non-substantive and/or procedural if they do not result in, for example: i) a material changes in fees or costs; ii) an increase in density or intensity of use; iii) a change in permitted uses; iv) an increase in the maximum height and size of buildings; v) a decrease in the amount of land to be dedicated for public purposes; or vi) the reduction of improvement and construction standards and specifications for the Project. The City Attorney shall be authorized, upon consultation with, and approval of, the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute either a substantive change or an amendment to this Development Agreement which requires compliance with the provisions of Section 13.2 of this Development Agreement.

SECTION 14 ~~SECTION 14~~ NON-CANCELLATION OF RIGHTS

Subject to defeasance pursuant to Sections 2, 10.6, 17, ~~20~~18, 19, 21 or 22 of this Development Agreement, Owner's rights pursuant to the Existing Development Approvals shall be vested in the Property upon recordation of this Development Agreement.

SECTION 15 ~~SECTION 15~~ UNDERTAKINGS AND ASSURANCES CONTEMPLATED AND PROMOTED BY DEVELOPMENT AGREEMENT STATUTE

The mutual undertakings and assurances described above and provided for in this Development Agreement are for the benefit of City and Owner and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development which was contemplated and promoted by the Development Agreement Statute. City agrees that it will not take any actions which are intended to circumvent this Development Agreement; provided, however, that any action of the electorate shall not be deemed an action for purposes of this Section.

SECTION 16 ~~SECTION 16~~ RESERVED AUTHORITY

16.1 Reservation of Authority With Respect to Subsequent Development Approvals and Major Project Modifications. In addition to the normal and customary discretion exercised by the City in connection with consideration of applications for land use entitlements in accordance with Section 12, Owner expressly understands and agrees that all Subsequent Development Approvals that are Discretionary Actions, Discretionary Approvals, or Discretionary Permits, and all Major Project Modifications, shall also be subject to review by the City pursuant to CEQA, including but not limited to CEQA Guidelines sections 15162-15164. Notwithstanding any other provision set forth in this Development Agreement to the contrary, City reserves the right, after the Development Agreement Date to exercise the same degree of discretion and control in its consideration of Subsequent Development Approvals and Major Project Modifications that it would have in the absence of this Development Agreement to impose conditions under CEQA, and other applicable laws and regulations that apply to all similar development throughout the City, in order to mitigate the Project's impact on the environment. In addition, consistent with Section 5.1 of this Development Agreement, notwithstanding any provision of California law or the Zoning Code to the contrary, City reserves the right after the Development Agreement Date to exercise sole and absolute discretion and control in its consideration of any Major Project Modification requested by Owner.

16.2 State and Federal Laws and Regulations. In the event that the State or Federal laws or regulations enacted after this Development Agreement has been entered into prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of the Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Development Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

16.3 Uniform Codes. This Development Agreement shall not prevent City from applying new rules, regulations and policies contained in Uniform Codes as long as adoption of the Uniform Codes applies to all development in the City.

16.4 Public Health and Safety. This Development Agreement shall not prevent City from adopting new rules, regulations and policies, including amendments or modifications to Uniform Codes described in Section 16.3 of this Development Agreement, which directly result from findings by City that failure to adopt such rules, regulations or policies would result in a condition injurious or detrimental to the public health and safety.

SECTION 17 ~~SECTION 17~~ CANCELLATION

17.1 Initiation of Cancellation. Either Party may propose cancellation of this Development Agreement.

17.2 Procedure. The procedure for proposing a cancellation of and cancelling this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance. Such procedures are set forth in Section 65868 of the California Government Code.

17.3 Consent of Owner and City. Subject to the Parties' rights and obligations regarding cancellation set forth in Section 22.3, except as otherwise provided in ~~Sections~~Section 10.6 ~~or 20~~ of this Development Agreement, any cancellation of this Development Agreement shall require the mutual written consent of Owner and City, each in their sole and absolute discretion.

17.4 Fee Payment Obligations. In the event this Development Agreement is cancelled pursuant to the provisions of this Section 17, City shall be entitled to retain and/or seek payment from Owner of all Development Fees and Community Benefit Fees due to be paid pursuant to the terms of this Development Agreement prior to the date cancellation is proposed by a Party; however, Owner shall have no obligation to pay any Development Fees or Community Benefit Fees that are subject to deferral pursuant to Section 22.1.4 as of the date of cancellation or are due to be paid pursuant to the terms of this Development Agreement after the date cancellation is proposed by a Party.

SECTION 18 ~~SECTION 18~~ PERIODIC REVIEW

18.1 Time for Review. In accordance with the procedures set forth in the Development Agreement Ordinance, City shall, at least every twelve (12) months after the Development Agreement Date, review the extent of good faith compliance by Owner with the terms and conditions of this Development Agreement. Such periodic review shall determine compliance with the terms of this Development Agreement pursuant to California Government Code Section 65865.1 and other successor laws and regulations. If City fails to review the Project and the Owner's compliance with the material terms of this Development Agreement, Owner will be deemed to be in compliance with the provisions of this Development Agreement, and the Development Agreement will be deemed in full force and effect. The City's failure to review the Project or Owner's compliance with the terms of the Development Agreement, or Owner's

failure to submit evidence concerning its good faith compliance with the material terms of the Development Agreement as specified in Section 18.2 of this Development Agreement, shall not constitute or be asserted by either Party as a breach of the Development Agreement by the other Party.

18.2 Owner's Submission. Each year, not less than forty-five (45) days nor more than ninety (90) days prior to the anniversary of the Development Agreement Date, Owner shall submit evidence to the City's Community Development Director demonstrating its good faith compliance with the terms and conditions of this Development Agreement.

18.3 Findings. Within sixty (60) days after the submission of Owner's evidence, the City Council shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied in good faith with the terms and conditions of this Development Agreement. The burden of proof on this issue shall be on the Owner. If the City Council finds that Owner has so complied, the review for that period shall be deemed concluded. If the City Council finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of this Development Agreement for the period under review, Owner shall be deemed to be in ~~default~~non-compliance of the Development Agreement, and City may proceed in accordance with Section ~~19.1~~18.5.

18.4 Initiation of Review by City. In addition to the periodic review set forth in this Development Agreement, the City may at any time initiate a review of this Development Agreement upon the giving of written notice thereof to Owner. Within thirty (30) days following receipt of such notice, Owner shall submit evidence to the City's Community Development Director of Owner's good faith compliance with this Development Agreement and such review and determination shall proceed in the manner as otherwise provided in this Development Agreement.

~~SECTION 19 EVENTS OF DEFAULT~~

18.5 ~~19.1 Defaults~~Non-Compliance by Owner. If the City Council finds and determines, on the basis of substantial evidence, and subject to limitations on remedies in this Development Agreement, that Owner has not complied in good faith with the terms and conditions of this Development Agreement, City may, by written notice to Owner, specify the manner in which Owner has failed to so comply and state the steps Owner must take to bring itself into compliance. Owner shall be given at least sixty (60) days to cure such non-compliance and if the actions required to cure such non-compliance take more than sixty (60) days, then City shall give Owner additional time provided that Owner is making reasonable progress towards such end. If during the cure period, Owner fails to cure such noncompliance or is not making reasonable good faith progress towards such end, then, the City Council may, at its discretion, proceed to modify or terminate this Development Agreement or establish a time schedule for compliance in accordance with the procedures set forth in Section ~~20~~18.5 or 18.11 of this Development Agreement.

~~19.2 Specific Performance Remedy. After implementation of the Project, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning~~

~~and processing of the Project in agreeing to the terms of this Development Agreement and will be investing even more significant time in implementing the Project in reliance upon the terms of this Development Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if City fails to carry out its obligations under this Development Agreement. Therefore, specific performance of this Development Agreement is the only remedy which would compensate Owner if City fails to carry out its obligations under this Development Agreement, and City hereby agrees that Owner shall be entitled to specific performance in the event of a default by City hereunder. City and Owner acknowledge that, if Owner fails to carry out its obligations under this Development Agreement, City shall have the right to refuse to issue any permits or other approvals which Owner would otherwise have been entitled to pursuant to this Development Agreement. If City issues a permit or other approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. Except as expressly provided in the next sentence, City's right to specific performance shall be limited to those circumstances set forth above, and City shall have no right to seek specific performance to cause Owner to otherwise proceed with the Development of the Project in any manner. Notwithstanding the foregoing, in the event Owner defaults on an obligation to pay any fee at the time required pursuant to Section 10 of this Development Agreement, City shall be entitled to specific performance of Owner's obligation to pay said fee.~~

~~SECTION 20 MODIFICATION OR TERMINATION UPON EVENT OF DEFAULT~~

~~If pursuant to Section 19.1 of this Development Agreement, City elects to modify or terminate this Development Agreement or establish a revised time schedule for compliance following a determination by the City Council that Owner has not complied in good faith with the terms and conditions of this Development Agreement and Owner's failure, during the cure period, to cure such noncompliance or to make reasonable good faith progress towards such end, as provided in Section 19.1, then City shall proceed as set forth in this Section 20. The provisions of this Section 20 shall not apply to an amendment or cancellation of this Development Agreement by mutual agreement of the Parties.~~

18.6 ~~20.1~~ Notice to Owner. City shall give notice to Owner of the City Council's intention to proceed to modify or terminate this Development Agreement or establish a time schedule for compliance within ten (10) days of making City's findings.

18.7 ~~20.2~~ Public Hearing. The City Council shall set and give notice of a public hearing on modification, termination or a time schedule for compliance to be held within forty-five (45) days after the City Council gives notice to Owner.

18.8 ~~20.3~~ Decision. The City Council shall announce its findings and decisions on whether this Development Agreement is to be terminated, how this Development Agreement is to be modified or the provisions of the Development Agreement with which Owner must comply and a time schedule therefore not more than ten (10) days following completion of the public hearing.

18.9 ~~20.4~~ Standard of Review. Any determination by City to terminate this Development Agreement because Owner has not complied in good faith with the terms of this Development Agreement must be based upon a finding by the City Council, on the basis of substantial evidence, that Owner is in ~~default~~ Default and has not cured that ~~default~~ Default in the timeframe permitted by Sections 18 and 19 of this Development Agreement, as applicable.

18.10 ~~20.5~~ Implementation. Modifying or terminating this Development Agreement shall be accomplished by City enacting an ordinance. The ordinance shall recite the reasons which, in the opinion of City, make the modification or termination of this Development Agreement necessary. Not later than ten (10) days following the adoption of the ordinance, one copy thereof shall be forwarded to Owner. This Development Agreement shall be terminated or this Development Agreement as modified shall become effective on the effective date of the ordinance terminating or modifying this Development Agreement.

18.11 ~~20.6~~ Schedule for Compliance. Setting a reasonable time schedule for compliance with this Development Agreement may be accomplished by City enacting a resolution. The resolution shall recite the reasons which, in the opinion of City, make it advisable to set a schedule for compliance and why the time schedule is reasonable. Not later than ten (10) days following adoption of the resolution, one copy thereof shall be forwarded to Owner. Compliance with any time schedule so established as an alternative to modification or termination shall be subject to periodic review as provided in this Development Agreement and lack of good faith compliance by Owner with the time schedule shall be basis for termination or modification of this Development Agreement.

SECTION 19 DEFAULTS AND REMEDIES

19.1 Default. In addition to the rights and remedies described in Section 18, either party may avail itself of the rights and remedies pursuant to this Section 19. Subject to Excusable Delay, Excusable Delay re Hotel, and limitations on remedies in this Development Agreement, as applicable, and compliance with the provisions of this Development Agreement, failure or delay by either party to perform any material term or provision of this Development Agreement (a "Breach") following notice and failure to cure as described hereafter constitutes a "Default" under this Development Agreement.

19.2 Notice of Default / Cure. The non-defaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the non-defaulting party ("Notice of Default"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion ("Cure Period"). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a Default hereunder.

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.

19.3 Remedies. After implementation of the Project, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Development Agreement and will be investing even more significant time in implementing the Project in reliance upon the terms of this Development Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if City fails to carry out its obligations under this Development Agreement. Therefore, specific performance of this Development Agreement is the only remedy which would compensate Owner if City fails to carry out its obligations under this Development Agreement, and City hereby agrees that Owner shall be entitled to specific performance in the event of a Default by City hereunder. City and Owner acknowledge that, if Owner fails to carry out its obligations under this Development Agreement, City shall have the right, subject to Excusable Delay, Excusable Delay re Hotel, limitations on remedies in this Development Agreement, and Notice of Default and Cure Period obligations of the City in this Development Agreement, to refuse to issue any permits or other approvals which Owner would otherwise have been entitled to pursuant to this Development Agreement. If City issues a permit or other approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Owner in the future, and if Owner then fails to satisfy such condition, City shall be entitled to specific performance for the sole purpose of causing Owner to satisfy such condition. Except as expressly provided in the next sentence, City's right to specific performance shall be limited to those circumstances set forth above, and City shall have no right to seek specific performance to cause Owner to otherwise proceed with the Development of the Project in any manner. Notwithstanding the foregoing, in the event Owner Defaults on an obligation to pay any fee at the time required pursuant to Section 10 of this Development Agreement, City shall be entitled to pursue whatever legal or equitable remedies available to collect any such amounts due subject to Notice of Default and Cure Period provisions elsewhere in this Development Agreement.

SECTION 20 [INTENTIONALLY OMITTED]

SECTION 21 ~~SECTION 21~~ ASSIGNMENT

21.1 Right to Assign. Subject to Section 21.3, Owner shall have the right to sell, mortgage, hypothecate, assign or transfer this Development Agreement, and any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation at any time during the Term of this Development Agreement, provided that any such sale, mortgage, hypothecation, assignment or transfer must be pursuant to a sale, assignment or other transfer of the interest of Owner in the Property, or a portion thereof. In the event of any such sale, mortgage, hypothecation, assignment or transfer, (a) Owner shall notify City of such event and the name of the transferee, together with the corresponding entitlements being

transferred to such transferee, and (b) the agreement between Owner and such transferee shall provide that either Owner or the transferee or both shall be liable for the performance of all obligations of Owner pursuant to this Development Agreement, the Existing Development Approvals, the Subsequent Development Approvals, and/or any Major Project Modifications. Such transferee and/or Owner shall notify City in writing which entity shall be liable for the performance of such obligations, and upon the express written assumption of any or all of the obligations of Owner under this Development Agreement by such assignee, transferee or purchaser shall, relieve Owner of its legal duty to perform said obligations under this Development Agreement with respect to the Property or portion thereof, so transferred, except to the extent Owner is in ~~default~~Default under the terms of this Development Agreement and/or City's consent to the assignment is required pursuant to Section 21.3.

21.2 Release upon Transfer. It is understood and agreed by the Parties that the Property may be subdivided following the Development Agreement Date. Subject to Section 21.3, one or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Development Agreement. Effective upon such sale, mortgage, hypothecation, assignment or transfer, the obligations of Owner shall become several and not joint. Upon the sale, transfer, or assignment of Owner's rights and interests under this Development Agreement as permitted pursuant to Section 21.1 of this Development Agreement, Owner shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so transferred, provided that (a) Owner is not then in ~~default~~Default under this Development Agreement, (b) Owner has provided to City the notice of such transfer specified in Section 21.1 of this Development Agreement, and (c) the transferee executes and delivers to City a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all the obligations of Owner under this Development Agreement, the Existing Development Approvals, the Subsequent Development Approvals, and the Major Project Modifications with respect to the property, or portion thereof, so transferred. Non-compliance by any such transferee with the terms and conditions of this Development Agreement shall not be deemed a ~~default~~Default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against the other Party or persons then owning or holding interest in the Property or any portion thereof and not themselves in ~~default~~Default hereunder. The provisions of this Section shall be self-executing and shall not require the execution or recordation of any further document or instrument. Any and all successors, assigns and transferees of Owner shall have all of the same rights, benefits and obligations of Owner as used in this Development Agreement and the term "Owner" as used in this Development Agreement shall refer to any such successors, assigns and transferees unless expressly provided herein to the contrary.

21.3 City's Consent. The City's consent shall not be required to a transfer or assignment between Owner(s). Moreover, the City's consent to a transfer or assignment pursuant to this Section 21 shall not be required unless, at the time of the transfer or assignment, Owner is in ~~default~~Default under the terms of this Development Agreement. If Owner is in ~~default~~Default under the terms of this Development Agreement, City shall consent in writing to any transfer or assignment which provides adequate security to City, in the reasonable exercise of the City's discretion, to guarantee the cure of the ~~default~~Default upon completion of the transfer or assignment.

SECTION 22 ~~SECTION 22~~ GENERAL

22.1 Excusable Delay.

22.1.1 ~~22.1.1~~ Types of Delay. Except as otherwise expressly provided in this Development Agreement, including without limitation Excusable Delay re Hotel, and subject to Subsections 22.1.2 and 22.1.3, below, performance by either Party of its obligations under this Development Agreement shall be excused, and the Term shall be extended, for periods equal to the duration of any of the following:

(A) ~~(A)~~ Economic Delay. A recession, as defined by the National Bureau of Economic Research, excluding the period from the Development Agreement Date through December 31, 2021.

(B) ~~(B)~~ Force Majeure Delay. Except for the Covid-19 epidemic / pandemic existing as of the Development Agreement Date, floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control (including the Party's employment force), epidemics, pandemics, government regulations, court actions (such as restraining orders or injunctions), or other similar events beyond the Party's control.

(C) ~~(C)~~ Administrative Delay. Actions of the City or other governmental agency and beyond the control of the Owner that prevent, prohibit, or unreasonably delay the Owner's ability to proceed with Development of the Project within the time required by this Development Agreement. Delays in processing and acting on applications for the Ministerial Actions, Ministerial Approval, Ministerial Permits, or other permits or approvals by the City or other governmental agencies that are described in **Exhibit G** to this Development Agreement shall be deemed to be unreasonable if they exceed the time periods set forth in **Exhibit G**. Delays in processing and acting on applications for the Ministerial Actions, Ministerial Approval, Ministerial Permits, or other permits or approvals by the City or other governmental agencies that are not described in **Exhibit G** shall be deemed to be unreasonable if they exceed the average time it normally takes the agency to process and act on similar applications by more than thirty (30) days.

(D) ~~(D)~~ Litigation Delay. Pendency of a lawsuit, petition for writ of mandate, or other legal challenge by a third party to this Development Agreement, any of the Existing Development Approvals, or any of the Subsequent Development Approvals ("Third Party Challenge"). For purposes of this Subsection 22.1.1(D), a Third Party Challenge shall be deemed to be pending from the time it is filed until such time as (a) such Third Party Challenge has been dismissed with prejudice and any period for judicial appeal or other legal challenge in connection with the challenged approvals has expired with no such appeal or legal challenge having been filed; (b) such Third Party Challenge has been finally adjudicated to judgment upholding all challenged approvals and any period for judicial appeal or other legal challenge in connection with the challenged approvals has expires with no such appeal or legal challenge having been filed; or (c) such Third Party Challenge has been otherwise resolved through settlement, release, or similar agreement and accompanying dismissal with prejudice in a manner that allows no further appeal or legal challenge to the challenged approvals. In the event of a

Third Party Challenge that results in the setting aside of any portion of this Development Agreement or one or more Existing Development Approvals necessary for Development of the Project, then excusable delay pursuant to this Subsection 22.1.1(D) shall extend until such time as Owner has proposed, and City has approved, modifications or corrective actions to reapprove the challenged Existing Development Approvals in a form that is mutually acceptable to the Parties, each in its sole and absolute discretion, and the time for administrative appeal, judicial appeal, or other legal challenge relating to such corrective actions and/or reapproval has expired with no such appeal or challenge having been filed.

22.1.2 ~~22.1.2~~ Notice. If City or Owner seeks excuse from performance pursuant to this Section 22.1, it shall provide written notice of such delay to the other Party within thirty (30) days after the Party reasonably becomes aware of the commencement of such delay. If the delay or ~~default~~ Default, whether material or immaterial, is beyond the control of the Party seeking excuse from performance, it shall be excused, and extension of time for such cause shall be granted in writing for the period of the Excusable Delay, or longer as may be mutually agreed upon in writing. Any disagreement between the Parties with respect to whether this Section 22.1 applies to a particular delay or ~~default~~ Default is subject to the filing by either Party of an action for judicial review of the matter, including requests for declaratory and/or injunctive relief.

22.1.3 ~~22.1.3~~ Certain Fee Payment Obligations Not Subject to Excusable Delay. Notwithstanding Subsections 22.1.1 and 22.1.2, above, except as otherwise expressly provided in Subsection 22.1.4, below, Owner expressly acknowledges and agrees that it is obligated to pay the nonrefundable guaranteed Development Fees and Community Benefit Fees described in Subsections 10.3.3(A)-(E), 10.4.2, 10.5.1, and 10.5.2 of this Development Agreement, and **Exhibit D**, Milestones One, Two, Four, Six, ~~Seven~~, and ~~Nine~~ Eight, at the times specified in said provisions and **Exhibit D**, and that the excusable delay provisions of this Section 22.1 shall not apply to or operate to extend the time by which Owner is obligated to pay said Development Fees and Community Benefit Fees.

22.1.4 ~~22.1.4~~ Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay. Notwithstanding Subsection 22.1.3, above, subject to the provisions of this Subsection 22.1.4, Owner may defer payment of those Public Park In-lieu Fees that would otherwise be due to City pursuant to Subsections 10.3.3 (A), (B), (C), and/or (D) and **Exhibit D** Milestones One, Four, and/or Six during the pendency of any Litigation Delay pursuant to Subsection 22.1.1(D). Within ten (10) business days after the date the period of Litigation Delay ends, and provided that this Development Agreement is not terminated pursuant to Subsection 2.3 or cancelled pursuant to Subsections 22.3.2 or 22.3.3 hereof, Owner shall remit all deferred Public Park In-lieu Fees to City. By means of example, if the period of Litigation Delay ends on a date that is one year from the Development Agreement Date (and this Development Agreement is not terminated or cancelled), Owner will remit to City the first Public Park In-lieu Fee payment of Two Million Dollars (\$2,000,000) corresponding with Milestone One within ten (10) business days; however, if the Development Agreement is terminated pursuant to Subsection 2.3 or cancelled pursuant to Subsection 22.3.2 or 22.3.3 hereof, Owner shall not be required to remit said payment to the City. This Subsection 22.1.4 shall not be interpreted or construed to extend or relieve Owner of the obligation to pay Public Park In-lieu Fees due at the time of issuance of a vertical building permit for a Residential Building.

22.2 Construction of Development Agreement. The language in all parts of this Development Agreement shall in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of constructions. This Development Agreement shall be governed by the laws of the State of California. The Parties understand and agree that this Development Agreement is not intended to constitute, nor shall it be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of City, and in particular, City's police powers. In this regard, the Parties understand and agree that this Development Agreement shall not be deemed to constitute the surrender or abnegation of City's governmental powers over the Property.

22.3 Severability; Court Finding Materially Impairing Consideration; Cancellation For Protracted Litigation Delay or Significant CEQA-Related Costs.

22.3.1 ~~22.3.1~~ Severability. If any provision of this Development Agreement shall be adjudged to be invalid, void or unenforceable, such provision shall in no way affect, impair or invalidate any other provision hereof, unless such judgment affects a material part of this Development Agreement, and the Parties hereby agree that they would have entered into the remaining portions of this Development Agreement not adjudged to be invalid, void or illegal. In the event that all or any portion of this Development Agreement is found to be unenforceable, this Development Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and, subject to Section 17 and Subsection 22.3.2, below, the Parties further agree that in such event they shall take all steps necessary to comply with such public hearings and/or notice requirements as may be necessary in order to make valid this Development Agreement or that portion which is found to be unenforceable.

22.3.2 ~~22.3.2~~ Court Finding Materially Impairing Consideration. Notwithstanding any other provisions of this Development Agreement, in the event (i) any material provision of this Development Agreement, any of the Existing Development Approvals approved prior to the Development Agreement Date, and/or any of the Existing Land Use Regulations are found by a court to be unenforceable, void, or voidable, (ii) such court finding materially impairs the bargained-for consideration to be received by either Party under this Development Agreement, including, but not limited to, by preventing Owner from Developing the Project in accordance with the Existing Land Use Regulations and the Existing Development Approvals approved prior to the Development Agreement Date or by reducing or eliminating any of the public benefits, fees, public improvements or services, or dedications to be received by City pursuant to this Development Agreement, and (iii) any provision found to be unenforceable, void or voidable cannot be made valid by the undertaking of additional environmental review pursuant to CEQA, the holding of additional public hearings, and/or compliance with additional notice requirements, then the Parties agree that they will meet and confer in good faith to attempt to agree, each in its sole and absolute discretion, to modifications and/or other corrective actions consistent with state law; provided, however, that if the Parties are unable to agree to mutually acceptable modifications and/or corrective action within ninety (90) days of the court's finding, then, upon the written request of either Party, Owner and City agree they ~~will~~shall take all steps necessary to mutually cancel this Development Agreement in accordance with the provisions of Section 17 hereof.

22.3.3 ~~22.3.3~~ Cancellation for Protracted Third-Party Litigation or Significant CEQA-Related Costs. Owner acknowledges that the pendency of any Third Party Challenge shall not give rise to an immediate right to seek cancellation of this Development Agreement. However, Owner shall have the right to initiate cancellation of this Development Agreement pursuant Section 17, and City shall take all necessary steps to mutually cancel this Development Agreement, if either of the following occur: (i) the period of Litigation Delay lasts longer than four (4) consecutive years; or (ii) Owner is required to provide additional mitigation, improvements, or services that have a cost to Owner equal to or in excess of Five Million Dollars (\$5,000,000) as a result of additional environmental review pursuant to CEQA that is undertaken as a result of a successful Third Party Challenge.

22.4 Cumulative Remedies. ~~In addition~~ Subject to ~~any other rights or express limitations on~~ remedies elsewhere in this Development Agreement, including but not limited to Sections 5.4.1(H), 18.8 and 19.3, either Party may institute legal action to cure, correct or remedy any ~~default~~ Default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of anyone or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

22.5 Indemnification. Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify and hold City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees harmless from any liability for damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from the construction activities of Owner or Owner's contractors, subcontractors, agents, or employees which relate to the Project whether such activities be by Owner, or by any of Owner's contractors, subcontractors, or by anyone or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors. Additionally, Owner agrees to, and shall, to the fullest extent permitted by law, defend (with legal counsel approved or selected by City and at Owner's sole cost and expense), indemnify, and hold harmless City and City's elective and appointive councils, boards, commissions, officers, officials, agents, representatives and employees from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature whatsoever arising out of City's approval of or its performance under this Development Agreement and/or the Existing Development Approvals, Subsequent Development Approvals and/or Major Project Modifications. City may in its discretion participate in the defense of any such legal action. The provisions of this Subsection shall not be binding on Owner to the extent the liability arises out of the gross negligence or willful misconduct of City, or its elective and appointive councils, boards, commissions, officers, officials, agents, representatives or employees. Owner's indemnity obligations set forth in this Development Agreement shall survive termination of this Development Agreement.

22.6 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement and/or the Existing Development Approvals, Subsequent Development Approvals, or Major Project Modifications, the Parties hereby agree to

cooperate fully with each other in defending said action and the validity of each provision of this Development Agreement; however, it is expressly understood and agreed to by Owner that Owner shall be solely liable for all legal expenses and costs incurred in defending any such action. The Parties mutually agree that staff time spent by City employees in relation to any such action does not constitute legal expenses or costs payable by Owner. City shall have the right to approve or select legal counsel to defend against any such legal action. Owner shall pay any attorneys' fees awarded against City or Owner, or both, resulting from any such legal action. Owner shall be entitled to any award of attorneys' fees arising out of any such legal action.

22.7 Public Agency Coordination. City and Owner shall cooperate and use reasonable efforts in coordinating the implementation of the Existing Development Approvals, Subsequent Development Approvals, and/or Major Project Modifications with other public agencies, if any, having jurisdiction over the Property or the Project.

22.8 Initiative Measures. Both City and Owner intend that this Development Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, referendum, statute, ordinance or other limitation (whether relating to the rate, timing or sequencing of the Development or construction of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use approved, issued or granted within City, or portions of City, and which Agreement shall apply to the Project to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation is inconsistent or in conflict with this Development Agreement. Should an initiative, measure, moratorium, referendum, statute, ordinance, or other limitation be enacted by the citizens of City which would preclude construction of all or any part of the Project, and to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Development Agreement, Owner shall have no recourse against City pursuant to the Development Agreement, but shall retain all other rights, claims and causes of action under this Development Agreement not so invalidated and any and all other rights, claims and causes of action at law or in equity which Owner may have independent of this Development Agreement with respect to the Project. The foregoing shall not be deemed to limit Owner's right to appeal any such determination that such initiative, measure, referendum, statute, ordinance or other limitation invalidates or prevails over all or any part of this Development Agreement. City agrees to cooperate with Owner in all reasonable manners in order to keep this Development Agreement in full force and effect, provided Owner shall reimburse City for its out-of-pocket expenses incurred directly in connection with such cooperation and City shall not be obligated to institute a lawsuit or other court proceedings in this connection.

22.9 Attorneys' Fees. In the event of any dispute between the Parties involving the covenants or conditions contained in this Development Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

22.10 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed

to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall not be construed as a waiver of any succeeding breach of nonperformance of the same or other covenants and conditions hereof.

22.11 Authority to Execute. The person executing this Development Agreement on behalf of Owner represents and warrants that he/she has the authority to execute this Development Agreement on behalf of his/her partnership and represents and warrants that he/she has the authority to bind Owner to the performance of Owner's obligations hereunder.

22.12 Notice.

22.12.1 ~~22.12.1~~ To Owner. Any notice required or permitted to be given by City to Owner under or pursuant to this Development Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of Owner or mailed with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed; to Owner as follows:

MGP Fund X Laguna Hills, LLC
4365 Executive Drive, Suite 1400
San Diego, California 92121
Attn: Scott McPherson, Managing Partner

With copies to: Perkins Coie LLP
505 Howard Street Suite 1000
San Francisco, CA 94105
Attn: Matthew Gray

or such changed address as Owner shall designate in writing to City.

22.12.2 ~~22.12.2~~ To City. Any notice required or permitted to be given to City under or pursuant to this Development Agreement shall be made and given in writing, if by mail addressed to:

City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, California 92653

With copies to: Gregory E. Simonian
City Attorney - City of Laguna Hills
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626

or such changed address as City shall designate in writing to Owner. Alternatively, notices to City may also be personally delivered to the City Clerk, at the Laguna Hills City Hall, 24035 El Toro Road, Laguna Hills, California 92653, together with copies marked for the City Manager and the City Attorney or, if so addressed and mailed, with postage thereon fully prepaid,

registered or certified mail, return receipt requested, to the City Council in care of the City Clerk at the above address with copies likewise so mailed to the City Manager and the City Attorney, respectively and also in care of the City Clerk at the same address. The provisions of this Section shall be deemed permissive only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

22.13 Captions. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Development Agreement.

22.14 Consent. Except as otherwise provided herein, any consent required by the Parties in carrying out the terms of this Development Agreement shall not unreasonably be withheld.

22.15 Further Actions and Instruments. Each of the Parties shall cooperate with and reasonably provide to the other to the extent contemplated hereunder in the performance of all obligations under this Development Agreement and the satisfaction of the conditions of this Development Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

22.16 Subsequent Amendment to Authorizing Statute. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute in effect as of the Development Agreement Date. Accordingly, to the extent that subsequent amendments to the Development Agreement Statute would affect the provisions of this Development Agreement, such amendments shall not be applicable to this Development Agreement unless necessary for this Development Agreement to be enforceable or unless this Development Agreement is modified pursuant to the provisions set forth in this Development Agreement and California Government Code Section 65868 as in effect on the Development Agreement Date.

22.17 Governing Law. This Development Agreement, including, without limitation, its existence, validity, construction and operation, and the rights of each of the Parties shall be determined in accordance with the laws of the State of California.

22.18 Effect on Title. Owner and City agree that this Development Agreement shall not continue as an encumbrance against any portion of the Property as to which this Development Agreement has terminated.

22.19 Mortgagee Protection. Entering into or a breach of this Development Agreement shall not defeat, render invalid, diminish, or impair the lien of Mortgagees having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Development Agreement to perform

Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu thereof.

22.20 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If the City Clerk timely receives notice from a Mortgagee requesting a copy of any ~~notice~~ Notice of ~~default~~ Default given to Owner under the terms of this Development Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the ~~notice~~ Notice of ~~default~~ Default to Owner. The Mortgagee shall have the right, but not the obligation, for a period up to sixty (60) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy the ~~default~~ Default unless a further extension of time to cure is granted in writing by City. If the ~~default~~ Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the ~~default~~ Default or noncompliance within thirty (30) days after obtaining possession. If any such ~~default~~ Default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such ~~default~~ Default or non-compliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

22.21 Bankruptcy. Notwithstanding the foregoing provisions of Section 22.20 of this Development Agreement, if any Mortgagee is prohibited from commencing or pursuing and prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving City, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

22.22 Disaffirmance.

22.22.1 ~~22.22.1~~ New Development Agreement upon Most Senior Mortgagee's Request. City agrees that in the event of termination of this Development Agreement by reason of any ~~default~~ Default by City, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Owner or its property, City, if requested by any Mortgagee, shall enter into a new Development Agreement for the Project with the most senior Mortgagee requesting such new agreement, for the remainder of the Term, effective as of the date of such termination, upon the terms, provisions, covenants and agreements as herein contained to the extent and subject to the law then in effect, and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

(a) ~~(a)~~ The Mortgagee shall make written request upon City for the new Development Agreement for the Project within thirty (30) days after the date of termination;

(b) ~~(b)~~ The Mortgagee shall pay to City at the time of the execution and delivery of the new Development Agreement for the Project expenses, including reasonable attorneys' fees, to which City shall have been subjected by reason of Owner's ~~default~~ Default; and

(c) ~~(e)~~ The Mortgagee shall perform and observe all covenants herein contained on Owner's part to be performed, and shall further remedy any other conditions which Owner under the terminated agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the Mortgagee.

22.22.2 ~~22.22.2~~ New Development Agreement Not Required. Nothing herein contained shall require any Mortgagee to enter into a new Development Agreement pursuant to Subsection 22.22.1 of this Development Agreement, nor to cure any ~~default~~ Default of Owner referred to above.

22.23 No Third Party Beneficiaries. This Development Agreement and all provisions hereof is made and entered into for the sole protection and benefit of City, Owner and their successors and assigns. No other person shall have right of action based upon any provision in this Development Agreement.

22.24 Jurisdiction and Venue. Any action at law or in equity arising under this Development Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Development Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

22.25 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Development Agreement. No partnership, joint venture or other association of any kind is formed by this Development Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such private property. The Parties mutually acknowledge and agree that this Development Agreement does not confer upon or entitle Owner to any subsidy or reduction in fees from City pertaining to Owner's Development of the Project or the Parties' rights and obligations hereunder.

22.26 Restrictions. Owner shall place in any agreements to sell or convey any interest in the Property or any portion thereof, provisions making the terms of this Development Agreement binding on any successors in interest of Owner and express provision for Owner or City, acting separately or jointly, to enforce the provisions of this Development Agreement and to recover attorneys' fees and costs for such enforcement.

22.27 Recitals. The recitals in this Development Agreement constitute part of this Development Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Development Agreement.

22.28 Recording. The City Clerk shall cause a copy of this Development Agreement to be executed by City and recorded in the Official Records of Orange County no later than ten (10) days after the Development Agreement Date.

22.29 Entire Agreement. This Development Agreement⁵ constitutes the entire agreement between the Parties with respect to the subject matter of this Development Agreement, and this Development Agreement supersedes all previous negotiations, discussions and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

22.30 Successors and Assigns. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement inure to all successors in interest and assigns of the Parties to the Development Agreement.

22.31 Exhibits. All exhibits, including attachments thereto, are incorporated in this Development Agreement in their entirety by this reference and shall be enforceable by the Parties, except as otherwise expressly provided in this Development Agreement.

22.32 Waiver of Right to Protest. Execution of this Development Agreement is made by Owner without protest. Owner knowingly and willingly waives any rights it may have under Government Code Section 66020 or any other provision of law to protest the imposition of any fees, dedications, reservations, or other exactions which are specifically imposed on the Project by this Development Agreement.

[Signatures appear on the following page]

IN WITNESS WHEREOF, City and Owner have executed this Development Agreement as of the date and year first above written.

“CITY”

CITY OF LAGUNA HILLS, a California municipal corporation

By: _____
KENNETH H. ROSENFELD,
Interim City Manager

ATTEST:

MELISSA AU-YEUNG,
City Clerk

APPROVED AS TO FORM:

~~GREGORY E. SIMONIAN,~~
~~City Attorney~~

STRADLING YOCCA CARLSON &
RAUTH,
Thomas P. Clark Jr.

All signatures to be acknowledged by a Public Notary

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

Notary Public

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~~4890-4517-3512v1/200305-0005~~
155788992.14

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

Notary Public

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EXHIBIT A
PROPERTY DESCRIPTION AND DEPICTION

Exhibit A-1

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EXHIBIT B

DEVELOPMENT FEES

Public Park In-lieu Fees

Amount of Fee. Owner hereby agrees that Chapter 8-06 of the Laguna Hills Municipal Code pertaining to park dedication and in-lieu fee requirements shall apply to the Project, regardless of whether Owner proposes a subdivision map for each Residential Building. Accordingly, as part of the Development Fees applicable to the Project pursuant to this Development Agreement, Owner hereby agrees to, and shall, pay City a public park in-lieu fee of Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636.00) for each residential unit constructed as part of the Project, which amount the Parties agree is the applicable per dwelling unit fee calculated pursuant to Chapter 8-06 of the Laguna Hills Municipal Code.

Nonrefundable Guaranteed Fees. As material consideration for City's entering into this Development Agreement, the Owner expressly agrees that, except as provided in Subsection ~~10.5.5~~ 10.5.7 and Section 17.4 of this Development Agreement, notwithstanding any provision of Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or other provisions of law, Eighteen Million One Hundred Sixty Nine Thousand Thirty Two Dollars (\$18,169,032), which represents ~~the an~~ amount ~~of equal to the~~ Public Park In-lieu Fees attributable to the first one thousand one hundred sixty two (1,162) residential units anticipated to be Developed by Owner, shall be nonrefundable, and must be paid to City even if no or less than one thousand one hundred sixty two (1,162) residential units are actually constructed. Owner agrees to pay these nonrefundable fees at the times set forth in Section 10.3.3 and **Exhibits B and D** of this Development Agreement. To the extent any portion of said fees are paid prior to the issuance of a vertical building permit for the Residential Building containing any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E) of this Development Agreement, such portion shall constitute Community Benefit Fees when paid, subject to Section 10.5.4, but shall be credited and applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for the Residential Building containing said residential unit, provided a vertical building permit is issued for the Residential Building containing the residential unit during the Term of this Development Agreement and such building permit is not revoked and does not expire. No portion of the nonrefundable, guaranteed fees that are paid or owed pursuant to Section 10.3 of the Development Agreement shall be credited or applied to any residential units on the Property for which a vertical building permit is issued after the expiration or termination of this Development Agreement. Said payments shall be subject to Section 10.5.4 of this Development Agreement, and Owner expressly agrees that these payments shall be nonrefundable, and that the City may retain and expend that portion, if any, of such nonrefundable fees that are paid by Owner to City, which are attributable to residential units which are not actually constructed, or which City would otherwise be required to refund to Owner or other record owners of the Property pursuant to Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or any other provision of law. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, Section 10.3.2 of the Development Agreement shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

Exhibit B-1

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Timing of Payment of Public Park In-lieu Fees and/or Community Benefit Fees that may be deemed Credits Against Public Park In-lieu Fees. Notwithstanding any provision of Chapters 8-06 or 8-07 of the Laguna Hills Municipal Code, the Quimby Act, or other law, the Parties expressly agree that the Public Park In-lieu Fees attributable to the residential units constructed, or anticipated to be constructed, as part of the Project, shall be paid in the amounts and at the times specified below:

(A) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the date that is ninety (90) days after the Development Agreement Date (**Exhibit D**, Milestone One). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(B) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues a vertical building permit for ~~any new~~ Retail Buildings, or any new Office Buildings; or (ii) the date that is four (4) years after the Development Agreement Date (**Exhibit D**, Milestone Four). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(C) Owner shall pay City Two Million Dollars (\$2,000,000) on or before the earlier of the following two dates: (i) the date the City issues the first certificate of occupancy for ~~any new~~ Retail Buildings, or any ~~new~~ Office Buildings; or (ii) the date that is seven (7) years after this Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park In-lieu Fees During Pendency of Litigation Delay).

(D) Owner shall pay City Six Million Five Hundred Seventy-One Thousand Three Hundred Forty Four Dollars (\$6,571,344) in increments at the following times: (i) Eight Thousand One Hundred Seventy Three Dollars (\$8,173)¹ per unit for each of the first 804 residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is seven (7) years after this Development Agreement Date (**Exhibit D**, Milestone Six). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement, except as otherwise expressly provided in Subsection 22.1.4 (Deferral of Payment of Public Park

¹ This amount is calculated as follows: $[(\$15,636 \text{ per unit} \times 804 \text{ units}) - (\$6,000,000)] / 804 \text{ units}$.

In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the amount of the Public Park In-Lieu Fees applicable to the first 804 residential units that are required to be paid pursuant to Subsection 10.3.3(D) of this Development Agreement have been reduced to reflect the three payments of Two Million Dollars (\$2,000,000) required pursuant to Subsections 10.3.3 (A)-(C) of the Development Agreement.

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars (\$5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars (\$15,636) per for each of the next 358 units² residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Nine). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

(F) Owner shall pay City Fifteen Thousand Six Hundred Thirty-Six Dollars (\$15,636) per unit for each additional residential unit Owner Develops as part of the Project after the 1,162nd residential unit, prior to the issuance of a vertical building permit for the Residential Building containing the residential unit.

The Parties expressly acknowledge and agree that the Public Park In-lieu Fee payment obligations set forth in Section 10.3 of this Development Agreement may be assumed, in whole or in part, by a residential developer or other person or entity that purchases a portion of the Property on which a Residential Building is designated to be Developed, and agrees to assume such payment obligations in accordance with to the provisions of Section 21 of this Development Agreement (Assignment).

Public Art / Public Art In-Lieu Fees

Owner shall furnish Public Art in connection with the Project, and/or pay a Public Art In-lieu Fee, pursuant to the terms of the Development Agreement ("Owner's Public Art Obligation"). Pursuant to the Specific Plan, the minimum aggregate value of Owner's Public Art Obligation shall be one-half percent (0.5%) of the total aggregate construction costs of the Project, which ~~will~~shall be based on the valuation as determined by the City's Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of the Project. The Parties agree that (a) Six Hundred Fifty Thousand Dollars (\$650,000) of Owner's Public Art Obligation ~~will~~shall be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of the Development Agreement, and (b) that portion of Owner's Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the provision of actual Public Art on the Property, as approved by the City, and may not be satisfied through contribution to the City's Public Art In-Lieu Fund. Allowable expenses, construction and material standards, and general location restrictions for all Public Art shall be as set forth in the "Public Art" provisions of Section V, at

² This amount applies to the 805th residential unit through the 1,162nd residential unit.

pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the proposed type, size, art medium, location, and content of all Public Art. The procedures, timing, and requirements for preparation, submittal, review, and approval of plans and specifications for all Public Art shall be as specified in **Exhibit H** to the Development Agreement.

Credit. The City acknowledges and agrees that Owner paid a Public Art In-lieu Fee to the City the amount of Three Hundred Thousand Dollars (\$300,000) for improvements authorized by the 2016 Five Lagunas Entitlements that were ultimately not constructed. Accordingly, the City agrees it will credit this payment towards Owner's Public Art Obligation for the Project.

Nonrefundable Advance. Notwithstanding any provision of the Specific Plan, the Mitigation Fee Act, or other provisions of State law, the Parties expressly agree that Owner shall pay City a nonrefundable Public Art In-lieu Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), in advance, on or before the date that is ninety (90) days after the Development Agreement Date. Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement. The City shall credit this payment against Owner's Public Art Obligation for the Project. However, said payment shall be subject to the provisions of Section 10.5.3 of this Development Agreement and Owner expressly agrees that this payment shall be nonrefundable to Owner, and that the City may retain and expend such payment, even if Owner's Public Art Obligation for the Project is less than Three Hundred Fifty Thousand Dollars (\$350,000). Owner acknowledges and agrees that the Three Hundred Thousand Dollar (\$300,000) credit provided for in Subsection 10.4.1 of the Development Agreement shall not be applied to reduce Owner's obligation to pay the nonrefundable guaranteed fee required by Subsection 10.4.2 of the Development Agreement. Notwithstanding any other provision of this Development Agreement, to the extent, and for the period, necessary to implement the provisions hereof, Section 10.4.2 of this Development Agreement shall survive termination of this Development Agreement and remain enforceable and executory by the Parties notwithstanding termination of the remainder of this Development Agreement.

Traffic Impact Mitigation Fees

The Project, as initially approved pursuant to the Existing Development Approvals, does not trigger payment of the traffic impact mitigation fee in accordance with Chapter 9-102 of the Laguna Hills Municipal Code. If, however, there are future amendments or modifications to the Project, prior to issuance of any building permits, the Owner shall, pursuant to Chapter 9-102, pay a traffic impact mitigation fee, if applicable.

EXHIBIT C
PROJECT SITE PLAN (AT FULL BUILD-OUT)

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

Exhibit C

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EXHIBIT D

DEVELOPMENT AGREEMENT MILESTONES

[MODIFY WHEN TEXT IS COMPLETE]

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone One	90 Days From Development Agreement Date	Owner shall have submitted the following Fees to the City: • Public Art In-lieu Fee Advance Payment of \$350,000 (§10.4.2) • 1st Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(A))¹ • 1st Nonrefundable Community Benefit Fee Payment of \$1,113,533 (§10.5.1(A))	No
Milestone Two	15 Months from Development Agreement Date	Owner shall have submitted the following Fees to the City: • 2nd Nonrefundable Community Benefit Fee Payment of \$1,113,533 (§10.5.1(B))	No
Milestone Three	18 Months from Development Agreement Date	Owner shall have submitted a complete application for a Final Map for those parcels on which the Village Park, the Hotel, Retail Buildings containing at least one hundred forty thousand (140,000) square feet of space, and at least two (2) Residential Buildings for Phase One will <u>shall</u> be Developed (§5.4.1(A))	Yes
Milestone Four	4 Years (48 Months) from Development Agreement Date	Owner shall have submitted the following Fees to the City: • 2nd Nonrefundable Public Park In-lieu Fee Payment of \$2,000,000 (§10.3.3(B))	

¹ Owner's obligation to make this nonrefundable guaranteed fee payment is not subject to Excusable Delay; however, Owner may defer payment of this fee during the pendency of Litigation Delay pursuant to Subsection

Exhibit D-1

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Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
		Submitted , an additional Community Benefit Fee to City of \$500,000 (§ 5.4.1(F) and §10.5.2)	
Milestone Eight <u>Seven</u>	5 Years from Date of City's issuance of the final certificate of occupancy for the Retail Buildings and Residential Buildings required to Developed as part of Phase One pursuant to §§ 5.4.1(C) (ii), (iv), and (v)	Owner shall have recorded a Final Map approved by the City for those parcels on which the Retail Buildings and Residential Buildings for Phase Two required to be completed pursuant to Section 5.4.2(B) will <u>shall</u> be Developed (§5.4.2(A))	Yes
		Owner shall have obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two (§5.4.2(A))	Yes
Milestone Nine <u>Eight</u>	15 Years from Development Agreement Date (End of Initial Term)	Owner shall have submitted the following Fees to the City: Entire Remaining Balance, if any, of \$5,597,688 in Nonrefundable Public Park In-lieu Fees attributable to the 805th residential unit through the 1,162nd residential unit (§10.3.3(E))	No
Milestone Ten <u>Nine</u>	20 Years from Development Agreement Date (End of Extended		Yes

Exhibit D-3

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Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
	Term) ²	Owner shall have Completed Construction of all required Phase Two Components (§5.4.2(B)) Owner shall have Commenced Construction of any Retail Building, Office Building, Parking Structure, and/or Residential Building it did not Develop as part of Phase One or Phase Two but that it intends to Develop in Subsequent Phases (§5.4.3(D))	Yes

² Pursuant to Section 2.2. of the Development Agreement, the initial 15-year Term shall be automatically extended for an additional five (5) years if, prior to expiration of the initial Term, Owner has Completed Construction of all required portions of Phase One of the Project set forth in Section 5.4.1(C) and has obtained building permits for the vertical construction of the required Retail Buildings and Residential Buildings for Phase Two set forth in Section 5.4.2(B). If the Term has not been extended 5 years pursuant to Section 2.2 of the Development Agreement, the obligations set forth in Milestone ~~Ten~~Nine must be completed by Milestone ~~Nine~~Eight.

EXHIBIT E

ALL REQUIRED PUBLIC IMPROVEMENTS

1. Provision of Bus Stops on Calle de la Louisa. Prior to the construction of street improvements on Calle de la Louisa, Owner shall work with the Orange County Transportation Authority (OCTA) and provide bus stops along Calle de la Louisa, as requested by OCTA or City. Bus stop locations for OCTA facilities shall be constructed in accordance with the OCTA standards. Owner shall provide bus stop furniture to the reasonable satisfaction of the City's Community Development Director and Public Services Director to include, but not be limited to, benches, trash receptacles and shade opportunities that ~~will~~shall be maintained by the Owner.
2. Construction of Perimeter Entrance Feature at Southwest Corner of El Toro Road and Avenida de la Carlota. Prior to the issuance of the first building shell final or certificate of occupancy for new buildings in the El Toro Pad District, the Owner shall design and construct a Perimeter Entry Feature for the southwest corner of El Toro Road and Avenida de la Carlota and on the second entry drive southbound on Avenida de la Carlota as shown on Figures 21 and 25 of the Specific Plan. Ledge stone used for the project shall be Bear Canyon ledge stone, or equivalent. Ledge stone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and reasonable approval of the City's Community Development Director and Public Services Director.
3. Alignment of Intersection of Health Center Drive at Calle de la Louisa. The intersection of Health Center Drive at Calle de la Louisa shall be modified to directly align the centerline of Health Center Drive on either side of Calle de la Louisa, taking into account the existing median island on the westerly side of the intersection, and include one westerly bound left turn lane and one westerly bound through/right turn lane, each with a minimum 100' lane length, not including transitions, to the reasonable satisfaction of the City's Public Services Director.
4. Payment for Debris Gates and Full Trash Capture Devices. Prior to the issuance of the first grading permit, Owner shall pay the City the full cost to purchase and install new debris gates and full capture trash screens to fit into existing catch basins, for all existing catch basin inlets serving Avenida de la Carlota and El Toro Road along the frontage of the Project, as determined by the reasonable discretion of the City's Public Services Director, to include the following:
 - a. Catch Basin #97 located on the southerly side of El Toro Road approximately 152' westerly of the centerline of Avenida de la Carlota.
 - b. Catch Basin #61 located on the westerly side of Avenida de la Carlota approximately 709' southerly of the centerline of Plaza Lane / Project Driveway (private street intersection).

Exhibit E-1

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- c. Catch Basin #178 located on the westerly side of Avenida de la Carlota approximately 448' northerly of the centerline of Oakbrook Village (private street intersection).
5. Installation of New Traffic Signal at Intersection of Avenida de la Carlota and Health Center Drive. Prior to the issuance of the third certificate of occupancy for any combination of three Residential and/or Office Buildings (i.e., three Residential Buildings, two Residential Buildings and one Office Building, three Office Buildings, etc.), Owner shall prepare a current traffic signal warrant analysis following the procedures in the Caltrans Traffic Manual for the proposed new traffic signal at the intersection of Avenida de la Carlota and the extension of Health Center Drive (Intersection 35 referenced in the Traffic Impact Analysis dated September 1, 2020, in Section 6.0 Site Access) and submit it for review and approval by the City's Director of Public Services. If the traffic signal has not yet met warrants, Owner shall repeat the Traffic Signal Warrant Analysis upon the issuance of the certificate of occupancy for each additional Residential or Office Building. If the traffic signal is deemed to be warranted, within six months of said warrant analysis approval, Owner shall prepare the design of the traffic signal by a State of California licensed / registered civil engineer or traffic engineer and submit the plans to the City's Director of Public Services for review and approval. Within six months of the approval of said traffic signal design, the Applicant shall construct and install said traffic signal and all ancillary improvements and equipment to the reasonable satisfaction of the City's Director of Public Services. The design of the traffic signal shall be to the standards of the City of Laguna Hills and Caltrans Standard Plans and Specifications and shall include, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the City's Public Services Director. Owner shall provide the City the full cost to purchase the traffic signal controller, video detection equipment and emergency vehicle preemption equipment in advance of Owner's proposed construction. The schedule for the installation of said signal shall be subject to the reasonable discretion of the City's Public Services Director. Prior to the completion of construction of the Traffic Signal, if needed, Owner shall dedicate a traffic signal maintenance easement to the City for any traffic signal equipment located on the Property.
6. Payment for Installation of New Traffic Signal at Intersection of Paseo de Valencia at Calle de los Caballeros. Prior to the issuance of the final certificate of occupancy for the fourth Residential Building, Owner shall cause a traffic signal warrant analysis to be performed by a State of California licensed / registered civil engineer or traffic engineer to determine if the intersection of Paseo de Valencia at Calle de los Caballeros should be converted to a fully operational intersection and be provided with a traffic signal. If said warrant analysis does not meet at least one warrant by this initial analysis, the warrant analysis shall be repeated prior to the issuance of the final certificate of occupancy for the final Residential Building and be submitted to the City's Public Services Director for review. If the traffic signal is now warranted, the City will reasonably evaluate if alternative traffic controls, other than a traffic signal, can be implemented to address the traffic conditions. However, if as reasonably

determined by the City's Public Services Director the traffic signal is appropriate to address the traffic conditions, Owner shall contribute a pro-rata share of funding for the full cost of the design and construction of said signal and related ancillary improvements and equipment, including, but not be limited to, City required LED illuminated street name signs, hard wire fiber optic interconnection and communication equipment to all adjacent traffic signals, City selected traffic signal controller, City selected video detection equipment, City selected emergency vehicle preemption equipment, ADA accessibility improvements, and any other necessary ancillary improvements as determined by the City's Public Services Director. Prior to the issuance of any further certificates of occupancy, Owner shall deposit with the City an amount equal to the Project's pro-rata share of traffic contribution to the intersection of the cost of such design and construction, as reasonably determined by the City's Public Services Director. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of written request by City. In the event the Project's pro-rata share of the full documented cost to design, construct, and install the signal and related improvements and equipment is less than the amount of the deposit, City shall refund Owner the difference within thirty (30) days after completion of the construction and installation of the signal and all related improvements and equipment, as evidenced by a notice of completion issued by the City.

7. Payment for Vehicular Video Detection Equipment for Retrofit of Avenida de la Carlota. As reasonably determined by the City's Public Services Director, Owner shall be responsible for funding, in advance, the full cost of the purchase and installation by City of specified vehicular video detection equipment for retrofit of the Avenida de la Carlota at Plaza Lane / Project Driveway traffic signal in accordance with City standards. Owner shall provide the City the full cost to purchase and install the equipment, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
8. Payment for Replacement of Existing Illuminated Street Name Signs. As reasonably determined by the City's Public Services Director, Owner shall fund, in advance, the full cost of the replacement of the existing illuminated street name signs on existing traffic signals to match the new street name designations serving access to the Property. Such illuminated street name signs shall be replaced with LED illuminated street name signs as selected by City. Owner shall provide the City the full cost to purchase and install the signs, as determined in the reasonable discretion of the City's Public Services Director, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.
9. Payment for Replacement of City Wayfinding Signage. Owner shall be responsible for funding, in advance, the full cost of replacement of any City Wayfinding signage to be modified from "Laguna Hills Mall" to "Village at Laguna Hills", or any other City approved Project name, at any location at which the name change is required. Owner shall deposit with the City an amount equal to the full cost to manufacture and install all such signs, as reasonably determined by the City's Public Services Director. In the event the full documented cost to manufacture and install said signs exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of a written request by City. In the event the full documented cost to manufacture and install said signs is less than the

amount of the deposit, City shall refund Owner the difference within thirty (30) days after installation of the last such sign. Owner's deposit shall be made prior to the issuance of the first certificate of occupancy for any building located within the El Toro Pad District.

10. Construction of Enhanced Parkway Improvements and Dedication of Landscape/Pedestrian Access Easement Along Avenida de la Carlota, From El Toro Road to Plaza Lane. Prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District, or one year from the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, as reasonably determined by the City's Public Services Director, whichever occurs first, Owner shall construct the enhanced parkway along Avenida de la Carlota, from El Toro Road to Plaza Lane / Project Driveway, consistent with the Specific Plan, to the City's standards and specifications. The construction of these improvements shall include, as needed, the construction of retaining walls and pedestrian barriers at the top of the retaining wall and the modification, relocation and/or addition of Southern California Edison (SCE) street lighting, including the payment of fees to SCE. The construction of these improvements shall maintain the current Orange County Transportation Authority (OCTA) bus stop within the limits of this work. Owner shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way by an instrument in a form acceptable to the City's Public Services Director and City Attorney. The electrical meter and water meters serving the landscape areas described herein shall be separated from any other Project landscaping. The enhanced parkway improvements shall be designed and constructed to the reasonable satisfaction of the City's Community Development Director and Public Services Director and shall be maintained for the life of the Project by Owner in a first class condition similar to the condition on the completion of the original construction and/or installation, reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the Specific Plan area, as reasonably determined by the City's Public Services Director.
11. Construction of Enhanced Parkway Improvements and Dedication of Landscape/Pedestrian Access Easement Along Avenida de la Carlota, From Plaza Lane to Southern Project Boundary. Prior to (a) the issuance of the first Office Building certificate of occupancy, or (b) one year of the State's substantial completion of the westerly widening of Avenida de la Carlota associated with the Interstate 5 Segment 3 project, or (c) the completion of the required components of Phase One, whichever occurs first, as reasonably determined by the City's Public Services Director, Owner shall construct the enhanced parkway along the westerly side of Avenida de la Carlota from Plaza Lane / Project Driveway to the southern Project boundary, consisting of a new five (5) foot, six (6) inch wide landscaped area adjacent to the curb and a new six (6) foot wide sidewalk area adjacent to the landscaped area, including the modification, relocation and/or addition of Southern California Edison (SCE) street lighting to the reasonable satisfaction of the City's Public Services Director, including the payment of fees to SCE, within the public right of way, to the City's standards and specifications. Owner shall dedicate a landscape and/or pedestrian access easement to the City for any area described herein not already included within the public right of way, by an instrument in a form acceptable to the City's Public Services Director and City Attorney. The electrical meter and water meters serving the landscaping areas described herein shall be

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separate from any other Project improvements. The enhanced parkway improvements shall be designed and constructed to the reasonable satisfaction of the City's Community Development Director and Public Services Director and shall be maintained for the life of the Project by Owner in a first class condition similar to the condition on the completion of the original construction and/or installation, reasonable wear and tear excepted, and in a manner and condition consistent with similarly situated developments in the Specific Plan area, as reasonably determined by the City's Public Services Director. In consideration of the existing driveway to/from Avenida de la Carlota (located approximately 300 feet from the south property line) within the Southern Office District being utilized for interim access to the Project, the enhanced parkway improvements impacting the driveway can be deferred until said driveway is removed from service. In addition, the enhanced parkway improvements at the intersection of Avenida de la Carlota and Calle de los Caballeros can be deferred until such time as the intersection is improved as required by any Project condition of approval requiring the construction of the Site Improvements in the Southern Residential District.

12. Construction / Reconstruction of Project Entrances Along Avenida de la Carlotta. All of the existing and new Project entrances to the Property along Avenida De La Carlota shall be reconstructed/constructed such that they are at 90 degrees to the centerline of Avenida de la Carlota and shall be brought up to current ADA ramp and sidewalk standards to the reasonable satisfaction of the City's Public Services Director, utilizing Armor Tile blue cast-in-place detectable warning surfaces at ramps.
13. Construction of Asphalt Concrete Overlay on Avenida de la Carlota, From El Toro Road to Southerly Project Boundary. Within one-year of the completion of the Avenida de la Carlota enhanced parkway improvements described in Paragraphs 10 and 11, above, Owner shall design and construct a 0.15 foot asphalt concrete overlay over the entire width of Avenida de la Carlota, from El Toro Road to the southerly Property boundary. Said design shall include removal and replacement of deteriorated pavement, crack sealing, cold-planing, the pavement overlay, striping and advance traffic signal loop detector replacements as designed by a State of California registered / licensed civil engineer to the reasonable satisfaction of the City's Public Services Director. Owner may, at its option, fund the full cost necessary for the City to perform this work. The terms for payment to City for performance of the work shall be within the reasonable discretion of the City's Public Services Director. Upon completion of the asphalt concrete overlay described herein, no further utility excavations or storm drain modifications shall be allowed within Avenida de la Carlota for a period of five years. Notwithstanding this five-year limitation on excavations, if there is no alternative to a critically necessary excavation as reasonably determined by the City's Director of Public Services, Owner shall construct and implement enhanced pavement repairs to restore the like new condition of the pavement following completion of the excavation. The enhanced pavement repairs shall, at a minimum, consist of the cold plane of 0.17 foot asphalt concrete for a total distance of 100 feet, 50 feet beyond either side of the excavation location, from curb to the closest full lane width of the excavation location to the reasonable satisfaction of the City's Director of Public Services.

14. Upgrade of Adjacent Public Sidewalks, Ramps, and Related Facilities to Current ADA Standards. For every grading permit requested, prior to the issuance of said permit, Owner shall provide an Americans with Disabilities Act (ADA) accessibility review for compliance with all applicable state and federal accessibility statutes, regulations and standards to the reasonable satisfaction of the City's Public Services Director. In addition, the accessibility review shall depict compliance with California Disabled Accessibility requirements as required by Chapter 11 of the California Building Code (as may be amended, or the applicable California Building Code in effect at the time of a request for building permit application). The accessibility review shall include all existing and future public and private sidewalks, walkways, pathways, access ramps hand rails and all other ADA regulated facilities for the area of the Property for which a grading permit is requested. The public streets to be included in this review are the southerly side of El Toro Road and the westerly side of Avenida de la Carlota coincident with all the Project boundaries. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted as approved by the City's Public Services Director and Community Development Director. Owner shall install, construct or reconstruct to the City's standards and reasonable satisfaction of the City's Public Services Director any existing public and private facilities identified in the accessibility review that are not in compliance with ADA standards, prior to the issuance of any certificate of occupancy. In complying with this condition, Owner may prepare a "CASp Masterplan" subject to the review and approval of the City's Community Development Director and Public Services Director. The Directors shall refer to the CASp Masterplan to determine the extent of existing improvements to be protected in place during construction that should be modified to join with new ADA improvements. Accessibility improvements which are the subject of a grading or building permit shall be constructed and installed prior to grading plan close out, issuance of a building shell final, or certificate of occupancy for a tenant improvement (depending on the type of permit requested by Owner).
15. Reconstruction of El Toro Road Bus Stop. Prior to the issuance of the first certificate of occupancy for the third Residential Building or the first certificate of occupancy for the first Office Building, Owner shall reconstruct the OCTA El Toro Road Bus Stop, on the southerly side of El Toro Road easterly of Paseo de Valencia, to accommodate future projected ridership needs based on full Project buildout, to the reasonable satisfaction of the Public Services Director and OCTA, inclusive of street furniture, benches, waste receptacles, bicycle racks, shade structure, lighting and landscaping.
16. Funding and/or Construction of Other Public Improvements Required by Existing Land Use Regulations and Existing Development Approvals. Owner shall fund and/or construct any and all other public improvements required to be funded or constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

EXHIBIT F

VILLAGE AT LAGUNA HILLS

AFFORDABLE HOUSING IMPLEMENTATION PLAN

Exhibit F

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EXHIBIT G

REASONABLE APPROVAL PROCESSING TIMES

[Pursuant to Subsection 22.1.1(C) (Administrative Delay)]

Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
City Staff Review of Each Complete Phased Final Subdivision Map Submittal (Including City Plan Check of Map, Closure Calcs, and Title Report)	First Check: 20 Working Days Second Check: 15 Working Days Third and Subsequent Checks: 10 Working Days
County Review and Approval of Each Phased Final Subdivision Map	120 Days (Cumulative) **Includes the cumulative time for County staff review of all submittals and re-submittals of a Phased Final Map. Does not include periods of time Owner is making corrections between submittals.
City Council Consideration / Approval of Each Phased Final Subdivision Map (Following Approval by County and payment of fees)	30 days after approval of Phased Final Map by County, payment of fees, and Owner's execution of City Subdivision Improvement Agreement (if applicable), or at next regularly scheduled City Council meeting if more than 30 days after all of the above. **City approval of a Phased Final Map is contingent upon the Final Map being in compliance with all applicable conditions of approval and/or Owner's execution of a Subdivision Improvement Agreement and provision of acceptable security acceptable to City.
Public Property Encroachment Permit (Including City Plan Check of Improvement Plans)	First Check: 15 Working Days Second Check: 10 Working Day Third and Subsequent Checks: 5 Working

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Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
	Days Issuance of Permit: 5 Working Days after approval of plans and payment of fees
On-Site Grading Permits / On-Site Improvements (Including City Plan Check of Rough and/or Precise Grading Plans, Hydrology Study, WQMP, SSWMP, Improvement Plans, Hydraulic Analysis, Storm Drain Plans, etc.)	First Check: 20 Working Days Second Check: 15 Working Day Third and Subsequent Checks: 10 Working Days Issuance of Permit: 5 Working Days after approval of plans and payment of fees
City Engineer Review of Surveyor's Pad Elevation Certificate and the Geotechnical Engineer's Final Soils Certification	First Check: 5 Working Days Second Check: 5 Working Day Third and Subsequent Checks: 5 Working Days Authorization to Work: 5 Working Days after approval of plans, payment of fees, and satisfactory completion of Rough Grading
City Plan Check Completion (Per Plan Type) --Building Plan Check --Construction and Staging Plan Review --Lighting and Photometric Plan Review --Waste Management Plan Review --Outdoor Dining / Patio Plan Review	First Submittal: 20 Working Days Second Submittal: 15 Working Days Third and Subsequent Submittals: 10 Working Days
City Building Permit Issuance	5 Working Days **City issuance of building permits is contingent upon (1) Owner's compliance with all applicable Project conditions of approval that are prerequisites to building permit issuance and (2) the prior approval of all other entities required to approve requested permits, including, but not limited to, Orange County

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Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
	Fire Authority, Orange County Health Care Agency, El Toro Water District, Saddleback Valley Unified School District (payment of fees only), State of California (elevators), Southern California Edison, and Southern California Gas Company.
Landscape Plan Compliance Review (LHMC Chapters 9-46 and 9-47)	First Submittal: 20 Working Days Second Submittal: 20 Working Days Third and Subsequent Submittals: 10 Working Days
Waste Reduction and Recycling Plan Review (LHMC Chapter 5-48)	First Submittal: 20 Working Days Second Submittal: 20 Working Days Third and Subsequent Submittals: 10 Working Days
All Other Governmental Agency Permits/Approvals (i.e., approvals by governmental agencies other than City) ** County of Orange review of Phased Final Subdivision Maps addressed separately, above. **Other Governmental Agencies may include, but not be limited to, Orange County Fire Authority, Orange County Health Care Agency, El Toro Water District, Saddleback Valley Unified School District (payment of fees only), and the State of California (elevators). **Administrative Delay does not apply to review or approvals of utility companies or other agencies that are not governmental agencies, including, but not limited to,	90 Days (Cumulative) **Includes the cumulative time for Agency review following submission of an initial complete application to the Agency for which a permit or ministerial approval is requested. Does not include periods of time Owner is making corrections between submittals.

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Type of City or Other Agency Action, Approval, or Permit	Reasonable Time Period for Processing and Acting on Request/Submittal/Application
Southern California Edison, Southern California Gas Company, AT&T, etc.	

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EXHIBIT H

PROCEDURES AND REQUIREMENTS FOR PREPARATION, SUBMITTAL, REVIEW, APPROVAL, AND INSTALLATION OF PUBLIC ART

This **Exhibit H** sets forth the procedures and requirements for preparation, submittal, review, approval, and installation of Public Art for the Village at Laguna Hills Project (the “**Project**”) in accordance with Section 7.4 of the Development Agreement. The Project an integrated mixed-use development on approximately 68 acres consisting of multiple components, including Public Art installations, which Owner contemplates developing in multiple phases over the Term of the Development Agreement. This **Exhibit H** is intended to establish procedures and requirements to ensure that the Public Art required in conjunction with the Project is installed in an integrated, thought-out, and cohesive manner consistent with the goals, objectives, and standards of the Specific Plan’s “Public Art” provisions.

I. Owner’s Public Art Obligation

A. Owner’s Public Art Obligation. Section 7.4 of the Development Agreement provides that Owner shall furnish Public Art in connection with the Project and/or pay a Public Art In-lieu Fee with a combined minimum aggregate value of one-half percent (0.5%) of the total aggregate construction costs of the Project (“**Owner’s Public Art Obligation**”). For this purpose, construction costs are based on the valuation as determined by the City’s Community Development Director and indicated on the building applications submitted in order to obtain permits for construction of all of the Project components. City will determine the portion of Owner’s Public Art Obligation attributable to each discreet Project component at the time City receives an application for permits for construction such Project component by multiplying the construction cost of such Project component, as determined by City, by one-half percent (0.5%) (“**Component Public Art Obligation**”). The sum at any point in time of the Component Public Art Obligation for each building permit that has been approved and/or applied for is referred to herein as “**Owner’s Accrued Public Art Obligation.**”

B. In-Lieu Payment Contribution. Pursuant to Section 7.4 of the Development Agreement, the Parties have agreed that Six Hundred Fifty Thousand Dollars (\$650,000) of Owner’s Public Art Obligation will be satisfied by the Three Hundred Thousand Dollar (\$300,000) credit and Three Hundred Fifty Thousand Dollar (\$350,000) nonrefundable advance described in Section 10.4 of the Development Agreement (collectively, “**Owner’s In-Lieu Payment Contribution**”). Owner and City agree that Owner’s In-Lieu Payment Contribution correlates to a total aggregate construction cost of One Hundred Thirty Million Dollars (\$130,000,000) [$\$650,000 / 0.5\% = \$130,000,000$].

C. Actual Art Obligation. Pursuant to Section 7.4 of the Development Agreement, the Parties have agreed that that portion of Owner’s Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) must be satisfied through the actual provision of Public Art on the Property (“**Owner’s Actual Art Obligation**”). Unless otherwise proposed by

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Owner and included as a requirement within the Conceptual Project Art Program approved pursuant to Section II, Owner and City agree that Owner's Actual Art Obligation will not be triggered until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000). Consistent with the Specific Plan, expenses that may be attributed to Owner's Actual Art Obligation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs. That portion of Owner's Accrued Public Art Obligation that exceeds Six Hundred Fifty Thousand Dollars (\$650,000) is referred to herein as "**Owner's Accrued Actual Art Obligation.**"

II. Conceptual Project Art Program

A. Conceptual Project Art Program Required. Before the first building permit for any building in the Project is issued, Owner shall prepare, submit, and obtain City approval of a concept Public Art program for the entire Project (the "**Conceptual Project Art Program**"). All Public Art that is thereafter constructed and installed on the Property must be consistent with the approved Conceptual Project Art Program.

B. Conceptual Project Art Program Components. The Conceptual Project Art Program shall include the following components:

1. Goals and Objectives. A description of the goals and objectives of the Conceptual Project Art Program.

2. Theme. A description of the proposed theme of the Public Art to be installed on the Property.

3. Standards. Standards governing type, media, materials, size, scope, and content of Public Art to be installed on the Property. All standards should be consistent with the Specific Plan provisions for Public Art. Owner shall consider the following when developing proposed standards for Public Art installations:

- a. Relevance of the artwork to the City, its values, culture, and people;
- b. Suitability of the artwork for outdoor display, including its maintenance and conservation requirements.
- c. Relationship of the artwork to the site, especially how it serves to activate or enhance public space.
- d. Appropriateness of the scale of the artwork.
- e. Community standards of decency;

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f. Construction and material standards for Public Art set forth in the “Public Art” provisions of Section V of the Specific Plan. Pursuant to the Specific Plan, permissible types of Public Art include, but are not limited to, sculptures, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, and the preservation of historical or cultural resources. The Specific Plan also requires that artwork be constructed of durable, long-lasting materials that can withstand outdoor display and require low maintenance. Recommended materials include bronze, stainless steel, high-grade aluminum or hard stones. In addition, the Specific Plan states that artworks incorporating water features must be designed so that the artwork can stand on its own should the water cease to function properly.

4. Location. A description and depiction of the locations where Public Art is anticipated to be installed and standards for locating Public Art. Consistent with the Specific Plan, Public Art installations (i) should be located in places that are open and easily accessible to the public; (ii) should be prominently placed within the Property; (iii) should be oriented toward the pedestrian experience of the Project and/or located within the Village Park; and (iv) should not be sited near monument signs, walls, benches, or utility boxes, since these structures may block viewing the art and diminish the aesthetic value of the artwork.

5. Criteria for Selection of Artists. A description of how artists commissioned to create or fabricate original art for the Project ~~will~~shall be selected and the criteria that ~~will~~shall be used to select artists. Pursuant to the Specific Plan, artists selected must have experience in design concepts, fabrication, installation and long-term durability of large-scale outdoor artworks, and be approved by the City’s Planning Agency prior to selection. Owner may, but is not required, to include a list of proposed artists and their qualifications as part of the Conceptual Project Art Program.

6. Drawings and Illustrations. Owner is encouraged to include concept drawings, illustrations, and/or visual examples depicting the type, nature, size, scale, and location of the types of Public Art envisioned by the Conceptual Project Art Program. At Owner’s option, Owner may include illustrations of specific proposed Public Art installations.

7. Phasing Plan. A phasing plan for the funding and installation of Public Art.

a. The phasing plan shall provide for the funding and installation of Public Art on the Property within timeframes consistent with the anticipated phasing of the Project components and infrastructure and shall establish outside dates within the Term of the Development Agreement by which Public Art installations at specified locations or areas of the Property ~~will~~shall be completed. At a minimum, the phasing plan shall ensure that Public Art with a minimum

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value equal to or exceeding the amount of Owner's Accrued Actual Art Obligation attributable to the Project components Owner is required to Develop in Phase One shall be installed prior to the date Owner is required to Complete Construction of such required Phase One components pursuant to Subsection 5.4.1 of the Development Agreement.

b. If the phasing plan contemplates that funds will be accumulated within a Public Art Fund established pursuant to Section V to facilitate the financing and planning of larger, Project-serving Public Art installations, it shall address the anticipated amounts needed to fund such Public Art installations, the anticipated timing of completion of such Public Art installations, and any applicable requirements or limitations with respect to deposits to or withdrawals from the Public Art Fund for such Public Art installations.

c. The phasing plan shall address how Owner's In-Lieu Payment Contribution ~~will~~shall be applied to satisfy Owner's Public Art Obligation in relation to the sequence of issuance of building permits for construction of Project components. Unless otherwise proposed by Owner and included as a requirement within the approved Conceptual Project Art Program, Owner is not required to install any Public Art until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000). Notwithstanding the foregoing, at Owner's option, the phasing plan may require the installation of Public Art in conjunction with the construction of Project components before the estimated total aggregate construction cost of the Project components exceeds One Hundred Thirty Million Dollars (\$130,000,000).

d. At Owner's option, the phasing plan may include requirements for the funding and/or installation of Public Art in conjunction with the development of specific parcels of the Property and/or components of the Project, which ~~will~~shall be binding on and enforceable against future transferees, assignees, and developers.

7. Maintenance Standards. Proposed minimum maintenance standards for Public Art that is installed on the Property.

8. O&M Funding and Implementation. A description of the mechanism through which operation and maintenance of Public Art installed on the Property ~~will~~shall be funded and implemented for the life of the Project.

C. Review and Approval by Planning Agency. The Conceptual Project Art Program shall be subject to review by the City's Planning Agency for conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of Owner's submitted Conceptual Project Art Program is subject to the discretionary approval of the City's Planning Agency, subject to applicable limits of state and federal law.

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D. Amendments. The Conceptual Project Art Program may be amended from time to time with the approval of the City's Planning Agency.

III. Final Art Submittals

A. Final Art Submittal Required. Before fabricating and installing any piece of Public Art, Owner must prepare, submit, and obtain City approval of final plans and specifications for such Public Art ("**Final Art Submittal**").

B. Required Content of Final Art Submittals. Each Final Art Submittal shall describe and demonstrate how the proposed Public Art is consistent with the approved Conceptual Project Art Program and the Specific Plan and shall include, without limitation, detailed plans and specifications, schematics, and descriptions of the type, size, medium/material, location, content, and value of the proposed Public Art, a description of the proposed artist(s), a proposed timeline for installation of the Public Art, and a complete application for any Subsequent Development Approvals required for installation of the Public Art. More than one Public Art installation may be combined in a single Final Art Submittal.

C. Review and Approval by Planning Agency. The design, artist, type, size, medium, location, content, estimated value, and timeline for installation of each Public Art installation shall be subject to review the City's Planning Agency for consistency with the Conceptual Project Art Program and conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of each Final Art Submittal is subject to the discretionary approval of the City's Planning Agency, subject to the applicable limits of state and federal law; provided, however, that Planning Agency may not deny or impose conditions on a proposed Final Art Submittal based on aspects of the proposed Public Art that conform to the Conceptual Project Art Program approved by the Planning Agency.

IV. Installation of Approved Public Art

A. Obligation. Owner shall install approved Public Art within the timeframes set forth in the Conceptual Project Art Program phasing plan and each Final Art Submittal approved by the City's Planning Agency.

B. Time Extensions. Time extensions not exceeding six (6) months may be approved by the City Manager, in his or her reasonable discretion. Time extensions exceeding six (6) months shall require approval of the Planning Agency, in its reasonable discretion.

C. Excusable Delay. The timeframes in which Owner is required to install Public Art shall be subject to extension for periods equal to the duration of any excusable delay pursuant to Section 22.1 of the Development Agreement.

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D. Withholding of Permits for Noncompliance. In addition to any other remedies available to City, Owner's failure to complete installation of Public Art within required timeframes shall entitle City to withhold future building permits or certificates of occupancy for the Project until Public Art of a value equal or exceeding the amount of Owner's Accrued Actual Art Obligation has been installed.

V. Public Art Fund

A. Establishment of Public Art Fund. Rather than installing a separate Public Art installation in conjunction with the construction of each building to satisfy Owner's Actual Art Obligation, Owner may accumulate funds in a fund held in trust by the City (the "**Public Art Fund**") to facilitate the financing and planning of larger, Project-serving Public Art installations as provided in the approved Conceptual Project Art Program.

B. Effect of Deposits into Public Art Fund. Subject to any applicable requirements or limitations set forth in the approved Conceptual Project Art Program, deposits by Owner into the Public Art Fund in an amount equal to one-half percent (0.5%) of the estimated construction cost of any discreet Project component, as determined by City, shall permit Owner to obtain building permits and/or certificates of occupancy for such Project component prior to approval of Final Art Submittals for, and/or installation of, specified Public Art installations. Such deposits into the Public Art Fund shall not be deemed to satisfy or excuse Owner's obligation under the Development Agreement to install actual Public Art.

C. Withdrawals from Public Art Fund. Following approval by the City's Planning Agency of a Final Art Submittal for a Public Art installation intended to be financed with funds held in the Public Art Fund, Owner may withdraw funds from the Public Art Fund in an amount up to the estimated value of the Public Art installation, as determined by the Planning Agency in conjunction with approval of the Final Art Submittal. Consistent with the Specific Plan, allowable expenses attributable to the value of a Public Art installation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs.

D. Forfeiture in the Event of Expiration, Termination, or Cancellation of Development Agreement. In the event the Development Agreement expires or is terminated or cancelled pursuant to the terms of the Development Agreement, and Owner's Accrued Actual Art Obligation has not been satisfied by the date of such expiration, termination or cancellation, that portion of the funds, if any, held in the Public Art Fund equal to the difference between Owner's Accrued Actual Art Obligation and the value of Public Art that has actually been installed shall be forfeited to the City and deposited into City's Public Art In-Lieu Fund.

VI. Project Building and Occupancy Permits

A. Building Permits. In order to be entitled to issuance of a building permit for any discreet Project component, Owner must demonstrate that the combination of (1) the value of

Exhibit H-6

1569768.3

4890-4517-3512v1/200305-0005

[155788992.14](#)

specific Public Art installations already approved by the City's Planning Agency, and (2) the amount deposited by Owner into a Public Art Fund to fund larger, Project-serving Public Art installations pursuant to the approved Conceptual Project Art Program, equals or exceeds the amount of Owner's Accrued Public Art Obligation.

B. Certificates of Occupancy. In order to be entitled to issuance of a final certificate of occupancy for any building, Owner must demonstrate that it is in compliance with the timeframes for installation of Public Art set forth in the Conceptual Project Art Program phasing plan and all approved Final Art Submittals.

Exhibit H-7

~~1569768.3~~

~~4890-4517-3512v1/200305-0005~~
[155788992.14](#)

Document comparison by Workshare Compare on Thursday, March 3, 2022
9:21:57 AM

Input:	
Document 1 ID	netdocuments://4890-4517-3512/1
Description	Village at Laguna Hills Development Agreement
Document 2 ID	netdocuments://4890-4517-3512/10
Description	Village at Laguna Hills Development Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	692
Deletions	610
Moved from	21
Moved to	21
Style changes	0
Format changes	0
Total changes	1344

OUTLINE

VILLAGES OF LAGUNA HILLS DEVELOPMENT AGREEMENT

Capitalized terms are defined in the Development Agreement. [ALL CAPS SHOWS ITEMS ADDED SINCE THE ORIGINAL DEVELOPMENT AGREEMENT WAS PRESENTED TO THE CITY COUNCIL.]

I. Project Description

A. Phase One – To be completed within seven (7) years

1. The Village Park.
2. The Hotel.
3. At least 140,000 square feet of space within Retail Buildings.
4. At least two (2) of the Residential Buildings I, II, III and/or V.¹
5. Up to 465,000 square feet of office space within four (4) Office Buildings (at Owner's election).

B. Phase Two

1. Additional Retail Space in excess of 140,000 square feet not constructed in Phase One including a minimum total of not less than 210,000 square feet up to a total of 250,000 square feet.
2. Each of Residential Buildings I, II, III and/or V not constructed in Phase One, the remainder of the 200 Affordable Units not constructed in Phase One, and Residential Building IV
3. The remainder of the office space not constructed in Phase One (at Owner's election).

II. Term

A. 15 years.

¹ The allocation of the Affordable Units is shown as follows: Building Number – Total Units/Lower Income/Moderate Income. For example, Building I has a total of 358 Residential Units of which 31 will be Lower Income and 31 will be Moderate Income shown as I – 358/31/31.

I–	358/31/31
II–	230/20/20
III–	300/25/25
V–	275/24/24
Total	1163/100/100

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- B. Extension for five (5) years if, prior to 15 years, Owner has Completed Construction of required elements of Phase One and has obtained building permits for construction of the required elements of Phase Two.**

III. Owner Benefits

- A. Owner is granted the vested right to rely on Existing Land Use Regulations, including the fixing of Development Fees, for the Term.**

IV. City Benefits

- A. City also has the right to assert the Existing Land Use Regulations, for the Term.**

- B. A commitment by the Owner to complete the following elements of the Project.²**

1. 100 Lower Income Units and 100 Moderate Income Units in partial satisfaction of RHNA obligations.
2. The Village Park.
3. 210,000 square feet of retail space.
4. The Hotel TO BE COMPLETED PRIOR TO THE GRANTING OF CERTIFICATES OF OCCUPANCY FOR THE THIRD RESIDENTIAL BUILDING.³
5. Residential Buildings I, II, III, and V.

- C. Development Fees, Community Benefit Fees, and Other Fees.**

1. Normal fees for processing.
2. Annual Development Agreement fee of Twenty Thousand Dollars (\$20,000) per year increased at the rate of 3% per annum.
3. Normal fees and taxes payable to City

² The City's remedies are limited to retention of Community Benefit Fees (described in IV.C., below), withholding permits, and/or termination of the Development Agreement.

³ The City's remedies for failure to timely complete the hotel are limited to: (1) withholding Certificates of Occupancy for the fourth and fifth residential buildings (absent Excusable Delay re Hotel due to hotel market failure; (2) additional Community Benefit Fees of \$396 annually per occupied residential unit; and (3) \$500,000 Community Benefit Fee payment if the hotel is not completed by year seven. Other remedies, including but not limited to termination or withholding of certificate of occupancy for the third residential building, are not available.

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4. \$2,227,066 Community Benefit Fees, \$1,113,533 payable 90 days after the Development Agreement Date and \$1,113,533 payable within fifteen (15) months of the Development Agreement Date.
5. Public Park In-Lieu Fees at the rate of \$15,636 per Residential Unit payable:
 - a. \$2,000,000 90 days after the Development Agreement Date.
 - b. \$2,000,000 upon the earlier of
 - (i) Issuance of building permits for the First Retail Building or the First Office Building, or
 - (ii) 4 years after the Development Agreement Date.
 - c. \$2,000,000 upon the earlier of
 - (i) Issuance of Certificate of Occupancy for the First Retail Buildings or the First Office Buildings, or
 - (ii) 7 years after the Development Agreement Date.
 - d. \$6,571,344 payable
 - (i) \$8,173 per Residential Unit for each of the first 804 Residential Units prior to issuance of building permits for such Residential Buildings.
 - (ii) Remaining balance on or before the 7th Anniversary Date of the Development Agreement.
 - e. \$5,597,688 payable, as follows
 - (i) 15,636 for each of next 358 Residential Units.
 - (ii) Balance due on the 15th Anniversary Date of the Development Agreement.
 - f. \$15,636 per Residential Unit for all units after the 1162nd Residential Unit.
6. Public Art In-lieu Fees
 - a. Owner credited with \$300,000 paid in connection with Five Lagunas Entitlements.
 - b. \$350,000 on before the 90th day following the Development Agreement Date.

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7. Additional Community Benefit Fees
- a. All Community Benefit Fees described in C.5 not used as a credit against Public Park In-Lieu Fees.⁴
 - b. CONTINGENT FISCAL IMPACT FEE (HOTEL) – \$396 PER RESIDENTIAL UNIT PER YEAR, INFLATED AT THE RATE OF 3 PERCENT PER ANNUM COMPOUNDED ANNUALLY, FOR EACH RESIDENTIAL UNIT IN A RESIDENTIAL BUILDING FOR WHICH CERTIFICATES OF OCCUPANCY HAVE BEEN GRANTED PAYABLE FOR THE FULL 20 YEAR TERM, BUT TERMINATED UPON OPENING OF THE HOTEL. In addition, if the Hotel is not constructed within seven (7) years, Owner shall pay an additional Community Benefit Fee of \$500,000 in year SEVEN.
 - c. CONTINGENT FISCAL IMPACT FEE (RETAIL) – \$120 PER RESIDENTIAL UNIT (IN EXCESS OF 805 RESIDENTIAL UNITS) PER YEAR, INFLATED AT THE RATE OF 3 PERCENT PER ANNUM COMPOUNDED ANNUALLY, IN THE EVENT THAT LESS THAN 60,000 SQUARE FEET OF NEW RETAIL IS NOT LEASED BY THE EARLIER OF COMPLETION CONSTRUCTION OF THE THIRD RESIDENTIAL BUILDING PAYABLE FOR THE FULL 20 YEAR TERM BUT TERMINATED UPON LEASING OF THE NEW RETAIL.
 - d. FISCAL IMPACT FEE (GENERAL) – \$120 PER RESIDENTIAL UNIT, INFLATED AT THE RATE OF 3 PERCENT PER ANNUM COMPOUNDED ANNUALLY, FOR EACH RESIDENTIAL UNIT IN RESIDENTIAL BUILDINGS FOR WHICH CERTIFICATES OF OCCUPANCY HAVE BEEN ISSUED PAYABLE FOR THE TERM, INCLUDING ANY EXTENSION OF THE TERM. UPON ANY EARLY TERMINATION FOR A CAUSE OTHER THAN CITY DEFAULT, OWNER REMAINS OBLIGATED TO PAY THIS FEE FOR 16 YEARS FROM DEVELOPMENT AGREEMENT DATE. .
 - e. By way of example of the Additional Community Benefit Fees described in IV.C., assume Residential Building II, III and IV are constructed totaling 805 Residential Units by end of year seven (7), but the Hotel is not completed and the New Retail is not leased at that point in time.

⁴ Any portion of the Public Park-in-Lieu Fees paid before they are due are considered Community Benefit Fees until earned, at which point they are credited against Public Park In-Lieu Fees.

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Owner's obligation would be

$\$147.58^5 \times 805 = \$118,801.90$ per year

$\$487.03^6 \times 805 = \underline{\$392,059.19}$ per year

Total \$510,861.05 per year

Plus a one time payout of \$500,000 in year seven.

⁵ Inflated at 3% per annum

⁶ The Contingent Impact Fee (Retail) is not payable until the Residential Unit count exceeds 805.

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DENYING THE REQUEST BY MGP FUND X LAGUNA HILLS, LLC FOR APPROVAL OF A DEVELOPMENT AGREEMENT FOR THE VILLAGE AT LAGUNA HILLS PROJECT.

The City Council of the City of Laguna Hills, California, hereby finds, determines, and declares as follows:

1. MGP Fund X Laguna Hills, LLC (“Applicant”) is the owner of and/or has an equitable interest in, the existing approximately 68-acre former Laguna Hills Mall site generally located along the southerly side of El Toro Road and the westerly side of Avenida de la Carlota in the City of Laguna Hills, located at 24155 Laguna Hills Mall (the “Property”).

2. In March 2016, the City approved Site Development Permit, Master Sign Program, Conditional Use Permit, Parking Use Permit, Vesting Tentative Tract Map, and Precise Plan No. 2-15-3114 for the Property, which authorized redevelopment of the existing Laguna Hills Mall and the Property with a mixed-use retail and residential project branded “Five Lagunas.”

3. On July 18, 2018, the City Council approved the first phased final map for a portion of the Five Lagunas Project.

4. The Applicant has now filed an application (Case No. USE-0010-2019) for approval of a Development Agreement and related discretionary development permits, which, if approved, would permit modifications to the approved 2016 Five Lagunas Project and provide the Applicant with vested rights to develop the proposed modified project for a term that is longer than the Applicant would otherwise be entitled under state and local law (the “Village at Laguna Hills Project” or the “Modified Project”). The discretionary development permits requested in conjunction with the Development Agreement include: a site development permit for the proposed Modified Project; a master sign program for various on-site signs; conditional use permits for a new health club facility and a hotel; a conditional use permit to allow shared parking; a vesting tentative tract map to re-subdivide the Property into 16 lots; and, a precise plan for mixed use development of the Property (collectively, the “Development Permits”).

5. The City Council serves as, and is, the Planning Agency of the City pursuant to Government Code Section 65100.

6. Under the Laguna Hills Municipal Code, applicants are not required to apply for or enter into a development agreement in conjunction with requests for approval of discretionary development permits; however, the Applicant has voluntarily applied for and requested the City enter into a Development Agreement in conjunction with and as part of its application for approval of the Development Permits because approval of a

Development Agreement would provide the Applicant with greater development rights than would otherwise be allowed under state and local law. These greater development rights include, but are not limited to, the right to develop the Modified Project beyond the term otherwise provided by applicable law and more flexibility in the order and sequencing of development than the Applicant would otherwise be entitled to by right. The Development Agreement and related Development Permits were processed as, presented as, and consistently treated as a single development application, and are inextricably intertwined, such that approval of the Development Permits is dependent on approval of the Development Agreement. At no time during the application process has the City been requested to consider approval of the Development Permits and/or accompanying related conditions of approval separately from the Applicant's request for approval of the Development Agreement. The recommended conditions of approval associated with the Development Permits were prepared in conjunction with negotiation of the proposed Development Agreement, through concurrent processing, and with the understanding that the Development Agreement would be approved as a necessary and indispensable part of the overall Modified Project, as requested by the Applicant. For example, in many cases, the proposed conditions of approval specifically refer to terms in the proposed Development Agreement. If the Applicant had not applied for approval of the Development Agreement in conjunction with its request for Development Permits, City staff would have recommended different conditions of approval for the Development Permits.

7. On April 2, 2021 and April 5, 2021, the City caused public notice to be given of the City Council's intention to consider the proposed Development Agreement and related Development Permits. The public notice described the Development Agreement and related Development Permits as a single application.

8. On April 27, 2021, June 24, 2021, June 29, 2021, and March 8, 2022, the City Council held a public hearing on the proposed Development Agreement and related Development Permits.

9. At its meeting of June 29, 2021, a majority of the City Council members expressed disagreement with many of the terms and conditions of the proposed Development Agreement for the Village at Laguna Hills Project as presented and directed that the City engage in further negotiations with the Applicant regarding the terms of the Development Agreement.

10. In accordance with the City Council's direction, the City has continued to negotiate with the Applicant in good faith regarding the terms of the proposed Development Agreement.

11. Despite these good faith negotiations, the City and the Applicant have been unable to reach a meeting of the minds on terms of the Development Agreement that are mutually acceptable to both the Applicant and the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. The terms of the proposed Development Agreement presented to the City Council are unacceptable to the City; therefore, the Applicant's request for approval of a Development Agreement for the proposed Village at Laguna Hills Project is hereby denied.

SECTION 3. Because the Applicant voluntarily applied for and requested the City enter into a Development Agreement in conjunction with and as an integral part of its application for approval of the Development Permits, and approval of the Development Agreement is denied, the City is unable to take action regarding the Development Permits.

SECTION 4. Adoption of this Resolution is exempt from the California Environmental Quality Act (CEQA) pursuant to the provisions of Article 19, Section 15270 of the CEQA Guidelines.

SECTION 5. The advisory ad hoc committee established on September 28, 2021, for the single-purpose of directing further development agreement negotiations for the Village at Laguna Hills Project is hereby dissolved.

DENIED AND ADOPTED this 8th day of March, 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2022- adopted by the Planning Agency and City Council of the City of Laguna
Hills, California, at a Regular Meeting thereof held on the 8th day of March, 2022, by the
following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MELISSA AU-YEUNG, CITY CLERK

The Village at Laguna Hills

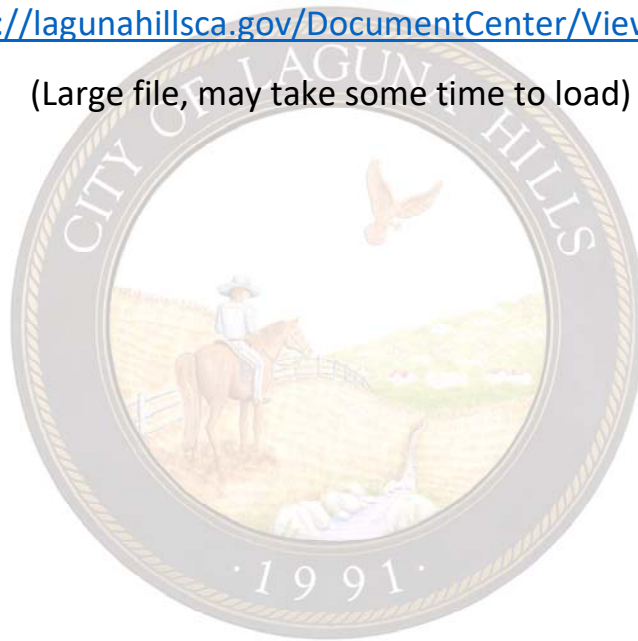
Attachment I

Project Plans

Due to file size limitations, this attachment is provided via direct City website link where the Project Plans can be viewed and downloaded:

<https://lagunahillsca.gov/DocumentCenter/View/6842>

(Large file, may take some time to load)



The Village at Laguna Hills

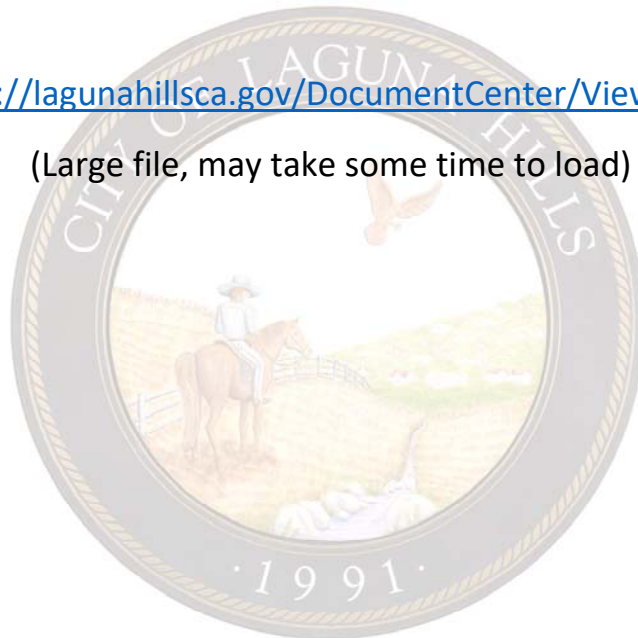
Attachment m

Master Sign Program

Due to file size limitations, this attachment is provided via direct City website link where the Master Sign Program can be viewed and downloaded:

<https://lagunahillsca.gov/DocumentCenter/View/6845>

(Large file, may take some time to load)



Jennifer Lee

Subject: FW: Say no to the "Village"

From: Kimberly Maag <info@email.actionnetwork.org>

Sent: Tuesday, June 29, 2021 5:16 PM

To: Erica Pezold <epezold@lagunahillsCA.gov>; Dave Wheeler <dwheeler@lagunahillsCA.gov>; Janine Heft <jheft@lagunahillsCA.gov>; Bill Hunt <bhunt@lagunahillsCA.gov>; Donald M. Sedgwick <dsedgwick@lagunahillsCA.gov>; Cindy Sands <csands@lagunahillsCA.gov>; Public Comments <publiccomments@lagunahillsCA.gov>; Melissa Au-Yeung <MAu-Yeung@lagunahillsCA.gov>

Subject: Say no to the "Village"

City Council Laguna Hills City Council and Staff,

I urge the City to reject this project. Many changes should be made before it could be approved: the City should eliminate the proposed Hotel, require improved bicycle connectivity, require a higher percentage of affordable units, and a better landscaping plan. Imagine if Laguna Hills residents could bike through the property on dedicated bike lanes and onto the Aliso Creek bike trail. The current plan involves four class III bike lanes, which could be as little as painted arrows on the ground. But we need top level bike trails insulated from the street, including where there are proposed bike lanes. All proposed bike routes should be class I bike trails to the fullest extent possible. We urge greater connectivity with the regions' excellent bike trails.

Sincerely,
Kimberly Maag

Kimberly Maag
equineaupair@gmail.com
26742 Barkstone Ln.
Laguna Hills, California 92653

[[[External E-mail]]]

ATTENTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF LAGUNA HILLS. USE CAUTION WHEN OPENING ATTACHMENTS OR LINKS.

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

Jennifer Lee**Subject:** FW: Agreement Renegotiation -- the Village at Laguna Hills

From: Christine Morinello <auntchristy4@gmail.com>**Sent:** Thursday, July 1, 2021 1:30 AM**To:** Public Comments**Subject:** Agreement Renegotiation -- the Village at Laguna Hills

Dear Mayor Erica Pezold, Mayor Pro Tem Don Sedgwick, Councilwoman Janine Heft, Councilman Bill Hunt and Councilman Dave Wheeler:

Thank you all for the many, many long hours of hard work you have devoted to the creation of the Village at Laguna Hills (mall redevelopment). I am a senior citizen resident of Rancho Santa Margarita who has patronized Laguna Hills businesses continuously since moving to Orange County in 1993. The Laguna Hills Mall was always my "go to" and I have been following the redevelopment concepts closely.

It is my understanding that at the June 29, 2021 meeting, the City Council considered eliminating the four office buildings from the Village plan. That would be a very wise move which I urge the City Council to adopt. Many employers are now allowing their workforce to continue working remotely, which decreases the need for office space dramatically. I personally know of one multinational company based in Massachusetts with a branch in Orange County which is in the midst of moving to a smaller O.C. facility due to the number of staff members who wish to continue working from home. Another consideration is that all cities need tax revenue to operate, and office buildings do not generate the sales taxes and "bed taxes" that restaurants, retail shops and hotels generate.

I respectfully suggest that the Village plan be expanded to include multiple hotels at various "price points" designed to appeal to different travel demographics. For example, the Village could include a luxury boutique hotel, an extended stay hotel, and a budget motel. The Village site is ideal for hospitality accommodations with its high visibility from the freeway and a profusion of restaurants and retail shops nearby.

Thank you for allowing me to offer my thoughts on the future of the Village at Laguna Hills.

Very truly yours,
Christine L. Morinello
auntchristy4@gmail.com

[[[External E-mail]]]

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Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

Jennifer Lee

Subject: FW: No to the Village at Laguna Hills

From: Felicity Figueroa <info@email.actionnetwork.org>

Sent: Friday, July 2, 2021 3:54 PM

To: Erica Pezold <epezold@lagunahillsCA.gov>; Dave Wheeler <dwheeler@lagunahillsCA.gov>; Janine Heft <jheft@lagunahillsCA.gov>; Bill Hunt <bhunt@lagunahillsCA.gov>; Donald M. Sedgwick <dsedgwick@lagunahillsCA.gov>; Cindy Sands <csands@lagunahillsCA.gov>; Public Comments <publiccomments@lagunahillsCA.gov>; Melissa Au-Yeung <MAu-Yeung@lagunahillsCA.gov>

Subject: No to the Village at Laguna Hills

City Council Laguna Hills City Council and Staff,

The City should oppose the project as proposed. Unless the developer eliminates the hotel component, improves the landscaping plan, and makes other changes to improve our quality of life, the project should be rejected. For example, the developer should protect any mature trees on site and use only native plants. This creates a harmonious ecosystem and promotes our area's natural foliage. Please reject this project.

Thank you,

Felicity Figueroa

felicitynf@aol.com

36 Blazing Star

Irvine, California 92604

[[[External E-mail]]]

ATTENTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF LAGUNA HILLS. USE CAUTION WHEN OPENING ATTACHMENTS OR LINKS.

Jennifer Lee

Subject: FW: Say no to the "Village"

From: Gail Fitzpatrick <info@email.actionnetwork.org>

Sent: Monday, July 5, 2021 2:45 PM

To: Erica Pezold <epezold@lagunahillsCA.gov>; Dave Wheeler <dwheeler@lagunahillsCA.gov>; Janine Heft <jheft@lagunahillsCA.gov>; Bill Hunt <bhunt@lagunahillsCA.gov>; Donald M. Sedgwick <dsedgwick@lagunahillsCA.gov>; Cindy Sands <csands@lagunahillsCA.gov>; Public Comments <publiccomments@lagunahillsCA.gov>; Melissa Au-Yeung <MAu-Yeung@lagunahillsCA.gov>

Subject: Say no to the "Village"

City Council Laguna Hills City Council and Staff,

I urge the City to reject this project. Many changes should be made before it could be approved: the City should eliminate the proposed Hotel, require improved bicycle connectivity, require a higher percentage of affordable units, and a better landscaping plan. Imagine if Laguna Hills residents could bike through the property on dedicated bike lanes and onto the Aliso Creek bike trail. The current plan involves four class III bike lanes, which could be as little as painted arrows on the ground. But we need top level bike trails insulated from the street, including where there are proposed bike lanes. All proposed bike routes should be class I bike trails to the fullest extent possible. We urge greater connectivity with the regions' excellent bike trails.

Sincerely,

Gail Fitzpatrick

gginger99@yahoo.com

23301 Ridge Route Dr

Laguna Hills, California 92653

[[[External E-mail]]]

ATTENTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF LAGUNA HILLS. USE CAUTION WHEN OPENING ATTACHMENTS OR LINKS.

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

From: Janelle Cranch <Janellecranch@iusd.org>

Sent: Monday, July 5, 2021 1:48 PM

To: Erica Pezold <epezold@lagunahillsCA.gov>; Dave Wheeler <dwheeler@lagunahillsCA.gov>; Janine Heft <jheft@lagunahillsCA.gov>; Bill Hunt <bhunt@lagunahillsCA.gov>; Donald M. Sedgwick <dsedgwick@lagunahillsCA.gov>; Cindy Sands <csands@lagunahillsCA.gov>; Public Comments <publiccomments@lagunahillsCA.gov>; Melissa Au-Yeung <MAu-Yeung@lagunahillsCA.gov>

Subject: No Hotel at Village at Laguna Hills. Oppose this Massive Project

City Council Laguna Hills City Council and Staff,

The City should oppose the project as proposed. Instead, we need the modifications to improve quality of life for Laguna Hills residents. For example, the City should reject the proposed hotel. Residents do not need the 100-150 room hotel. That land could be more affordable housing or open space.

Sincerely,

Janelle Cranch

Janellecranch@iusd.org

22171 Caminito Petatlan

Laguna Hills, California 92653

[[[External E-mail]]]

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Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

Jennifer Lee

Subject: FW: No to the Village at Laguna Hills

From: Scott Keach <info@email.actionnetwork.org>

Sent: Saturday, July 3, 2021 6:51 AM

To: Erica Pezold <epezold@lagunahillsCA.gov>; Dave Wheeler <dwheeler@lagunahillsCA.gov>; Janine Heft <jheft@lagunahillsCA.gov>; Bill Hunt <bhunt@lagunahillsCA.gov>; Donald M. Sedgwick <dsedgwick@lagunahillsCA.gov>; Cindy Sands <csands@lagunahillsCA.gov>; Public Comments <publiccomments@lagunahillsCA.gov>; Melissa Au-Yeung <MAu-Yeung@lagunahillsCA.gov>

Subject: No to the Village at Laguna Hills

City Council Laguna Hills City Council and Staff,

The City should oppose the project as proposed. Unless the developer eliminates the hotel component, improves the landscaping plan, and makes other changes to improve our quality of life, the project should be rejected. For example, the developer should protect any mature trees on site and use only native plants. This creates a harmonious ecosystem and promotes our area's natural foliage. Please reject this project.

Thank you,

Scott Keach

scottkeach@icloud.com

25591 Indian Hill Lane

Laguna Hills, California 92653

[[[External E-mail]]]

ATTENTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF LAGUNA HILLS. USE CAUTION WHEN OPENING ATTACHMENTS OR LINKS.

Attachment: March 8, 2022 - Introduction of Ordinance Staff Report and Attachments (2775 : Second Reading & Adoption of Ordinance - Village

July 6, 2021

Dear Mayor and Members of the City Council,

I want to propose a compromise plan for the Village at Laguna Hills. By rearranging only 15% of the site plan, the City can accomplish the following goals without changing the total amount of development the developer has proposed yet provides for future retail expansion and a park.

VILLAGE AT LAGUNA HILLS – RETAIL AND PARK EXPANSION PLAN

A) PROPOSED GOALS:

- Provide more land for future retail expansion
- Increase retail parking
- Provide a new recreational park
- Provide more meeting space and 150 rooms in the hotel
- Add Class 1 bicycle path on Calle de los Caballeros through the site

B) RETAIL AND PARK EXPANSION PLAN DESCRIPTION:

The Retail and Park Expansion Plan maintains the existing square footage and intensities for the project including the 1,500 residential units, 250,000 SF of retail & 465,000 SF of office space but rearranges the office site plan (less than 15% of the site) to achieve the above goals.

Moving the surface parking from the office/residential sector to the retail sector will allow the expansion area to provide more future retail space and reduce the likelihood it would be come residential or office uses. This would give the City more control of its ultimate use and encourage expansion of the retail as the retail market evolves. The plan does the following:

- 1) **CONSOLIDATE OFFICE INTO TWO BLOCKS:** Consolidate office buildings & parking into two southern blocks. Office buildings floorplans remain the same – the north building relocates to south block and the two parking structures are built to provide 100% of the office parking.
- 2) **RETAIL LAND & PARKING EXPANSION:** Increase retail land by 25% (4+ acres) providing approximately 250 additional parking spaces for retail use using the north office block.
- 3) **FUTURE RETAIL EXPANSION:** Provide future pad for 50,000 SF of future retail or a second hotel on the 4-acre retail land expansion (20% increase in total retail SF).
- 4) **VILLAGE GREEN PARK** Add 1-acre Village Green recreational park with grass field for recreation on the NEC of Calle de los Caballeros and Calle Zocalo which is adjacent to the residential area plus is convenient for all the residents of the UVSP.
- 5) **HOTEL CONFERENCE SPACE:** Move 9,000 SF of the 10,805 SF of retail planned on the hotel ground floor to a new building so the hotel can devote this 9,000 SF of space to conference facilities while maintaining the 150 rooms. There would be no change to the hotel footprint, just removing most of the shops and replacing it with meeting space.
- 6) **NEW RETAIL BUILDING:** A new retail building is added in the Village Park (same floor plan) to take 9,000 SF of the retail located in the hotel and move it next to the theater escalators (it will also hide the back of the big box retail). There is no net increase in

retail – just moving it around on the site plan from the hotel to the theater area (also it moves the smelly dog park from the theater entrance).

- 7) **CLASS 1 BICYCLE LANE:** The proposed 6' sidewalk on the south side of Calle de los Caballeros could be expanded to 10' wide to provide a Class 1 bicycle path connecting Avenida de la Carlota to Paseo de Valencia and the transit center with a 4' parkway separating the bikeway from the street and parking (to avoid doors opening into bikes).

C) ENVIRONMENTAL:

Since the retail, office and residential square footages and hotels rooms are the same as what was analyzed there would no changes to the environmental impacts and the current documentation can be used without any major changes for the approval process. The minor changes to the site plan could be accomplished by updating the Development Agreement and adding the compromise site plan and related conditions to the Conditions of Approval. At such time in the future that the developer wants to add additional 50,000 SF of retail space, a new environmental review and approval by the Planning Commission would be required.

D) RETAIL EXPANSION:

The Retail and Park Expansion Plan provides a better balance of land uses with about 40% of the site land area containing retail uses and retail uses under residential which is a significant increase from the current plan. The extra 4 acres of land devoted to retail uses increase the exclusive retail land by 25% and will provide area for the potential for future expansion of retail by 20% (50,000 SF). Providing 250 more surface parking spaces will increase the success of the retail and make it easier for residents to patronize the retailers.

Part of the new parking along the freeway could be used for community events such as Pumpkin City which allows the retail and restaurants to feed off this special event. Calle de la Magdalena could be closed between the Village and Recreation Parks for the weekly Farmers market allowing the retailers to capitalize on the foot traffic from the Farmers Market.

E) FISCAL IMPACTS:

- 1) **PROVIDES FUTURE SOURCE OF REVENUE:** The compromise project will provide the same benefits as the current fiscal analysis but also provides additional potential future revenue sources by adding meeting space to the hotel which could increase ADR and occupancy and providing a future expansion of retail square footage (or even a second hotel site).

- 2) **MAINTENANCE DISTRICT:** I would suggest that either a Landscape and Lighting District (LLD) or a Community Facilities District (CFD) be set up that is funded through fees added to the property tax bill of the 68 acres that would maintain the all of the public streets within the UVSP bounded by Avenida de la Carlota, Los Alisos and Paseo de la Valencia. This would provide ongoing revenue for the City to offset costs that are currently coming out of the general fund. The maintenance district would include the following items:

- Median and parkway landscaping
- Street lighting
- Monument and directional signage
- Traffic signal maintenance
- Holiday lighting and decorations
- Maintenance, utilities, and real estate operations of the police substation

3) PUBLIC BENEFITS PAYMENT – I would add an additional public benefits payment for money for the following which improve the quality of life for the City and provide better access to the project for the developer:

i) El Toro/I 5 intersection improvements: Payment for designing a Laguna Hills based solution to the El Toro/5 Freeway interchange to improve traffic flow on El Toro.

ii) Traffic Signal Synchronization: Traffic signal synchronization project to improve traffic flows in the City of Laguna Hills & Laguna Woods bounded by Lake Forest Drive on the north, 5 freeway on the east, 73 Toll Road on the west and Alicia Parkway on the south

iii) Deferred Road Maintenance – Road repairs on roads that serve the project within the area boarded by Alicia, 5 Freeway, Lake Forest and 73 toll road.

F) ARCHITECTURE: The architectural design of the project does not meet the standards outlined in the UVSP. The project design should be changed to eliminate materials such as: board form concrete, metal wall panels, metal roofing, perforated metal panels, concrete panels. The Laguna Hills City Hall, Ashley Furniture complex and Oakbrook Village all followed the recommended architectural styles in the UVSP. As the centerpiece of the UVSP, The Village at Laguna Hills should incorporate the architectural styles discussed in the UVSP. If they do not want to follow the UVSP and use the NorCal style they have proposed then they need to propose an amendment to the UVSP Zoning Code and allow the City Council to debate the merits of the amendment to the Zoning Code prior to gaining approval on the project.

CONCLUSION:

This Retail and Park Expansion Plan provides the developer with the intensity of uses they proposed but answers many of the concerns raised by the public and City council including providing more open space, more space for retail, more parking and more conference space for the hotel. Increasing the retail land by 25% will provide more land for future expansion of retail square footage at a later time. I believe that providing the new Recreation Park will expand recreational opportunities for all the residents in the UVSP which currently do not have a park. I hope you will consider the Retail and Park Expansion Plan to get this project approved with a project the City will be proud of and will provide positive fiscal impacts for the city.

Sincerely,

Carl Christiansen

MASTER PLAN, FULL BUILD



LEGEND

- Retail / Restaurant / Health Club / Cinema
- Residential
- Office
- Hotel
- Structured Parking

PHASE SUMMARY*

Overall Site Area	±2,935,730 SF / ±67.8 Acres
District Area	±756,175 SF / ±17.4 Acres
Retail / Restaurant / Health Club / Cinema	250,000 SF
District Area	±87,300 SF / ±2.2 Acres
Hotel	100-150 Rooms
District Area	±796,175 SF / ±18.2 Acres
Office	465,000 SF
District Area	±1,286,080 SF / ±30.0 Acres
Residential / Mixed-Use	1,300 Units
Parking Required	5,824 Stalls
Parking Provided	5,939 Stalls

* See full breakdown on Project & Parking Summaries, Sheets SD1.01 & SD1.02.



THE VILLAGE AT LAGUNA HILLS

MerloneGeier
Partners

MASTER PLAN
Laguna Hills, CA
08/28/2020

SD
1.03

Project Pg. 399



SUMMARY OF FINDINGS

Proposed Laguna Hills Hotel

LAGUNA HILLS MALL, CALLE DE LA LOUISA
LAGUNA HILLS, CALIFORNIA



SUBMITTED TO:

Stephen T. Logan
Merlone Geier Partners
4365 Executive Drive, Suite 1400
San Diego, California 92121

PREPARED BY:

HVS Consulting & Valuation
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December 13, 2021

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www.hvs.com

Re: Proposed Laguna Hills Hotel
Laguna Hills, California
HVS Reference: 2021022179

Dear Mr. Logan:

Pursuant to your request, we herewith submit our summary of findings pertaining to the above-captioned property. We have inspected the real estate and analyzed the hotel market conditions in the Laguna Hills, California, area. We have studied the proposed project, and the summary results of our fieldwork and analysis are presented in this document.

The purpose of this study is to analyze and test the feasibility of two different scenarios for a proposed hotel in Laguna Hills. The first scenario explores the feasibility of a nationally branded “upscale” hotel, as categorized by Smith Travel Research (STR) Chain Scales. Chain scale segments are grouped primarily according to actual average room rates nationwide. Upscale hotels are typically select-service or full-service in nature. For the purpose of our first analysis we have assumed a select-service hotel. Select-service hotels offer F&B (e.g., a lobby bar and restaurant which may have a more limited menu or operating hours) and meeting facilities, but these are still limited when compared to full-service hotels.

The second purpose of this study was to evaluate the feasibility of a higher caliber hotel (above the upscale chain scale segment). As such, the second scenario analyzes the potential feasibility of a nationally branded upper-upscale hotel as categorized by STR. Upper-upscale hotels are typically full-service in nature with an F&B offering that typically comprises one or more full-service restaurants (typically with more expansive food and beverage offerings, operational hours, and in-room dining) as well as expanded meeting facilities in order to better cater to groups and events. Given the subsequent results of the upper-upscale full-service analysis, we did not test the feasibility of a hotel of higher caliber than the upper-upscale segment.

Our findings for both scenarios are further described in the subsequent chapters of this report.

FEASIBILITY SUMMARY

	<u>Upscale Scenario</u>	<u>Upper Upscale Scenario</u>
Net Present Value (NPV)	\$41,500,000	\$47,300,000
Estimated Replacement Cost	\$40,900,000	\$55,700,000
Difference Between NPV and Replacement Cost	1.5%	-15.1%
Feasibility Conclusion	Feasible	Not Feasible

Based on our analysis, which is further outlined in this report, there is sufficient support for an upscale, select-service hotel, while there is insufficient support for the upper upscale, full-service scenario. The difference between the Net Present Value (NPV), which is the anticipated value of the property upon completion, and the estimated Replacement Cost is a key indicator of the feasibility of a project. Investors expect to create additional value following the completion of a hotel; if the NPV is below the cost to construct the property, there is generally limited incentive to pursue the project. Given that the NPV for the upper upscale scenario is significantly below the estimated replacement cost, it is unlikely the project would be feasible in the next five to ten years based on the current scope and market performance.

We hereby certify that we have no undisclosed interest in the property, and our employment and compensation are not contingent upon our findings. This study is subject to the comments made throughout this report and to all assumptions and limiting conditions set forth herein.

Sincerely,
TS Worldwide, LLC



Luigi Major, MAI, Managing Director
lmajor@hvs.com, +1 (310) 270-3240

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1. Subject of The Study

Subject of the Study

The subject of the study is an approximately 95,832-square-foot (2.20-acre) parcel to be improved with either an upscale select-service lodging facility or an upper upscale full-service hotel; the hotel is expected to be associated with a national upscale, select-service or upper upscale full-service hotel brand. The proposed subject property, which is expected to open on June 1, 2023¹, will feature 150 rooms. The upscale scenario is expected to feature a lobby restaurant and bar, a fitness room, a lobby workstation or small business center, and leased ground-floor retail; the upper upscale scenario is expected to feature a restaurant and a café, a fitness center, a business center, a gift shop, and leased ground-floor retail. The hotel will also contain the appropriate parking capacity and all necessary back-of-the-house space.

¹ The proposed opening date is for analysis purposes only, and does not account for the time necessary to obtain local implementing approvals (e.g., final map approval, a building permit or a certificate of occupancy) required to construct and then open the hotel.

FIGURE 1-1 SUMMARY OF PLANNED FACILITIES (UPSCALE)

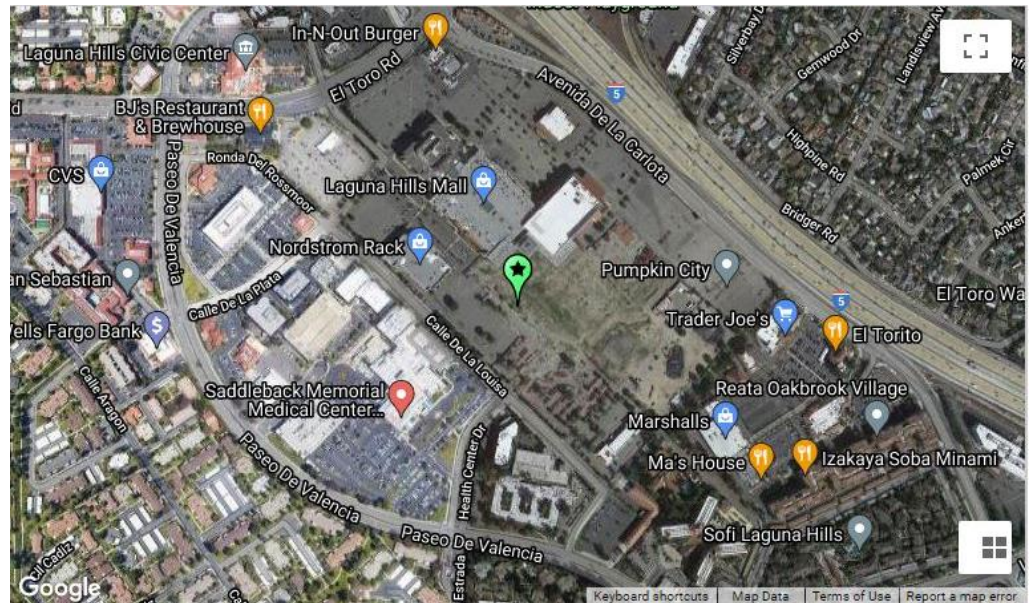
Anticipated Guestroom Configuration	Estimated Number of Units
King	75
Queen/Queen	60
Suites	15
Total	150
Anticipated Food & Beverage Facilities	Estimated Seating Capacity
Lobby Restaurant & Bar	100–150
Anticipated Indoor Meeting & Banquet Facilities	Square Footage
Meeting Room(s)	TBD by brand
Anticipated Amenities & Services	
Fitness Room	
Lobby Workstation or Business Center	
Ground-Floor Retail (Leased)	

FIGURE 1-2 SUMMARY OF PLANNED FACILITIES (UPPER UPSCALE)

Anticipated Guestroom Configuration	Estimated Number of Units
King	75
Queen/Queen	60
Suites	15
Total	150
Anticipated Food & Beverage Facilities	Estimated Seating Capacity
Restaurant & Bar	200–250
Café	25–50
Anticipated Indoor Meeting & Banquet Facilities	Square Footage
Ballroom	TBD by brand
Meeting Room(s)	TBD by brand
Anticipated Amenities & Services	
Fitness Center	Concierge
Business Center	Room Service
Ground-Floor Retail (Leased)	Gift Shop/Boutique

The subject site's location is the Laguna Hills Mall, Calle de la Louisa, Laguna Hills, California 92653.

LOCATION MAP



VIEW OF SUBJECT SITE



Ownership, Franchise, and Management Assumptions

We assume that all utilities will be available to the site and that no hazards are present that will impede its development. We assume that the certificate of occupancy will be issued on or before the opening date for the entirety of the improvements.

The subject site was last sold in 2013. Merlone Geier Partners has owned the site since that time, having purchased it from Simon Property Group for an undisclosed price. At the time of purchase, the site encompassed an indoor shopping mall; the mall was permanently shuttered in late 2018, and most of the original structure has since been demolished. The greater 68-acre tract is expected to be divided into smaller parcels as part of the Village at Laguna Hills mixed-use development; the proposed subject hotel will be a part of this development. No transfers of the property have reportedly occurred since 2013.

Details pertaining to management terms were not yet determined at the time of this report; however, we assume that the proposed hotel will be managed by a professional hotel-operating company, with fees deducted at rates consistent with current market standards. Our projections reflect a management fee of 3.0% of total revenues in our study.

While a specific franchise has not been selected at the time of this report, we assume that the proposed subject hotel will operate as either an upscale, select-service or an upper upscale, full-service lodging facility. Our projections reflect the associated fees for each scenario. We have positioned the proposed hotel's projected franchise fees based on our review of several hotel brand's current franchise fees. Based on our review of national hotel brand franchise terms and fees are outlined in the table below. Reservations fees will also be due and are included in the rooms expense line item of our forecast.

FIGURE 1-3 FRANCHISE FEES

	Royalty Fee (%) of Rooms Revenue)	Marketing Fee (%) of Rooms Revenue)
Upscale Scenario	5.50%	3.15%
Upper Upscale Scenario	5.50%	4.00%

2. Overview of Local Area Economy

Overview of Local Area Economy

Orange County comprises 34 incorporated cities with 42 miles of coastline. Orange County adjoins the greater Los Angeles area to the north and has been a direct beneficiary of the aggressive economic growth of the Los Angeles Basin. As the Los Angeles economy expanded in the 1980s, Orange County evolved into a self-sufficient, diverse urban center with mature industrial, commercial, and residential markets. It is known for its sunny beaches, including Laguna Beach, as well as Disneyland and Knott's Berry Farm. Its population was estimated by the U.S. Census to be nearly 3.2 million people in 2018. Orange County has a diverse economic base, with Santa Ana serving as the government seat of the county, Irvine as the financial center, and Anaheim/Garden Grove as the major tourism destination. The city of Laguna Hills, which was incorporated in 1991, along with nearby Lake Forest and Foothill Ranch, has become a hub for several corporate headquarters and offices including Marie Callender's, Panasonic, Oakley, Saddleback College, Loan Depot, Cox Communications, and Kawasaki. This area is also home to several hiking trails and lakes, which draw outdoor enthusiasts to the region.

Locally, the unemployment rate was 7.5% in 2020; for this same area in 2021, the most recent month's unemployment rate was registered at 4.2%, versus 7.8% for the same month in 2020.

The following bullet points highlight major demand generators for this market:

- The University of California - Irvine (UC Irvine) is the second-largest employer in Orange County. UC Irvine, whose name originated from the Irvine Company, was founded in 1965 as a public, co-educational research university. UC Irvine offers 68 undergraduate degree programs, 53 minors, 45 master's degree programs, and 43 doctoral programs. In 2010, UC Irvine opened the 100,000-square-foot Sue and Bill Gross Hall, the first stem-cell research center in Southern California. The facility is equipped with Orange County's only Level I trauma center and regional burn center, as well as a 45-bed neonatal intensive-care unit. Phase II of this hospital opened in early 2012. The project was touted to be the largest construction project in Orange County's history, at a total cost of \$556 million. In 2016, the \$92-million expansion of the Mesa Court student-housing complex opened, housing over 800 students. We note that classes and facilities were shut down beginning in March 2020 due to the

onset of the COVID-19 pandemic. Students were limited to remote learning, with few exceptions, in the 2020–21 academic year; however, students returned to in-person learning for the Fall 2021 semester.

- Companies representing the technology and automotive sectors have a large presence in Irvine, Lake Forest, Foothill Ranch, and Mission Viejo. Broadcom Corp. is one of the world's largest semiconductor companies and the largest technology company in Irvine; a new, 70-acre, 1.1-million-square-foot campus in Irvine's Great Park neighborhood was completed in 2018. Toshiba America Electronic Components Inc. is an independent operating company owned by Toshiba America Inc., a subsidiary of Toshiba Corporation, which employs approximately 8,000 people in the United States. Toshiba America Electronic Components Inc.'s headquarters are in Irvine, and the company continues to grow in the field of research and development. Quality Systems Inc.'s (QSI) national headquarters are also in Irvine; QSI and its NextGen Healthcare subsidiary provide prepackaged software for healthcare companies looking to digitize their medical records and connectivity services. Although numerous layoffs and furloughs were announced in March and April of 2020, many furloughs ended later in 2020, and many companies are now hiring. Many corporate entities are still encouraging remote working, or a combination of office and remote work. Laguna Hills and the surrounding communities benefit from the breadth of corporate demand generators in Irvine, considered Orange County's financial and technology center.
- MemorialCare Saddleback Medical Center is a major general medical and surgical hospital in Laguna Hills. The hospital is consistently ranked among the Top 100 hospitals in the United States by U.S. News & World Report across a variety of specialties. The hospital is major employer in the area, employing over 1,000 physicians, nurses, and administrative staff. In 2019, the Neuroscience Institute at Saddleback Medical Center was expanded, allowing the hospital to rank among the first three U.S. hospitals to receive Joint Commission Certification as an Advanced Thrombectomy-Capable Stroke Center in the United States. The recognition has made the area a destination for stroke treatment in Orange County and Southern California.

The greater Irvine area, inclusive of Laguna Hills, remains one of the desirable commercial centers in Orange County. The economic base is diverse in this market, with strong employers in the technology, consumer goods, healthcare, and financial sectors. Moreover, the former El Toro Marine Corps Air Station continues to be transformed into an urban park area known as Orange County Great Park, with facilities that include a waterpark, sports park, botanical gardens, and several arts and cultural centers. We also note that land prices have significantly increased in the past several years, but this has not deterred the development of mixed-use projects in the area. Finally, the defunct Laguna Hills Mall is being redeveloped

into a mixed-use development that will encompass 68 acres and include 250,000 square feet of retail, 465,000 square feet of office space, a hotel, and approximately 1,500 multi-family and townhome residential units. Although the COVID-19 pandemic continues to affect the local and regional economy to some degree, the lifting of most pandemic-related restrictions, coupled with the wide distribution of vaccinations, has aided in a recovery.

This area is served by John Wayne Airport, Long Beach International Airport, and the Los Angeles International Airport.

FIGURE 2-4 AIRPORT STATISTICS

Year	John Wayne Airport		Long Beach Airport		Los Angeles International Airport	
	Passenger Traffic	Percent Change	Passenger Traffic	Percent Change	Passenger Traffic	Percent Change
2011	8,609,008	—	3,115,433	—	61,862,052	—
2012	8,857,944	2.9 %	3,205,907	2.9 %	63,688,121	3.0 %
2013	9,232,789	4.2	2,942,873	(8.2)	66,665,726	4.7
2014	9,386,033	1.7	2,823,996	(4.0)	70,662,212	6.0
2015	10,038,466	7.0	2,523,686	(10.6)	74,956,305	6.1
2016	10,496,511	4.6	2,841,144	12.6	80,921,527	8.0
2017	10,423,578	(0.7)	3,783,775	33.2	84,558,776	4.5
2018	10,664,038	2.3	3,884,857	2.7	87,533,177	3.5
2019	10,656,986	(0.1)	3,584,203	(7.7)	88,068,013	0.6
2020	3,794,850	(64.4)	1,043,773	(70.9)	28,779,527	(67.3)
<i>Year-to-date, Aug</i>						
2020	2,704,119	—	827,903	—	22,676,679	—
2021	4,341,266	60.5 %	1,191,244	43.9 %	33,036,486	45.7 %

Sources: Respective Airport Authorities

Although the greater Irvine area itself offers limited tourist attractions, nearby cities such as Costa Mesa, Newport Beach, Laguna Beach, and Anaheim feature a variety of tourist and leisure attractions. The peak season for tourism in this area is typically from May to September. During other times of the year, weekend demand usually comprises travelers passing through en route to other destinations, people visiting friends or relatives, and other similar weekend demand generators. Primary attractions in the area include the following:

- The Irvine Spectrum Center is an outdoor shopping center featuring over 100 shops, the 21-screen Edwards movie theatre, and the 500-seat Irvine Improv Theatre. The shopping center also offers the "Giant Wheel," a Ferris wheel that projects lighting schemes via 52,000 LED lights, visible by passing motorists on

Interstate 5; other attractions include a carousal and a children's train. The nearby South Coast Plaza is also a major shopping attraction for residents and visitors, alike. We note that many of the shopping outlets and attractions at the Irvine Spectrum Center closed in March 2020 with the onset of the COVID-19 pandemic. However, most retail outlets and attractions have since reopened now that most pandemic-related restrictions have been rescinded.

- The Orange County Great Park is a non-aviation reuse of the defunct El Toro Marine Corps Air Station, encompassing over 450 acres, with plans to develop the park to over 1,300 acres. The park currently includes attractions such as the Great Park Balloon, the Great Park Ice Arena, a variety of sports fields, the Palm Court Arts Complex, a Farmer's Market, multiple miles of hiking trails, and a 2,500-seat soccer stadium, which is home to Orange County SC. Future planned projects include a 19-acre outdoor waterpark, slated to open in the summer 2022; a 10,000-seat amphitheater; an aviation museum; and multiple retail and dining outlets. The entire planned development includes a breadth of attractions, which should become a major tourism destination for the region over the coming years. We note that many of the existing attractions closed in March 2020 given the onset of the COVID-19 pandemic. However, most of these attractions have reopened, some with limited capacities per any applicable governmental restrictions.
- Orange County is home to a variety of coastal beaches and towns, which typically receive visitors from around the world. Popular destinations include Laguna Beach, Newport Beach, and Huntington Beach; the beaches are a major attraction for surfers, while Laguna Beach also has tide pools and the oceanfront Crystal Cove State Park. Moreover, the Pacific Coast Highway (State Highway 1), which follows the California coastline, is a famous attraction, with visitors beginning at one end and traveling the route along the coast to see the renowned vistas. The southernmost end of the highway begins at Dana Point, which is just south of the Lake Forest and Laguna Hills area. As a popular starting point for the journey, communities in the area benefit from travelers staying here before they begin the trip.

Prior to the onset of the COVID-19 pandemic and the corresponding economic crisis, the greater Irvine area, which includes Laguna Hills, was experiencing a period of economic strength and expansion, primarily led by the technology and finance industries and the healthcare sector. However, the COVID-19 pandemic continues to affect the local market to a moderate degree, resulting in decreased business activity, inclusive of the hospitality industry. Nevertheless, the wide distribution of vaccinations and the lifting of many pandemic-related restrictions has sparked a recovery in the second half of 2021; thus, while the near-term

Overview of Local Area Lodging Market Trends

outlook for the market is best described as one of caution at this time, the long-term outlook is more optimistic.

The subject site is located in the greater Orange County lodging market, which encompasses over 200 open and operating lodging facilities totaling roughly 25,000 guestrooms. Within this greater market, the direct submarket that will include the subject hotel is known as Laguna Hills; competitive hotels are also located in Lake Forest, Irvine, and Mission Viejo. Within this market, the proposed subject hotel will compete with a smaller set of hotels based on various factors, such as price point, product offering, and amenities, among other factors.

STR is an independent research firm that compiles and publishes data on the lodging industry, and this information is routinely used by typical hotel buyers. HVS has ordered and analyzed an STR Trend Report of historical supply and demand data for this competitive set.

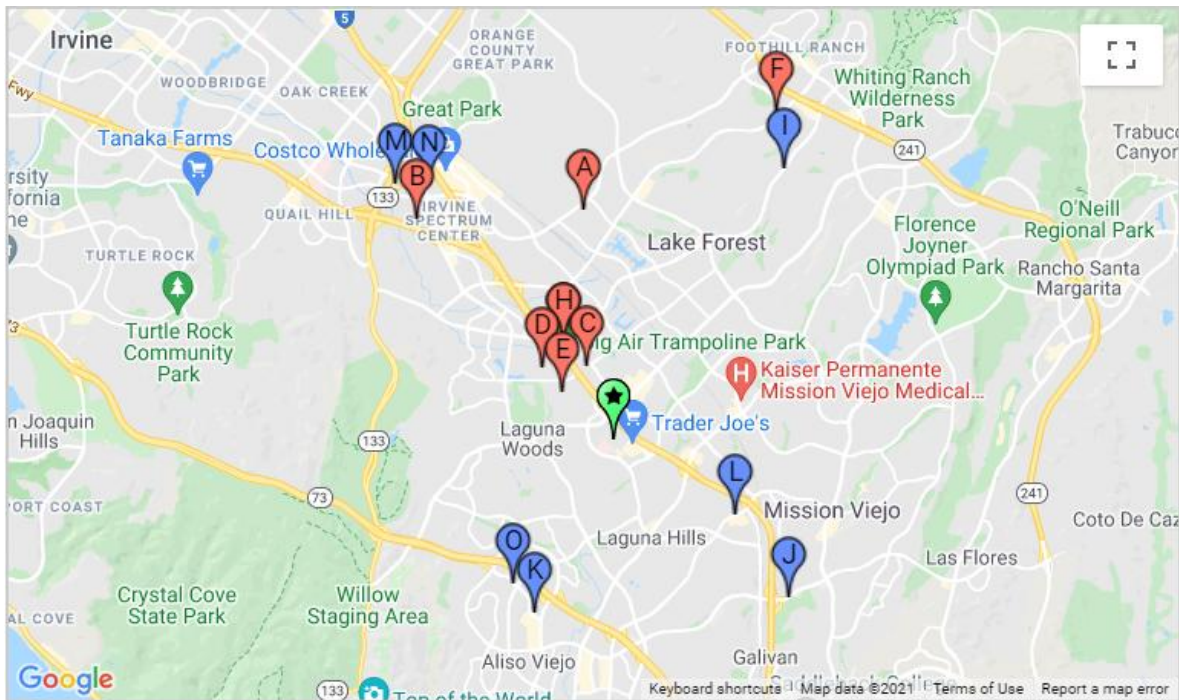
FIGURE 2-5 HISTORICAL SUPPLY AND DEMAND TRENDS (STR)

Year	Average Daily Room Count	Available Room Nights	Change	Occupied Room Nights	Change	Occupancy	Average Rate	Change	RevPAR	Change
2011	1,304	475,960	—	345,566	—	72.6 %	\$118.69	—	\$86.17	—
2012	1,304	476,113	0.0 %	337,857	(2.2) %	71.0	125.09	5.4 %	88.77	3.0 %
2013	1,304	475,960	(0.0)	350,842	3.8	73.7	132.08	5.6	97.36	9.7
2014	1,410	514,600	8.1	394,816	12.5	76.7	139.20	5.4	106.79	9.7
2015	1,514	552,610	7.4	435,126	10.2	78.7	151.06	8.5	118.94	11.4
2016	1,632	595,696	7.8	462,779	6.4	77.7	155.62	3.0	120.90	1.6
2017	1,666	608,096	2.1	481,828	4.1	79.2	158.54	1.9	125.62	3.9
2018	1,914	698,610	14.9	530,126	10.0	75.9	167.89	5.9	127.40	1.4
2019	1,914	698,610	0.0	535,038	0.9	76.6	171.03	1.9	130.98	2.8
2020	2,062	752,668	7.7	302,387	(43.5)	40.2	132.26	(22.7)	53.13	(59.4)
Year-to-Date Through September										
2020	2,004	547,140	—	220,547	—	40.3 %	\$140.38	—	\$56.58	—
2021	2,314	631,710	15.5 %	366,687	66.3 %	58.0	146.95	4.7 %	85.30	50.8 %
Average Annual Compounded Change:										
2011 – 2019			4.9 %		5.6 %			4.7 %		5.4 %
2011 – 2020			5.2		(1.5)			1.2		(5.2)
2016 – 2019			5.5 %		5.0 %			3.2 %		2.7 %

Hotels Included in Sample	Class	Competitive Status	Number of Rooms	Year Affiliated	Year Opened
Ascend Collection The Hills Hotel	Upscale Class	Secondary	148	Jun 2020	Jan 1977
Fairfield Inn Mission Viejo Orange County	Upper Midscale Class	Primary	146	Dec 1992	May 1987
Residence Inn Irvine Spectrum	Upscale Class	Primary	112	May 1989	May 1989
Sonesta Select Laguna Hills Irvine Spectrum Orange County	Upscale Class	Primary	136	Feb 2021	Jul 1990
DoubleTree by Hilton Hotel Irvine Spectrum	Upscale Class	Secondary	252	Jul 1999	Jul 1999
Holiday Inn Express & Suites Lake Forest - Irvine East	Upper Midscale Class	Primary	60	May 2019	Oct 2002
Staybridge Suites Irvine East/Lake Forest	Upscale Class	Primary	128	Mar 2006	Mar 2006
Renaissance ClubSport Aliso Viejo Laguna Beach Hotel	Upper Upscale Class	Secondary	174	Jun 2020	Jul 2008
Hilton Garden Inn Irvine Spectrum Lake Forest	Upscale Class	Primary	148	Oct 2019	Sep 2009
Courtyard Irvine Spectrum	Upscale Class	Primary	210	Jul 2014	Jul 2014
Homewood Suites by Hilton Aliso Viejo Laguna Beach	Upscale Class	Secondary	129	Feb 2016	Feb 2016
Marriott Irvine Spectrum	Upper Upscale Class	Secondary	271	Dec 2017	Dec 2017
Hampton by Hilton Inn Irvine Spectrum Lake Forest	Upper Midscale Class	Primary	92	Jun 2020	Jun 2020
Homewood Suites by Hilton Irvine Spectrum Lake Forest	Upscale Class	Primary	116	Jun 2020	Jun 2020
TownePlace Suites Irvine Lake Forest	Upper Midscale Class	Primary	112	Jun 2020	Jun 2020
SpringHill Suites Irvine Lake Forest	Upscale Class	Primary	102	Mar 2021	Mar 2021
Total			2,336		

Source: STR

MAP OF COMPETITION



- | | | | |
|--|--|--|---|
| | Proposed Laguna Hills Hotel | | Homewood Suites by Hilton Irvine Spectrum Lake Forest (Primary) |
| | Residence Inn by Marriott Irvine Spectrum (Primary) | | Holiday Inn Express & Suites Lake Forest (Secondary) |
| | Courtyard by Marriott Irvine Spectrum (Primary) | | Fairfield by Marriott Mission Viejo Orange County (Secondary) |
| | Hilton Garden Inn Lake Forest Irvine Spectrum (Primary) | | Homewood Suites by Hilton Aliso Viejo Laguna Beach (Secondary) |
| | Sonesta Select Laguna Hills Irvine Spectrum (Primary) | | Hills Hotel an Ascend Collection Hotel (Secondary) |
| | TownePlace Suites by Marriott Irvine Lake Forest (Primary) | | DoubleTree by Hilton Irvine Spectrum (Secondary) |
| | Staybridge Suites Irvine East Lake Forest (Primary) | | Marriott Irvine Spectrum (Secondary) |
| | Hampton Inn Irvine Spectrum Lake Forest (Primary) | | Renaissance ClubSport Aliso Viejo (Secondary) |

During the illustrated historical period, both occupancy and ADR generally followed a strengthening trend. A number of new hotels began to open within the market in 2014, a trend that continued through 2018, during which available room nights increased by 46%. Continued corporate expansions and developments in the Irvine and Lake Forest areas boosted demand levels, allowing the market to absorb the new supply until 2018, at which time available room nights increased by 15%; thus, occupancy contracted notably. However, ADR increased year-over-year during the same period. In 2016, occupancy declined moderately and ADR growth slowed following layoffs at Oakley. Corporate expansions and increased leisure demand aided in the growth over the past decade. In March 2020, the COVID-19 pandemic began to affect the local market, similar to the rest of the nation, resulting in decreased business activity, inclusive of the hospitality, tourism, and manufacturing industries; thus, all performance metrics declined significantly in 2020. Year-to-date 2021 data illustrate a notable improvement in occupancy and a roughly \$6 gain in ADR. The most recent performance metrics can be attributed to increased business activity and heightened leisure travel given the improving conditions. While the pandemic will continue to affect business to some degree in the near term, the overall outlook is optimistic given the dynamics of this market, the successful rollout of vaccines, the removal of many COVID-related restrictions, and the recent increase in travel.

The following table illustrates the historical occupancy and average rate (ADR) levels for selected hotels in the market.

FIGURE 2-6 PRIMARY COMPETITORS – OPERATING PERFORMANCE

Property	Number of Rooms	Est. Segmentation			Estimated 2018				Estimated 2019					
		Commercial	Leisure	Group	Weighted Annual Room Count	Occ.	Average Rate	RevPAR	Weighted Annual Room Count	Occ.	Average Rate	RevPAR	Occupancy Penetration	Yield Penetration
Residence Inn by Marriott Irvine Spectrum	112	70 %	20 %	10 %	112	60 - 65 %	\$170 - \$180	\$105 - \$110	112	75 - 80 %	\$170 - \$180	\$140 - \$150	100 - 110 %	100 - 110 %
Courtyard by Marriott Irvine Spectrum	210	75	15	10	210	80 - 85	190 - 200	150 - 160	210	80 - 85	190 - 200	150 - 160	100 - 110	120 - 130
Hilton Garden Inn Lake Forest Irvine Spectrum	148	75	15	10	148	70 - 75	160 - 170	120 - 125	148	50 - 55	150 - 160	85 - 90	70 - 75	60 - 65
Sonesta Select Laguna Hills Irvine Spectrum	136	70	15	15	136	70 - 75	150 - 160	110 - 115	136	70 - 75	140 - 150	105 - 110	95 - 100	80 - 85
TownePlace Suites by Marriott Irvine Lake Forest	112	70	20	10					HOTEL OPENED IN 2020					
Staybridge Suites Irvine East Lake Forest	128	75	10	15	128	80 - 85	160 - 170	130 - 140	128	80 - 85	160 - 170	130 - 140	100 - 110	100 - 110
Hampton Inn Irvine Spectrum Lake Forest	92	70	15	15					HOTEL OPENED IN 2020					
Homewood Suites by Hilton Irvine Spectrum Lake Forest	116	70	15	15					HOTEL OPENED IN 2020					
Sub-Totals/Averages	1,054	73 %	15 %	12 %	734	76.3 %	\$170.48	\$130.00	734	74.9 %	\$169.33	\$127	98 %	96.8 %
Secondary Competitors	1,180	56 %	25 %	19 %	903	75.6 %	\$165.76	\$125.27	903	78.0 %	\$172.38	\$134	102 %	102.6 %
Totals/Averages	2,234	64 %	21 %	16 %	1,637	75.9 %	\$167.89	\$127.39	1,637	76.6 %	\$171.04	\$131	100 %	100.0 %

* Specific occupancy and average rate data were utilized in our analysis, but are presented in ranges in the above table for the purposes of confidentiality.

FIGURE 2-7 SECONDARY COMPETITORS – OPERATING PERFORMANCE

Property	Number of Rooms	Est. Segmentation				Weighted Annual Room Count	Estimated 2018			Weighted Annual Room Count	Estimated 2019		
		Commercial	Leisure	Group	Total Competitive Level		Occ.	Average Rate	RevPAR		Occ.	Average Rate	RevPAR
Holiday Inn Express & Suites Lake Forest	146	65 %	20 %	15 %	85 %	124	70 - 75 %	\$120 - \$125	\$90 - \$95	124	70 - 75 %	\$125 - \$130	\$90 - \$95
Fairfield by Marriott Mission Viejo Orange County	60	65	20	15	85	51	75 - 80	120 - 125	90 - 95	51	70 - 75	120 - 125	90 - 95
Homewood Suites by Hilton Aliso Viejo Laguna Beach	129	65	20	15	80	103	80 - 85	160 - 170	130 - 140	103	80 - 85	160 - 170	125 - 130
Hills Hotel an Ascend Collection Hotel	148	45	30	25	75	111	70 - 75	125 - 130	85 - 90	111	65 - 70	125 - 130	85 - 90
DoubleTree by Hilton Irvine Spectrum	252	60	25	15	75	189	75 - 80	160 - 170	125 - 130	189	80 - 85	180 - 190	150 - 160
Marriott Irvine Spectrum	271	50	25	25	75	203	70 - 75	210 - 220	150 - 160	203	80 - 85	210 - 220	180 - 190
Renaissance ClubSport Aliso Viejo	174	50	35	15	70	122	70 - 75	190 - 200	140 - 150	122	70 - 75	180 - 190	130 - 140
Totals/Averages	1,180	56 %	25 %	19 %	77 %	903	75.6 %	\$165.76	\$125.27	903	78.0 %	\$172.38	\$134.41

* Specific occupancy and average rate data was utilized in our analysis, but is presented in ranges in the above table for the purposes of confidentiality.

Our survey of the primarily competitive hotels in the local market shows a range of lodging types and facilities. Each primary competitor was inspected and evaluated.

According to the City of Laguna Hills Planning Office, and our research and inspection (as applicable), new supply expected to be competitive within the proposed subject hotel's competitive submarket is outlined in the following table.

FIGURE 2-8 NEW SUPPLY

Proposed Property	Number of Rooms	Total Competitive Level	Weighted Room Count	Estimated Opening Date	Development Stage
Proposed Subject Property	150	100 %	150	June 1, 2023	Early Development
Springhill Suites by Marriott Lake Forest	102	100	102	March 1, 2021	Recently Opened
Totals/Averages	252		252		

Market segmentation is a useful procedure because individual classifications often exhibit unique characteristics in terms of growth potential, seasonality of demand, average length of stay, double occupancy, facility requirements, price sensitivity, and so forth. By quantifying the room-night demand by market segment and analyzing the characteristics of each segment, the demand for transient accommodations can be projected.

FIGURE 2-9 ACCOMMODATED-ROOM-NIGHT DEMAND

Market Segment	Marketwide	
	Accommodated Demand	Percentage of Total
Commercial	291,401	64 %
Leisure	94,805	21
Group	71,495	16
Total	457,701	100 %

Various types of economic and demographic data were then evaluated to determine their propensity to reflect changes in hotel demand. Based on this procedure, we forecast the following average annual compounded market-segment growth rates.

FIGURE 2-10 AVERAGE ANNUAL COMPOUNDED MARKET-SEGMENT GROWTH RATES

Market Segment	Annual Growth Rate					
	2020	2021	2022	2023	2024	2025
Commercial	-45.0 %	64.0 %	28.0 %	15.0 %	7.0 %	1.0 %
Leisure	-33.0	75.0	10.0	6.0	3.0	1.0
Group	-45.0	50.0	15.0	12.0	10.0	5.0
Base Demand Growth	-42.5 %	64.6 %	21.6 %	12.5 %	6.5 %	1.5 %

The following table details our projection of lodging demand growth for the subject market, including the total number of occupied room nights and any residual unaccommodated demand in the market.

FIGURE 2-11 FORECAST OF MARKET OCCUPANCY

	2019	2020	2021	2022	2023	2024	2025	2026
Commercial								
Total Demand	291,401	160,271	262,844	336,440	386,906	413,989	418,129	418,129
Growth Rate		(45.0) %	64.0 %	28.0 %	15.0 %	7.0 %	1.0 %	0.0 %
Leisure								
Total Demand	94,805	63,519	111,159	122,274	129,611	133,499	134,834	134,834
Growth Rate		(33.0) %	75.0 %	10.0 %	6.0 %	3.0 %	1.0 %	0.0 %
Group								
Total Demand	71,495	39,322	58,984	67,831	75,971	83,568	87,746	87,746
Growth Rate		(45.0) %	50.0 %	15.0 %	12.0 %	10.0 %	5.0 %	0.0 %
Totals								
Base Demand	457,701	263,112	432,986	526,546	592,488	631,057	640,710	640,710
Total Demand	457,701	263,112	432,986	526,546	592,488	631,057	640,710	640,710
Overall Demand Growth	0.9 %	(42.5) %	64.6 %	21.6 %	12.5 %	6.2 %	1.3 %	0.0 %
Market Mix								
Commercial	63.7 %	60.9 %	60.7 %	63.9 %	65.3 %	65.6 %	65.3 %	65.3 %
Leisure	20.7	24.1	25.7	23.2	21.9	21.2	21.0	21.0
Group	15.6	14.9	13.6	12.9	12.8	13.2	13.7	13.7
Existing Hotel Supply	1,637	1,796	1,957	1,957	1,957	1,957	1,957	1,957
Proposed Hotels								
Proposed Subject Property					88	150	150	150
Springhill Suites by Marriott Lake Forest			86	102	102	102	102	102
Available Room Nights per Year	597,633	655,566	745,645	751,663	783,763	806,413	806,413	806,413
Nights per Year	365	365	365	365	365	365	365	365
Total Supply	1,637	1,796	2,043	2,059	2,147	2,209	2,209	2,209
Rooms Supply Growth	0.0 %	9.7 %	13.7 %	0.8 %	4.3 %	2.9 %	0.0 %	0.0 %
Marketwide Occupancy	76.6 %	40.1 %	58.1 %	70.1 %	75.6 %	78.0 %	79.0 %	79.0 %

¹ Opening in June 2023 of the 100% competitive, 150-room Proposed Subject Property

² Opening in March 2021 of the 100% competitive, 102-room Springhill Suites by Marriott Lake Forest

These room-night projections for the market area are used in determining the proposed subject hotel's expected occupancy levels based on penetration levels forecast by segment.

3. Upscale Analysis

Forecast of the Proposed Subject Hotel's Occupancy

In the first scenario, the proposed subject hotel is expected to be operated as an upscale, select-service lodging facility, to be affiliated with a national brand. Some brands that fall under this category include Aloft Hotels, AC Hotel by Marriott, Courtyard by Marriott, and Hilton Garden Inn. These hotels typically include a lobby restaurant and bar, which is generally more limited in scope than what is offered at a full-service hotel. Moreover, the proposed subject hotel is anticipated to feature ground-floor retail (leased), meeting space, a fitness room, and a business center or lobby workstation.

The proposed subject hotel's occupancy forecast is set forth as follows, with the adjusted projected penetration rates used as a basis for calculating the amount of captured market demand.

FIGURE 3-12 FORECAST OF SUBJECT PROPERTY'S OCCUPANCY

Market Segment	2023	2024	2025	2026
Commercial				
Demand	386,906	412,733	415,737	415,737
Market Share	3.6 %	6.7 %	7.2 %	7.2 %
Capture	13,945	27,721	29,897	29,897
Penetration	88 %	99 %	106 %	106 %
Leisure				
Demand	129,611	133,094	134,063	134,063
Market Share	3.8 %	6.7 %	7.0 %	7.0 %
Capture	4,897	8,978	9,432	9,432
Penetration	92 %	99 %	104 %	104 %
Group				
Demand	75,971	83,314	87,244	87,244
Market Share	2.3 %	4.6 %	5.3 %	5.3 %
Capture	1,717	3,844	4,612	4,612
Penetration	55 %	68 %	78 %	78 %
Total Room Nights Captured	20,559	40,542	43,941	43,941
Available Room Nights	32,100	54,750	54,750	54,750
Subject Occupancy	64 %	74 %	80 %	80 %
Market-wide Available Room Nights	783,763	806,413	806,413	806,413
Fair Share	4 %	7 %	7 %	7 %
Market-wide Occupied Room Nights	592,488	629,141	637,044	637,044
Market Share	3 %	6 %	7 %	7 %
Market-wide Occupancy	76 %	78 %	79 %	79 %
Total Penetration	85 %	95 %	102 %	102 %

These positioned segment penetration rates result in the following market segmentation forecast.

FIGURE 3-13 MARKET SEGMENTATION FORECAST – SUBJECT PROPERTY

	2023	2024	2025	2026
Commercial	68 %	68 %	68 %	68 %
Leisure	24	22	21	21
Group	8	9	10	10
Total	100 %	100 %	100 %	100 %

These projections reflect years beginning June 1, 2023, which correspond to the first projection year in the forecast of income and expense for the proposed subject hotel.

Forecast of the Proposed Subject Hotel's Average Rate

The defined primarily competitive market realized an overall average rate of \$144.17 in the 2020 base year, declining from the 2019 level of \$169.33. The Marriott Irvine Spectrum Center (a secondary competitor) achieved the highest estimated average rate in the local competitive market, by a significant margin, because of the hotel's upper-upscale product offering, popular brand affiliation, and location adjacent to primary commercial demand generators. Of the primary competitive set, the Courtyard by Marriott Irvine Spectrum achieved the highest estimated average rate because of similar aforementioned factors, although this hotel offers a select-service product. Other important rate aspects of this market include location near Interstate 5 and proximity to commercial demand generators. The selected rate position for the proposed subject hotel, in base-year dollars, takes into consideration expected factors such as its ground-floor retail space, select-service amenities, and upscale product offering. We have selected the rate position of \$175.00, in base-year dollars, for the proposed subject hotel. The final forecast reflects years beginning on June 1, 2023, and corresponds with our financial projections, as shown below.

FIGURE 3-14 ADR FORECAST – MARKET AND PROPOSED SUBJECT HOTEL

Calendar Year	Historical		2021	2022	2023	2024	2025	2026	2027	2028
	2019	2020								
Market ADR	\$171.04	\$132.27	\$149.46	\$167.40	\$175.77	\$181.04	\$186.47	\$192.07	\$197.83	\$203.76
Projected Market ADR Growth Rate	—	-22.7%	13.0%	12.0%	5.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Proposed Subject Property ADR (As-If Stabilized)	\$175.00	\$135.33	\$152.92	\$171.27	\$179.83	\$185.23	\$190.79	\$196.51	\$202.41	\$208.48
ADR Growth Rate		-22.7%	13.0%	12.0%	5.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Proposed Subject Stabilized ADR Penetration	102%	102%	102%	102%	102%	102%	102%	102%	102%	102.3%
Fiscal Year					2023/24	2024/25	2025/26	2026/27	2027/28	2028/29
Proposed Subject Property Average Rate					\$182.07	\$187.53	\$193.15	\$198.95	\$204.92	\$211.07
Opening Discount					3.0%	1.0%	0.0%	0.0%	0.0%	0.0%
Average Rate After Discount					\$176.60	\$185.65	\$193.15	\$198.95	\$204.92	\$211.07
Real Average Rate Growth					—	5.1%	4.0%	3.0%	3.0%	3.0%
Market ADR					\$177.95	\$183.29	\$188.79	\$194.45	\$200.29	\$206.29
Proposed Subject ADR Penetration (After Discount)					99%	101%	102%	102%	102%	102%
ADR Expressed in Base-Year Dollars Deflated @ Inflation Rate					\$160.02	\$163.32	\$164.97	\$164.97	\$164.97	\$164.97

Discounts of 3% and 1% have been applied to the stabilized room rates projected for the first two years of operation, as would be expected for a new property of this type as it builds its reputation and becomes established in the market.

FIGURE 3-15 ADR AND OCCUPANCY FORECAST - CONCLUSION

Year	Occupancy	Average Rate		Average Rate After Discount
		Before Discount	Discount	
2023/24	68 %	\$182.07	3.0 %	\$176.60
2024/25	77	187.53	1.0	185.65
2025/26	80	193.15	0.0	193.15

Forecast of Income and Expense

The following table presents a detailed forecast through the fifth projection year, including amounts per available room (PAR) and per occupied room (POR). The second table illustrates our ten-year forecast of income and expense, presented with a lesser degree of detail. The forecasts pertain to years that begin on June 1, 2023, expressed in inflated dollars for each year.

FIGURE 3-16 DETAILED FORECAST OF INCOME AND EXPENSE

	2023/24 Begins June				2024/25				Stabilized				2026/27				2027/28			
Number of Rooms:	150				150				150				150				150			
Occupancy:	68%				77%				80%				80%				80%			
Average Rate:	\$176.60				\$185.65				\$193.15				\$198.95				\$204.92			
RevPAR:	\$120.09				\$142.95				\$154.52				\$159.16				\$163.93			
Days Open:	365				365				365				365				365			
Occupied Rooms:	37,230	%Gross	PAR	POR	42,158	%Gross	PAR	POR	43,800	%Gross	PAR	POR	43,800	%Gross	PAR	POR	43,800	%Gross	PAR	POR
OPERATING REVENUE																				
Rooms	\$6,575	89.9 %	\$43,833	\$176.60	\$7,827	90.5 %	\$52,180	\$185.66	\$8,460	90.7 %	\$56,400	\$193.15	\$8,714	90.7 %	\$58,093	\$198.95	\$8,975	90.7 %	\$59,833	\$204.91
Food & Beverage	608	8.3	4,054	16.33	686	7.9	4,572	16.27	727	7.8	4,846	16.60	749	7.8	4,991	17.09	771	7.8	5,141	17.61
Other Operated Departments	93	1.3	623	2.51	100	1.2	665	2.36	104	1.1	692	2.37	107	1.1	713	2.44	110	1.1	734	2.52
Miscellaneous Income	35	0.5	234	0.94	37	0.4	249	0.89	39	0.4	260	0.89	40	0.4	267	0.92	41	0.4	275	0.94
Total Operating Revenues	7,312	100.0	48,744	196.39	8,650	100.0	57,666	205.18	9,330	100.0	62,198	213.01	9,610	100.0	64,065	219.40	9,898	100.0	65,984	225.97
DEPARTMENTAL EXPENSES *																				
Rooms	1,537	23.4	10,245	41.28	1,659	21.2	11,057	39.34	1,734	20.5	11,562	39.60	1,786	20.5	11,909	40.78	1,840	20.5	12,266	42.01
Food & Beverage	585	96.3	3,903	15.72	627	91.4	4,181	14.88	654	90.0	4,361	14.94	674	90.0	4,492	15.38	694	90.0	4,627	15.85
Other Operated Departments	39	41.3	257	1.04	40	40.3	268	0.95	42	40.0	277	0.95	43	40.0	285	0.98	44	40.0	294	1.01
Total Expenses	2,161	29.6	14,405	58.04	2,326	26.9	15,506	55.17	2,430	26.0	16,200	55.48	2,503	26.0	16,686	57.15	2,578	26.0	17,187	58.86
DEPARTMENTAL INCOME	5,151	70.4	34,339	138.35	6,324	73.1	42,160	150.01	6,900	74.0	45,997	157.53	7,107	74.0	47,379	162.26	7,320	74.0	48,797	167.11
UNDISTRIBUTED OPERATING EXPENSES																				
Administrative & General	812	11.1	5,415	21.82	824	9.5	5,496	19.56	818	8.8	5,453	18.67	842	8.8	5,616	19.23	868	8.8	5,785	19.81
Info & Telecom Systems	48	0.7	321	1.29	51	0.6	341	1.21	53	0.6	356	1.22	55	0.6	366	1.25	57	0.6	377	1.29
Marketing	477	6.5	3,179	12.81	484	5.6	3,226	11.48	480	5.1	3,201	10.96	494	5.1	3,297	11.29	509	5.1	3,395	11.63
Franchise Fee	569	7.8	3,792	15.28	677	7.8	4,514	16.06	732	7.8	4,879	16.71	754	7.8	5,025	17.21	776	7.8	5,176	17.72
Prop. Operations & Maint.	244	3.3	1,627	6.55	292	3.4	1,946	6.92	338	3.6	2,252	7.71	348	3.6	2,320	7.94	358	3.6	2,389	8.18
Utilities	257	3.5	1,712	6.90	273	3.2	1,821	6.48	284	3.0	1,897	6.50	293	3.0	1,954	6.69	302	3.0	2,012	6.89
Total Expenses	2,407	32.9	16,046	64.65	2,601	30.1	17,343	61.71	2,705	28.9	18,036	61.77	2,787	28.9	18,577	63.62	2,870	28.9	19,134	65.53
GROSS OPERATING PROFIT	2,744	37.5	18,293	73.70	3,723	43.0	24,817	88.30	4,194	45.1	27,961	95.76	4,320	45.1	28,801	98.63	4,449	45.1	29,663	101.58
Management Fee	219	3.0	1,462	5.89	259	3.0	1,730	6.16	280	3.0	1,866	6.39	288	3.0	1,922	6.58	297	3.0	1,980	6.78
INCOME BEFORE NON-OPR. INC. & EXP.	2,525	34.5	16,831	67.81	3,463	40.0	23,087	82.15	3,914	42.1	26,095	89.37	4,032	42.1	26,879	92.05	4,152	42.1	27,683	94.81
NON-OPERATING INCOME & EXPENSE																				
Property Taxes	425	5.8	2,834	11.42	434	5.0	2,891	10.29	442	4.7	2,948	10.10	451	4.7	3,007	10.30	460	4.6	3,068	10.51
Insurance	101	1.4	670	2.70	104	1.2	691	2.46	107	1.1	711	2.44	110	1.1	733	2.51	113	1.1	755	2.58
Retail Income	(310)	(4.2)	(2,068)	(8.33)	(320)	(3.7)	(2,130)	(7.58)	(329)	(3.5)	(2,194)	(7.51)	(339)	(3.5)	(2,260)	(7.74)	(349)	(3.5)	(2,328)	(7.97)
Total Expenses	215	3.0	1,436	5.79	218	2.5	1,451	5.16	220	2.3	1,466	5.02	222	2.3	1,480	5.07	224	2.2	1,495	5.12
EBITDA	2,309	31.5	15,395	62.03	3,245	37.5	21,636	76.98	3,694	39.8	24,629	84.35	3,810	39.8	25,399	86.98	3,928	39.9	26,189	89.69
Reserve for Replacement	146	2.0	975	3.93	259	3.0	1,730	6.16	373	4.0	2,488	8.52	384	4.0	2,563	8.78	396	4.0	2,639	9.04
EBITDA LESS RESERVE	\$2,163	29.5 %	\$14,420	\$58.10	\$2,986	34.5 %	\$19,906	\$70.83	\$3,321	35.8 %	\$22,142	\$75.83	\$3,425	35.8 %	\$22,836	\$78.21	\$3,532	35.9 %	\$23,549	\$80.65

*Departmental expenses are expressed as a percentage of departmental revenues.

FIGURE 3-17 TEN-YEAR FORECAST OF INCOME AND EXPENSE

	2023/24		2024/25		2025/26		2026/27		2027/28		2028/29		2029/30		2030/31		2031/32		2032/33	
Number of Rooms:	150		150		150		150		150		150		150		150		150		150	
Occupied Rooms:	37,230		42,158		43,800		43,800		43,800		43,800		43,800		43,800		43,800		43,800	
Occupancy:	68%		77%		80%		80%		80%		80%		80%		80%		80%		80%	
Average Rate:	\$176.60	% of	\$185.65	% of	\$193.15	% of	\$198.95	% of	\$204.92	% of	\$211.07	% of	\$217.40	% of	\$223.92	% of	\$230.64	% of	\$237.56	% of
RevPAR:	\$120.09	Gross	\$142.95	Gross	\$154.52	Gross	\$159.16	Gross	\$163.93	Gross	\$168.85	Gross	\$173.92	Gross	\$179.14	Gross	\$184.51	Gross	\$190.04	Gross
OPERATING REVENUE																				
Rooms	\$6,575	89.9 %	\$7,827	90.5 %	\$8,460	90.7 %	\$8,714	90.7 %	\$8,975	90.7 %	\$9,245	90.7 %	\$9,522	90.7 %	\$9,808	90.7 %	\$10,102	90.7 %	\$10,405	90.7 %
Food & Beverage	608	8.3	686	7.9	727	7.8	749	7.8	771	7.8	794	7.8	818	7.8	843	7.8	868	7.8	894	7.8
Other Operated Departments	93	1.3	100	1.2	104	1.1	107	1.1	110	1.1	113	1.1	117	1.1	120	1.1	124	1.1	128	1.1
Miscellaneous Income	35	0.5	37	0.4	39	0.4	40	0.4	41	0.4	43	0.4	44	0.4	45	0.4	46	0.4	48	0.4
Total Operating Revenues	7,312	100.0	8,650	100.0	9,330	100.0	9,610	100.0	9,898	100.0	10,195	100.0	10,501	100.0	10,816	100.0	11,140	100.0	11,475	100.0
DEPARTMENTAL EXPENSES *																				
Rooms	1,537	23.4	1,659	21.2	1,734	20.5	1,786	20.5	1,840	20.5	1,895	20.5	1,952	20.5	2,011	20.5	2,071	20.5	2,133	20.5
Food & Beverage	585	96.3	627	91.4	654	90.0	674	90.0	694	90.0	715	90.0	736	90.0	758	90.0	781	90.0	805	90.0
Other Operated Departments	39	41.3	40	40.3	42	40.0	43	40.0	44	40.0	45	40.0	47	40.0	48	40.0	50	40.0	51	40.0
Total Expenses	2,161	29.6	2,326	26.9	2,430	26.0	2,503	26.0	2,578	26.0	2,655	26.0	2,735	26.0	2,817	26.0	2,902	26.0	2,989	26.0
DEPARTMENTAL INCOME	5,151	70.4	6,324	73.1	6,900	74.0	7,107	74.0	7,320	74.0	7,540	74.0	7,766	74.0	7,999	74.0	8,239	74.0	8,486	74.0
UNDISTRIBUTED OPERATING EXPENSES																				
Administrative & General	812	11.1	824	9.5	818	8.8	842	8.8	868	8.8	894	8.8	921	8.8	948	8.8	977	8.8	1,006	8.8
Info & Telecom Systems	48	0.7	51	0.6	53	0.6	55	0.6	57	0.6	58	0.6	60	0.6	62	0.6	64	0.6	66	0.6
Marketing	477	6.5	484	5.6	480	5.1	494	5.1	509	5.1	525	5.1	540	5.1	557	5.1	573	5.1	590	5.1
Franchise Fee	569	7.8	677	7.8	732	7.8	754	7.8	776	7.8	800	7.8	824	7.8	848	7.8	874	7.8	900	7.8
Prop. Operations & Maint.	244	3.3	292	3.4	338	3.6	348	3.6	358	3.6	369	3.6	380	3.6	392	3.6	403	3.6	415	3.6
Utilities	257	3.5	273	3.2	284	3.0	293	3.0	302	3.0	311	3.0	320	3.0	330	3.0	340	3.0	350	3.0
Total Expenses	2,407	32.9	2,601	30.1	2,705	28.9	2,787	28.9	2,870	28.9	2,956	28.9	3,045	28.9	3,136	28.9	3,230	28.9	3,327	28.9
GROSS OPERATING PROFIT	2,744	37.5	3,723	43.0	4,194	45.1	4,320	45.1	4,449	45.1	4,584	45.1	4,721	45.1	4,863	45.1	5,008	45.1	5,159	45.1
Management Fee	219	3.0	259	3.0	280	3.0	288	3.0	297	3.0	306	3.0	315	3.0	324	3.0	334	3.0	344	3.0
INCOME BEFORE NON-OPR. INC. & EXP.	2,525	34.5	3,463	40.0	3,914	42.1	4,032	42.1	4,152	42.1	4,278	42.1	4,406	42.1	4,538	42.1	4,674	42.1	4,814	42.1
NON-OPERATING INCOME & EXPENSE																				
Property Taxes	425	5.8	434	5.0	442	4.7	451	4.7	460	4.6	469	4.6	479	4.6	488	4.5	498	4.5	508	4.4
Insurance	101	1.4	104	1.2	107	1.1	110	1.1	113	1.1	117	1.1	120	1.1	124	1.1	127	1.1	131	1.1
Retail Income	(310)	(4.2)	(320)	(3.7)	(329)	(3.5)	(339)	(3.5)	(349)	(3.5)	(360)	(3.5)	(370)	(3.5)	(382)	(3.5)	(393)	(3.5)	(405)	(3.5)
Total Expenses	215	3.0	218	2.5	220	2.3	222	2.3	224	2.2	226	2.2	228	2.2	230	2.1	232	2.1	234	2.0
EBITDA	2,309	31.5	3,245	37.5	3,694	39.8	3,810	39.8	3,928	39.9	4,051	39.9	4,177	39.9	4,308	40.0	4,442	40.0	4,580	40.1
Reserve for Replacement	146	2.0	259	3.0	373	4.0	384	4.0	396	4.0	408	4.0	420	4.0	433	4.0	446	4.0	459	4.0
EBITDA LESS RESERVE	\$2,163	29.5 %	\$2,986	34.5 %	\$3,321	35.8 %	\$3,425	35.8 %	\$3,532	35.9 %	\$3,644	35.9 %	\$3,757	35.9 %	\$3,875	36.0 %	\$3,996	36.0 %	\$4,121	36.1

Our positioning of each revenue and expense level is supported by comparable operations or trends specific to this market.

FIGURE 3-18 COMPARABLE OPERATING STATEMENTS: RATIO TO SALES

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Subject
						Stabilized \$
Year:	2019	2018	2018	2018	2017	2019
Edition:	11	11	11	11	11	11
Number of Rooms:	150 to 200	80 to 100	100 to 130	190 to 240	170 to 220	150
Days Open:	365	365	365	365	365	365
Occupancy:	80%	80%	80%	76%	81%	80%
Average Rate:	\$159	\$164	\$163	\$172	\$172	\$163
RevPAR:	\$127	\$131	\$130	\$131	\$138	\$130
REVENUE						
Rooms	82.3 %	93.7 %	93.1 %	92.8 %	84.6 %	90.7 %
Food & Beverage	9.1	4.5	5.4	5.1	13.3	7.8
Other Operated Departments	7.0	1.1	1.0	0.3	1.3	1.1
Miscellaneous Income	1.6	0.7	0.5	1.8	0.9	0.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
DEPARTMENTAL EXPENSES*						
Rooms	21.7	18.8	16.2	20.2	21.7	20.5
Food & Beverage	86.7	131.3	96.7	45.3	85.4	90.0
Other Operated Departments	10.1	36.2	52.8	69.8	15.0	40.0
Total	26.4	23.9	20.8	21.3	29.9	26.0
DEPARTMENTAL INCOME	73.6	76.1	79.2	78.7	70.1	74.0
UNDISTRIBUTED OPERATING EXPENSES						
Administrative & General	7.0	10.0	7.6	8.7	11.3	8.8
Info. and Telecom. Systems	0.6	1.0	0.4	1.1	1.1	0.6
Marketing	4.9	6.6	3.6	8.1	7.0	5.1
Franchise Fee	6.2	5.1	6.4	4.4	7.3	7.8
Property Operations & Maintenance	3.6	3.5	3.2	4.2	4.1	3.6
Utilities	3.1	3.3	2.5	2.8	3.6	3.0
Total	25.4	29.5	23.8	29.4	34.3	29.0
GROSS OPERATING PROFIT	48.2	46.6	55.4	49.3	35.8	45.0
Management Fee	2.9	3.5	4.0	4.7	2.0	3.0
INCOME BEFORE NON-OPER. INC. & EXP.	45.3	43.1	51.4	44.6	33.8	42.0
EBITDA LESS RESERVE	36.2 %	35.6 %	47.7 %	36.9 %	29.7 %	35.6 %

* Departmental expense ratios are expressed as a percentage of departmental revenues

FIGURE 3-19 COMPARABLE OPERATING STATEMENTS: AMOUNTS PER AVAILABLE ROOM

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Subject
						Stabilized \$
Year:	2019	2018	2018	2018	2017	2019
Edition:	11	11	11	11	11	11
Number of Rooms:	150 to 200	80 to 100	100 to 130	190 to 240	170 to 220	150
Days Open:	365	365	365	365	365	365
Occupancy:	80%	80%	80%	76%	81%	80%
Average Rate:	\$159	\$164	\$163	\$172	\$172	\$163
RevPAR:	\$127	\$131	\$130	\$131	\$138	\$130
REVENUE						
Rooms	\$46,403	\$47,761	\$47,444	\$47,890	\$50,525	\$47,581
Food & Beverage	5,103	2,310	2,731	2,648	7,930	4,088
Other Operated Departments	3,964	536	498	143	753	584
Miscellaneous Income	903	380	278	925	513	219
Total	56,374	50,987	50,951	51,606	59,721	52,472
DEPARTMENTAL EXPENSES						
Rooms	10,048	8,977	7,704	9,675	10,979	9,754
Food & Beverage	4,426	3,034	2,641	1,200	6,771	3,679
Other Operated Departments	399	194	263	100	113	234
Total	14,873	12,205	10,608	10,975	17,863	13,667
DEPARTMENTAL INCOME	41,500	38,782	40,343	40,630	41,857	38,805
UNDISTRIBUTED OPERATING EXPENSES						
Administrative & General	3,964	5,095	3,880	4,505	6,754	4,600
Info. and Telecom. Systems	352	507	202	572	628	300
Marketing	2,737	3,347	1,841	4,192	4,166	2,700
Franchise Fee	3,515	2,620	3,275	2,274	4,356	4,116
Property Operations & Maintenance	2,024	1,790	1,646	2,159	2,449	1,900
Utilities	1,740	1,657	1,295	1,458	2,123	1,600
Total	14,333	15,017	12,138	15,160	20,477	15,216
GROSS OPERATING PROFIT	27,167	23,765	28,205	25,470	21,380	23,589
Management Fee	1,635	1,785	2,038	2,436	1,194	1,574
INCOME BEFORE NON-OPER. INC. & EXP.	25,533	21,980	26,167	23,034	20,186	22,015
EBITDA LESS RESERVE	\$20,409	\$18,119	\$24,299	\$19,070	\$17,777	\$18,680

FIGURE 3-20 COMPARABLE OPERATING STATEMENTS: AMOUNTS PER OCCUPIED ROOM

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Subject
						Stabilized \$
Year:	2019	2018	2018	2018	2017	2019
Edition:	11	11	11	11	11	11
Number of Rooms:	150 to 200	80 to 100	100 to 130	190 to 240	170 to 220	150
Days Open:	365	365	365	365	365	365
Occupancy:	80%	80%	80%	76%	81%	80%
Average Rate:	\$159	\$164	\$163	\$172	\$172	\$163
RevPAR:	\$127	\$131	\$130	\$131	\$138	\$130
REVENUE						
Rooms	\$158.72	\$163.87	\$163.33	\$172.19	\$171.53	\$162.95
Food & Beverage	17.45	7.93	9.40	9.52	26.92	14.00
Other Operated Departments	13.56	1.84	1.72	0.51	2.56	2.00
Miscellaneous Income	3.09	1.30	0.96	3.33	1.74	0.75
Total	192.82	174.93	175.40	185.55	202.75	179.70
DEPARTMENTAL EXPENSES						
Rooms	34.37	30.80	26.52	34.79	37.27	33.40
Food & Beverage	15.14	10.41	9.09	4.32	22.99	12.60
Other Operated Departments	1.36	0.67	0.91	0.36	0.38	0.80
Total	50.87	41.88	36.52	39.46	60.65	46.80
DEPARTMENTAL INCOME	141.95	133.06	138.89	146.09	142.10	132.89
UNDISTRIBUTED OPERATING EXPENSES						
Administrative & General	13.56	17.48	13.36	16.20	22.93	15.75
Info. and Telecom. Systems	1.20	1.74	0.69	2.06	2.13	1.03
Marketing	9.36	11.48	6.34	15.07	14.14	9.25
Franchise Fee	12.02	8.99	11.27	8.18	14.79	14.09
Property Operations & Maintenance	6.92	6.14	5.67	7.76	8.31	6.51
Utilities	5.95	5.69	4.46	5.24	7.21	5.48
Total	49.02	51.52	41.79	54.51	69.52	52.11
GROSS OPERATING PROFIT	92.92	81.53	97.10	91.58	72.59	80.79
Management Fee	5.59	6.12	7.02	8.76	4.05	5.39
INCOME BEFORE NON-OPER. INC. & EXP.	87.33	75.41	90.08	82.82	68.53	75.39
EBITDA LESS RESERVE	\$69.80	\$62.16	\$83.65	\$68.57	\$60.35	\$63.97

In conclusion, our analysis reflects a profitable operation, with net income expected to total 35.9% of total revenue by the stabilized year. The stabilized total revenue comprises primarily rooms revenue, with a secondary portion derived from other income sources. On the cost side, departmental expenses total 26.0% of

Feasibility Analysis

revenue by the stabilized year, while undistributed operating expenses total 28.9% of total revenues; this assumes that the proposed subject property will be operated competently by a well-known hotel operator. After a 3.0% of total revenues management fee, a net income ratio of 40.3% is forecast by the stabilized year.

FIGURE 3-21 DISCOUNTED CASH FLOW FOR FEASIBILITY CALCULATION

Stabilized Year	3
Discount Rate	10.0 %
Loaded Terminal Cap	8.5
Transaction Costs	3.0

Year	Net Income, Before Taxes	Property Taxes	Net Income, After Taxes	Discount Factor @ 10%	Discounted Cash Flow
2023/24	\$2,588,056	\$425,583	\$2,162,474	0.90909	\$1,965,885
2024/25	3,419,517	434,094	2,985,423	0.82645	2,467,291
2025/26	3,763,494	442,776	3,320,718	0.75131	2,494,904
2026/27	3,876,557	451,632	3,424,925	0.68301	2,339,270
2027/28	3,992,521	460,664	3,531,857	0.62092	2,193,005
2028/29	4,112,890	469,877	3,643,013	0.56447	2,056,386
2029/30	4,236,277	479,275	3,757,002	0.51316	1,927,936
2030/31	4,363,365	488,861	3,874,504	0.46651	1,807,485
2031/32	4,494,266	498,638	3,995,628	0.42410	1,694,536
2032/33	4,629,094	508,610	58,368,654 *	0.38554	22,503,643

Estimated Market Value	\$41,450,342
(SAY)	\$41,500,000
Per Room	280,000

Reversion Analysis	
11th Year's EBITDA Less Reserves (not including taxes)	\$4,767,967
Capitalization Rate (loaded with tax rate)	8.5%
Total Sales Proceeds	\$55,925,949
Less: Transaction Costs @ 3.0%	1,677,778
Net Sales Proceeds (Say)	54,248,170

**10th year NOI after taxes, plus the reversionary value.*

Our discounted cash flow analysis indicates a net present value for the proposed subject property of \$41,500,000 or \$280,000 per room.

Based on our review of investor surveys, sales transactions, and interviewing market participants, we have selected a discount rate of 10.0% and a terminal cap rate of 8.5% in our analysis. Due to the subject property's California location and the higher property tax implications upon the sale at the end of the hold, the terminal capitalization rate is loaded with the tax rate and is applied to the NOI estimate prior to property taxes.

The below cost estimates are derived from the *2020 HVS Development Cost Survey*, as well as our market and industry knowledge.

FIGURE 3-22 COST COMPARABLES

Item	Comp #1		Comp #2		Comp #3		Comp #4	
	Secondary, CA Select-Service		Secondary, CA Extended Stay Midscale		Secondary, CA Select-Service		Secondary, CA Extended Stay Upscale	
	Approx. 180 Rooms		Approx. 110 Rooms		Approx. 180 Rooms		Approx. 190 Rooms	
	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total
Building	\$197,137	82.6 %	\$194,444	73.9 %	\$197,137	82.6 %	\$201,222	75.7 %
Soft Costs	20,144	8.4	36,343	13.8	20,144	8.4	38,690	14.6
Furniture, Fixtures, & Equipment	20,000	8.4	27,778	10.6	20,000	8.4	18,613	7.0
Pre-Opening Costs & Working Capital	1,429	0.6	0	0.0	1,429	0.6	7,320	2.8
Developer Fee (if Applicable)	0	0.0	4,630	1.8	0	0.0	0	0.0
Total (Excluding Site Cost)	\$238,709	94.3 %	\$263,194	86.6 %	\$238,709	94.3 %	\$265,845	88.0 %
Site Cost	\$14,457	5.7 %	\$40,741	13.4 %	\$14,457	5.7 %	\$36,082	12.0 %
Total (Including Site Cost)	\$253,167	100.0 %	\$303,935	100.0 %	\$253,167	100.0 %	\$301,927	100.0 %

FIGURE 3-23 HVS DEVELOPMENT COST POSITIONING - UPSCALE

Item	Minimum		Maximum		Average		Subject Property	
	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total
Building	\$194,444	73.9 %	\$201,222	82.6 %	\$197,485	78.7 %	\$180,000	66.1 %
Soft Costs	20,144	8.4	38,690	14.6	28,830	11.3	28,000	10.3
Furniture, Fixtures, & Equipment	18,613	7.0	27,778	10.6	21,598	8.6	25,000	9.2
Pre-Opening Costs & Working Capital	0	0.0	7,320	2.8	2,544	1.0	5,000	1.8
Developer Fee (if Applicable)	0	0.0	4,630	1.8	1,157	0.6	5,000	1.8
Total (Excluding Site Cost)	\$238,709		\$265,845		\$251,615		\$243,000	89.2 %
Site Cost	\$14,457	5.7 %	\$40,741	13.4 %	26,434	9.2 %	\$29,333	10.8 %
Total (Including Site Cost)	\$253,167		\$306,586		\$278,049		\$272,333	100.0 %

FIGURE 3-24 HVS DEVELOPMENT COST ESTIMATE - UPSCALE

Item	Cost per Room	Cost
Building	\$180,000	\$27,000,000
Soft Costs	28,000	4,200,000
Furniture, Fixtures, & Equipment	25,000	3,750,000
Pre-Opening Costs & Working Capital	5,000	750,000
Developer Fee (if Applicable)	5,000	750,000
Land	29,333	4,400,000
Total Cost New Before Incentive	\$273,000	\$40,900,000

The derived net present value of \$41,500,000 is 1.5% higher than the estimated replacement cost of \$40,900,000.

Based on our market analysis, there is sufficient market support for the proposed, upscale, select-service hotel. It is important to note that the retail component is an important aspect in our analysis and the project's feasibility is based on the inclusion of this component. Our assumption of replacement cost was developed utilizing development costs from comparable select-service properties in California, derived from the 2020 HVS Development Cost Survey. We have utilized a discounted cash flow (DCF) analysis to come to our conclusion of value upon completion of the project. The when-complete value is above the assumed replacement cost, deeming the project feasible.

4. Upper-Upscale Analysis

In the second scenario, the proposed subject hotel is expected to be operated as an upper-upscale, full-service lodging facility, to be affiliated with a national brand. Some brands that fall under this category include Embassy Suites by Hilton, Omni, Sheraton, and the full-service flagship Marriott and Hilton hotels. These hotels typically include a lobby restaurant and bar, which is more complex in scope than what is offered at a select-service hotel; moreover, other food and beverage (F&B) outlets are often provided, such as a fine-dining establishment with elevated offerings and a more robust menu, a café, or a grab-and-go type of outlet. Other services typically present in a full-service hotel include a concierge and room service. Moreover, the proposed subject hotel is anticipated to feature ground-floor retail (leased), meeting space, a fitness center, and a business center, as well as a gift shop.

Forecast of the Proposed Subject Hotel's Occupancy

The proposed subject hotel's occupancy forecast is set forth as follows, with the adjusted projected penetration rates used as a basis for calculating the amount of captured market demand.

FIGURE 4-25 FORECAST OF SUBJECT PROPERTY'S OCCUPANCY

Market Segment	2023	2024	2025	2026
Commercial				
Demand	386,906	412,733	415,737	415,737
Market Share	3.6 %	6.7 %	7.1 %	7.1 %
Capture	13,800	27,474	29,651	29,651
Penetration	87 %	98 %	105 %	105 %
Leisure				
Demand	129,611	133,094	134,063	134,063
Market Share	3.8 %	6.7 %	7.0 %	7.0 %
Capture	4,897	8,978	9,432	9,432
Penetration	92 %	99 %	104 %	104 %
Group				
Demand	75,971	83,314	87,244	87,244
Market Share	2.3 %	4.7 %	5.4 %	5.4 %
Capture	1,780	3,957	4,728	4,728
Penetration	57 %	70 %	80 %	80 %
Total Room Nights Captured	20,477	40,409	43,812	43,812
Available Room Nights	32,100	54,750	54,750	54,750
Subject Occupancy	64 %	74 %	80 %	80 %
Market-wide Available Room Nights	783,763	806,413	806,413	806,413
Fair Share	4 %	7 %	7 %	7 %
Market-wide Occupied Room Nights	592,488	629,141	637,044	637,044
Market Share	3 %	6 %	7 %	7 %
Market-wide Occupancy	76 %	78 %	79 %	79 %
Total Penetration	84 %	95 %	101 %	101 %

These positioned segment penetration rates result in the following market segmentation forecast.

FIGURE 4-26 MARKET SEGMENTATION FORECAST – SUBJECT PROPERTY

	2023	2024	2025	2026
Commercial	67 %	68 %	68 %	68 %
Leisure	24	22	22	22
Group	9	10	11	11
Total	100 %	100 %	100 %	100 %

**Forecast of the
Proposed Subject
Hotel's Average Rate**

The defined primarily competitive market realized an overall average rate of \$144.17 in the 2020 base year, declining from the 2019 level of \$169.33. The Marriott Irvine Spectrum Center (a secondary competitor) achieved the highest estimated average rate in the local competitive market, by a significant margin, because of the hotel's upper-upscale product offering, popular brand affiliation, and location adjacent to primary commercial demand generators. Of the primary competitive set, the Courtyard by Marriott Irvine Spectrum achieved the highest estimated average rate because of similar aforementioned factors, although this hotel offers a select-service product. Other important rate aspects of this market include location near Interstate 5 and proximity to commercial demand generators. The selected rate position for the proposed subject hotel, in base-year dollars, takes into consideration expected factors such as its ground-floor retail space, full-service amenities, and upper-upscale product offering. We have selected the rate position of \$205.00, in base-year dollars, for the proposed subject hotel. The final forecast reflects years beginning on June 1, 2023, and corresponds with our financial projections, as shown below.

FIGURE 4-27 ADR FORECAST – MARKET AND PROPOSED SUBJECT HOTEL

Calendar Year	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Market ADR	\$171.04	\$132.27	\$149.46	\$167.40	\$175.77	\$181.04	\$186.47	\$192.07	\$197.83	\$203.76
Projected Market ADR Growth Rate	—	-22.7%	13.0%	12.0%	5.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Proposed Subject Property ADR (As-If Stabilized)	\$205.00	\$158.53	\$179.14	\$200.63	\$210.66	\$216.98	\$223.49	\$230.20	\$237.10	\$244.22
ADR Growth Rate		-22.7%	13.0%	12.0%	5.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Proposed Subject Stabilized ADR Penetration	120%	120%	120%	120%	120%	120%	120%	120%	120%	119.9%
Fiscal Year										
					2023/24	2024/25	2025/26	2026/27	2027/28	2028/29
Proposed Subject Property Average Rate					\$213.28	\$219.68	\$226.27	\$233.05	\$240.05	\$247.25
Opening Discount					3.0%	1.0%	0.0%	0.0%	0.0%	0.0%
Average Rate After Discount					\$206.88	\$217.48	\$226.27	\$233.05	\$240.05	\$247.25
Real Average Rate Growth					—	5.1%	4.0%	3.0%	3.0%	3.0%
Market ADR					\$177.95	\$183.29	\$188.79	\$194.45	\$200.29	\$206.29
Proposed Subject ADR Penetration (After Discount)					116%	119%	120%	120%	120%	120%
ADR Expressed in Base-Year Dollars Deflated @ Inflation Rate					\$187.45	\$191.31	\$193.25	\$193.25	\$193.25	\$193.25

Discounts of 3% and 1% have been applied to the stabilized room rates projected for the first two years of operation, as would be expected for a new property of this type as it builds its reputation and becomes established in the market.

FIGURE 4-28 ADR AND OCCUPANCY FORECAST - CONCLUSION

Year	Occupancy	Average Rate Before Discount	Discount	Average Rate After Discount
2023/24	68 %	\$213.28	3.0 %	\$206.88
2024/25	76	219.68	1.0	217.48
2025/26	80	226.27	0.0	226.27

Forecast of Income and Expense

The following table presents a detailed forecast through the fifth projection year, including amounts per available room (PAR) and per occupied room (POR). The second table illustrates our ten-year forecast of income and expense, presented with a lesser degree of detail. The forecasts pertain to years that begin on June 1, 2023, expressed in inflated dollars for each year.

FIGURE 4-29 DETAILED FORECAST OF INCOME AND EXPENSE

	2023/24 Begins June				2024/25				Stabilized				2026/27				2027/28			
Number of Rooms:	150				150				150				150				150			
Occupancy:	68%				76%				80%				80%				80%			
Average Rate:	\$206.88				\$217.48				\$226.27				\$233.05				\$240.05			
RevPAR:	\$140.68				\$165.28				\$181.01				\$186.44				\$192.04			
Days Open:	365				365				365				365				365			
Occupied Rooms:	37,230	%Gross	PAR	POR	41,610	%Gross	PAR	POR	43,800	%Gross	PAR	POR	43,800	%Gross	PAR	POR	43,800	%Gross	PAR	POR
OPERATING REVENUE																				
Rooms	\$7,702	79.8	% \$51,347	\$206.88	\$9,049	79.2	% \$60,327	\$217.47	\$9,910	79.6	% \$66,067	\$226.26	\$10,208	79.6	% \$68,053	\$233.06	\$10,514	79.6	% \$70,093	\$240.05
Food & Beverage	1,759	18.2	11,727	47.25	2,183	19.1	14,555	52.47	2,336	18.8	15,576	53.34	2,406	18.8	16,043	54.94	2,479	18.8	16,524	56.59
Other Operated Departments	140	1.5	935	3.77	149	1.3	993	3.58	156	1.3	1,038	3.56	160	1.3	1,070	3.66	165	1.3	1,102	3.77
Miscellaneous Income	47	0.5	312	1.26	50	0.4	331	1.19	52	0.4	346	1.19	53	0.4	357	1.22	55	0.4	367	1.24
Total Operating Revenues	9,648	100.0	64,320	259.15	11,431	100.0	76,206	274.71	12,454	100.0	83,027	284.34	12,828	100.0	85,523	292.89	13,213	100.0	88,087	301.61
DEPARTMENTAL EXPENSES *																				
Rooms	2,020	26.2	13,464	54.25	2,169	24.0	14,458	52.12	2,279	23.0	15,196	52.04	2,348	23.0	15,652	53.60	2,418	23.0	16,122	55.21
Food & Beverage	1,602	91.1	10,682	43.04	1,784	81.7	11,894	42.88	1,869	80.0	12,461	42.67	1,925	80.0	12,834	43.95	1,983	80.0	13,220	45.21
Other Operated Departments	72	51.6	483	1.95	75	50.5	502	1.81	78	50.0	519	1.78	80	50.0	535	1.83	83	50.0	551	1.89
Total Expenses	3,694	38.3	24,629	99.23	4,028	35.2	26,854	96.81	4,226	33.9	28,176	96.49	4,353	33.9	29,021	99.39	4,484	33.9	29,892	102.31
DEPARTMENTAL INCOME	5,954	61.7	39,691	159.92	7,403	64.8	49,352	177.91	8,228	66.1	54,851	187.85	8,475	66.1	56,501	193.50	8,729	66.1	58,195	199.30
UNDISTRIBUTED OPERATING EXPENSES																				
Administrative & General	846	8.8	5,637	22.71	858	7.5	5,721	20.62	853	6.9	5,690	19.49	879	6.9	5,861	20.07	905	6.9	6,036	20.61
Info & Telecom Systems	80	0.8	534	2.15	85	0.7	568	2.05	89	0.7	593	2.03	92	0.7	610	2.09	94	0.7	629	2.11
Marketing	722	7.5	4,815	19.40	733	6.4	4,887	17.62	729	5.9	4,860	16.64	751	5.9	5,006	17.14	773	5.9	5,156	17.61
Franchise Fee	732	7.6	4,878	19.65	860	7.5	5,731	20.66	941	7.6	6,276	21.49	970	7.6	6,465	22.14	999	7.6	6,659	22.81
Prop. Operations & Maint.	231	2.4	1,537	6.19	276	2.4	1,839	6.63	320	2.6	2,134	7.31	330	2.6	2,198	7.53	340	2.6	2,264	7.71
Utilities	296	3.1	1,975	7.96	315	2.8	2,100	7.57	329	2.6	2,193	7.51	339	2.6	2,259	7.74	349	2.6	2,326	7.91
Total Expenses	2,906	30.2	19,375	78.06	3,127	27.3	20,845	75.15	3,262	26.3	21,745	74.47	3,360	26.3	22,398	76.71	3,461	26.3	23,070	79.01
GROSS OPERATING PROFIT	3,047	31.5	20,316	81.85	4,276	37.5	28,507	102.76	4,966	39.8	33,106	113.38	5,115	39.8	34,103	116.79	5,269	39.8	35,125	120.21
Management Fee	289	3.0	1,930	7.77	343	3.0	2,286	8.24	374	3.0	2,491	8.53	385	3.0	2,566	8.79	396	3.0	2,643	9.01
INCOME BEFORE NON-OPR. INC. & EXP.	2,758	28.5	18,386	74.08	3,933	34.5	26,221	94.52	4,592	36.8	30,615	104.85	4,731	36.8	31,537	108.00	4,872	36.8	32,482	111.20
NON-OPERATING INCOME & EXPENSE																				
Property Taxes	485	5.0	3,233	13.03	495	4.3	3,298	11.89	505	4.1	3,364	11.52	515	4.0	3,431	11.75	525	4.0	3,500	11.91
Insurance	101	1.0	670	2.70	104	0.9	691	2.49	107	0.9	711	2.44	110	0.9	733	2.51	113	0.9	755	2.51
Retail Income	(310)	(3.2)	(2,068)	(8.33)	(320)	(2.8)	(2,130)	(7.68)	(329)	(2.6)	(2,194)	(7.51)	(339)	(2.6)	(2,260)	(7.74)	(349)	(2.6)	(2,328)	(7.91)
Total Expenses	275	2.8	1,836	7.40	279	2.4	1,858	6.70	282	2.4	1,881	6.44	286	2.3	1,904	6.52	289	2.3	1,927	6.60
EBITDA	2,483	25.7	16,551	66.68	3,654	32.1	24,362	87.82	4,310	34.4	28,734	98.40	4,445	34.5	29,633	101.48	4,583	34.5	30,555	104.61
Reserve for Replacement	193	2.0	1,286	5.18	343	3.0	2,286	8.24	498	4.0	3,321	11.37	513	4.0	3,421	11.72	529	4.0	3,523	12.01
EBITDA LESS RESERVE	\$2,290	23.7	% \$15,264	\$61.50	\$3,311	29.1	% \$22,076	\$79.58	\$3,812	30.4	% \$25,413	\$87.03	\$3,932	30.5	% \$26,213	\$89.77	\$4,055	30.5	% \$27,032	\$92.58

*Departmental expenses are expressed as a percentage of departmental revenues.

FIGURE 4-30 TEN-YEAR FORECAST OF INCOME AND EXPENSE

	2023/24		2024/25		2025/26		2026/27		2027/28		2028/29		2029/30		2030/31		2031/32		2032/33	
Number of Rooms:	150		150		150		150		150		150		150		150		150		150	
Occupied Rooms:	37,230		41,610		43,800		43,800		43,800		43,800		43,800		43,800		43,800		43,800	
Occupancy:	68%		76%		80%		80%		80%		80%		80%		80%		80%		80%	
Average Rate:	\$206.88	% of	\$217.48	% of	\$226.27	% of	\$233.05	% of	\$240.05	% of	\$247.25	% of	\$254.67	% of	\$262.31	% of	\$270.17	% of	\$278.28	% of
RevPAR:	\$140.68	Gross	\$165.28	Gross	\$181.01	Gross	\$186.44	Gross	\$192.04	Gross	\$197.80	Gross	\$203.73	Gross	\$209.84	Gross	\$216.14	Gross	\$222.62	Gross
OPERATING REVENUE																				
Rooms	\$7,702	79.8 %	\$9,049	79.2 %	\$9,910	79.6 %	\$10,208	79.6 %	\$10,514	79.6 %	\$10,829	79.6 %	\$11,154	79.6 %	\$11,489	79.6 %	\$11,834	79.6 %	\$12,189	79.6 %
Food & Beverage	1,759	18.2	2,183	19.1	2,336	18.8	2,406	18.8	2,479	18.8	2,553	18.8	2,630	18.8	2,709	18.8	2,790	18.8	2,873	18.8
Other Operated Departments	140	1.5	149	1.3	156	1.3	160	1.3	165	1.3	170	1.3	175	1.3	181	1.3	186	1.3	192	1.3
Miscellaneous Income	47	0.5	50	0.4	52	0.4	53	0.4	55	0.4	57	0.4	58	0.4	60	0.4	62	0.4	64	0.4
Total Operating Revenues	9,648	100.0	11,431	100.0	12,454	100.0	12,828	100.0	13,213	100.0	13,609	100.0	14,017	100.0	14,438	100.0	14,872	100.0	15,318	100.0
DEPARTMENTAL EXPENSES *																				
Rooms	2,020	26.2	2,169	24.0	2,279	23.0	2,348	23.0	2,418	23.0	2,491	23.0	2,565	23.0	2,642	23.0	2,722	23.0	2,803	23.0
Food & Beverage	1,602	91.1	1,784	81.7	1,869	80.0	1,925	80.0	1,983	80.0	2,042	80.0	2,104	80.0	2,167	80.0	2,232	80.0	2,299	80.0
Other Operated Departments	72	51.6	75	50.5	78	50.0	80	50.0	83	50.0	85	50.0	88	50.0	90	50.0	93	50.0	96	50.0
Total Expenses	3,694	38.3	4,028	35.2	4,226	33.9	4,353	33.9	4,484	33.9	4,618	33.9	4,757	33.9	4,900	33.9	5,047	33.9	5,198	33.9
DEPARTMENTAL INCOME	5,954	61.7	7,403	64.8	8,228	66.1	8,475	66.1	8,729	66.1	8,991	66.1	9,261	66.1	9,539	66.1	9,825	66.1	10,120	66.1
UNDISTRIBUTED OPERATING EXPENSES																				
Administrative & General	846	8.8	858	7.5	853	6.9	879	6.9	905	6.9	933	6.9	961	6.9	989	6.9	1,019	6.9	1,050	6.9
Info & Telecom Systems	80	0.8	85	0.7	89	0.7	92	0.7	94	0.7	97	0.7	100	0.7	103	0.7	106	0.7	109	0.7
Marketing	722	7.5	733	6.4	729	5.9	751	5.9	773	5.9	797	5.9	820	5.9	845	5.9	870	5.9	897	5.9
Franchise Fee	732	7.6	860	7.5	941	7.6	970	7.6	999	7.6	1,029	7.6	1,060	7.6	1,091	7.6	1,124	7.6	1,158	7.6
Prop. Operations & Maint.	231	2.4	276	2.4	320	2.6	330	2.6	340	2.6	350	2.6	360	2.6	371	2.6	382	2.6	394	2.6
Utilities	296	3.1	315	2.8	329	2.6	339	2.6	349	2.6	359	2.6	370	2.6	381	2.6	393	2.6	405	2.6
Total Expenses	2,906	30.2	3,127	27.3	3,262	26.3	3,360	26.3	3,461	26.3	3,564	26.3	3,671	26.3	3,781	26.3	3,895	26.3	4,012	26.3
GROSS OPERATING PROFIT	3,047	31.5	4,276	37.5	4,966	39.8	5,115	39.8	5,269	39.8	5,426	39.8	5,589	39.8	5,757	39.8	5,930	39.8	6,108	39.8
Management Fee	289	3.0	343	3.0	374	3.0	385	3.0	396	3.0	408	3.0	421	3.0	433	3.0	446	3.0	460	3.0
INCOME BEFORE NON-OPR. INC. & EXP.	2,758	28.5	3,933	34.5	4,592	36.8	4,731	36.8	4,872	36.8	5,018	36.8	5,169	36.8	5,324	36.8	5,484	36.8	5,649	36.8
NON-OPERATING INCOME & EXPENSE																				
Property Taxes	485	5.0	495	4.3	505	4.1	515	4.0	525	4.0	535	3.9	546	3.9	557	3.9	568	3.8	580	3.8
Insurance	101	1.0	104	0.9	107	0.9	110	0.9	113	0.9	117	0.9	120	0.9	124	0.9	127	0.9	131	0.9
Retail Income	(310)	(3.2)	(320)	(2.8)	(329)	(2.6)	(339)	(2.6)	(349)	(2.6)	(360)	(2.6)	(370)	(2.6)	(382)	(2.6)	(393)	(2.6)	(405)	(2.6)
Total Expenses	275	2.8	279	2.4	282	2.4	286	2.3	289	2.3	292	2.2	296	2.2	299	2.2	303	2.1	306	2.1
EBITDA	2,483	25.7	3,654	32.1	4,310	34.4	4,445	34.5	4,583	34.5	4,726	34.6	4,873	34.6	5,025	34.6	5,181	34.7	5,343	34.7
Reserve for Replacement	193	2.0	343	3.0	498	4.0	513	4.0	529	4.0	544	4.0	561	4.0	578	4.0	595	4.0	613	4.0
EBITDA LESS RESERVE	\$2,290	23.7 %	\$3,311	29.1 %	\$3,812	30.4 %	\$3,932	30.5 %	\$4,055	30.5 %	\$4,181	30.6 %	\$4,312	30.6 %	\$4,447	30.6 %	\$4,587	30.7 %	\$4,730	30.7 %

Our positioning of each revenue and expense level is supported by comparable operations or trends specific to this market.

FIGURE 4-31 COMPARABLE OPERATING STATEMENTS: RATIO TO SALES

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Subject
						Stabilized \$
Year:	2019	2017/18	2017	2017	2016	2019
Edition:	11	11	11	11	11	11
Number of Rooms:	200 to 260	160 to 200	210 to 260	250 to 320	120 to 160	150
Days Open:	365	365	365	365	365	365
Occupancy:	88%	81%	85%	81%	75%	80%
Average Rate:	\$178	\$185	\$178	\$180	\$201	\$191
RevPAR:	\$156	\$150	\$152	\$145	\$151	\$153
REVENUE						
Rooms	82.1 %	83.7 %	81.5 %	66.4 %	79.8 %	79.6 %
Food & Beverage	16.1	15.1	17.3	27.7	17.3	18.8
Other Operated Departments	1.3	0.3	0.8	4.9	0.1	1.3
Miscellaneous Income	0.5	0.9	0.4	1.0	2.8	0.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
DEPARTMENTAL EXPENSES*						
Rooms	20.7	20.1	26.7	23.5	23.0	23.0
Food & Beverage	63.4	75.8	81.9	62.6	89.5	80.0
Other Operated Departments	41.4	218.6	40.0	29.2	74.3	50.0
Total	27.7	29.0	36.2	34.4	33.9	33.9
DEPARTMENTAL INCOME	72.3	71.0	63.8	65.6	66.1	66.1
UNDISTRIBUTED OPERATING EXPENSES						
Administrative & General	7.0	8.1	7.8	7.5	8.3	6.9
Info. and Telecom. Systems	0.1	0.9	1.0	0.0	1.6	0.7
Marketing	6.3	7.1	7.1	7.8	5.9	5.9
Franchise Fee	7.8	6.5	3.0	5.5	0.0	7.6
Property Operations & Maintenance	3.1	2.5	4.9	3.4	3.8	2.6
Utilities	3.0	3.8	4.0	3.9	2.7	2.6
Total	27.3	29.0	27.8	28.1	22.2	26.2
GROSS OPERATING PROFIT	45.0	42.0	36.0	37.5	43.9	39.9
Management Fee	3.0	2.5	5.0	3.0	3.0	3.0
INCOME BEFORE NON-OPER. INC. & EXP.	42.0	39.6	31.0	34.5	40.8	36.9
EBITDA LESS RESERVE	31.1 %	35.9 %	25.7 %	25.0 %	32.9 %	30.6 %

* Departmental expense ratios are expressed as a percentage of departmental revenues

FIGURE 4-32 COMPARABLE OPERATING STATEMENTS: AMOUNTS PER AVAILABLE ROOM

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Subject
						Stabilized \$
Year:	2019	2017/18	2017	2017	2016	2019
Edition:	11	11	11	11	11	11
Number of Rooms:	200 to 260	160 to 200	210 to 260	250 to 320	120 to 160	150
Days Open:	365	365	365	365	365	365
Occupancy:	88%	81%	85%	81%	75%	80%
Average Rate:	\$178	\$185	\$178	\$180	\$201	\$191
RevPAR:	\$156	\$150	\$152	\$145	\$151	\$153
REVENUE						
Rooms	\$57,028	\$54,806	\$55,610	\$52,969	\$55,184	\$55,737
Food & Beverage	11,165	9,874	11,796	22,084	11,975	13,140
Other Operated Departments	925	227	540	3,911	42	876
Miscellaneous Income	337	601	259	808	1,918	292
Total	69,455	65,509	68,205	79,772	69,119	70,045
DEPARTMENTAL EXPENSES						
Rooms	11,783	11,023	14,840	12,428	12,696	12,820
Food & Beverage	7,076	7,483	9,665	13,835	10,712	10,512
Other Operated Departments	383	497	216	1,143	31	438
Total	19,242	19,003	24,720	27,406	23,440	23,770
DEPARTMENTAL INCOME	50,213	46,506	43,485	52,367	45,680	46,276
UNDISTRIBUTED OPERATING EXPENSES						
Administrative & General	4,859	5,300	5,313	6,016	5,706	4,800
Info. and Telecom. Systems	47	584	656	25	1,108	500
Marketing	4,406	4,662	4,863	6,187	4,103	4,100
Franchise Fee	5,446	4,262	2,030	4,386	0	5,295
Property Operations & Maintenance	2,155	1,641	3,362	2,679	2,622	1,800
Utilities	2,051	2,521	2,739	3,126	1,838	1,850
Total	18,963	18,970	18,963	22,420	15,378	18,345
GROSS OPERATING PROFIT	31,250	27,536	24,522	29,947	30,302	27,931
Management Fee	2,084	1,620	3,390	2,393	2,073	2,101
INCOME BEFORE NON-OPER. INC. & EXP.	29,167	25,915	21,132	27,554	28,229	25,830
EBITDA LESS RESERVE	\$21,622	\$23,465	\$17,501	\$19,969	\$22,786	\$21,441

FIGURE 4-33 COMPARABLE OPERATING STATEMENTS: AMOUNTS PER OCCUPIED ROOM

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Subject
						Stabilized \$
Year:	2019	2017/18	2017	2017	2016	2019
Edition:	11	11	11	11	11	11
Number of Rooms:	200 to 260	160 to 200	210 to 260	250 to 320	120 to 160	150
Days Open:	365	365	365	365	365	365
Occupancy:	88%	81%	85%	81%	75%	80%
Average Rate:	\$178	\$185	\$178	\$180	\$201	\$191
RevPAR:	\$156	\$150	\$152	\$145	\$151	\$153
REVENUE						
Rooms	\$178.21	\$184.78	\$178.35	\$179.61	\$200.77	\$190.88
Food & Beverage	34.89	33.29	37.83	74.88	43.57	45.00
Other Operated Departments	2.89	0.77	1.73	13.26	0.15	3.00
Miscellaneous Income	1.05	2.03	0.83	2.74	6.98	1.00
Total	217.05	220.87	218.74	270.49	251.46	239.88
DEPARTMENTAL EXPENSES						
Rooms	36.82	37.16	47.59	42.14	46.19	43.90
Food & Beverage	22.11	25.23	31.00	46.91	38.97	36.00
Other Operated Departments	1.20	1.67	0.69	3.88	0.11	1.50
Total	60.13	64.07	79.28	92.93	85.28	81.40
DEPARTMENTAL INCOME	156.92	156.80	139.46	177.56	166.19	158.48
UNDISTRIBUTED OPERATING EXPENSES						
Administrative & General	15.19	17.87	17.04	20.40	20.76	16.44
Info. and Telecom. Systems	0.15	1.97	2.10	0.09	4.03	1.71
Marketing	13.77	15.72	15.60	20.98	14.93	14.04
Franchise Fee	17.02	14.37	6.51	14.87	0.00	18.13
Property Operations & Maintenance	6.73	5.53	10.78	9.08	9.54	6.16
Utilities	6.41	8.50	8.78	10.60	6.69	6.34
Total	59.26	63.96	60.82	76.02	55.95	62.82
GROSS OPERATING PROFIT	97.66	92.84	78.64	101.54	110.24	95.65
Management Fee	6.51	5.46	10.87	8.11	7.54	7.20
INCOME BEFORE NON-OPER. INC. & EXP.	91.15	87.37	67.77	93.43	102.70	88.46
EBITDA LESS RESERVE	\$67.57	\$79.11	\$56.13	\$67.71	\$82.90	\$73.43

In conclusion, our analysis reflects a profitable operation, with net income expected to total 30.5% of total revenue by the stabilized year. The stabilized total revenue comprises primarily rooms revenue, with a secondary portion derived from other income sources. On the cost side, departmental expenses total 33.9% of revenue by the stabilized year, while undistributed operating expenses total 26.3% of total revenues; this assumes that the proposed subject property will be operated competently by a well-known hotel operator. After a 3.0% of total revenues management fee, a net income ratio of 34.7% is forecast by the stabilized year.

Feasibility Analysis

FIGURE 4-34 DISCOUNTED CASH FLOW FOR FEASIBILITY CALCULATION

Stabilized Year	3				
Discount Rate	10.0 %				
Loaded Terminal Cap	8.5				
Transaction Costs	3.0				
Year	Net Income, Before Taxes	Property Taxes	Net Income, After Taxes	Discount Factor @ 10%	Discounted Cash Flow
2023/24	\$2,774,603	\$485,062	\$2,289,542	0.90909	\$2,081,402
2024/25	3,806,092	494,763	3,311,330	0.82645	2,736,636
2025/26	4,316,484	504,658	3,811,826	0.75131	2,863,881
2026/27	4,446,530	514,751	3,931,779	0.68301	2,685,458
2027/28	4,579,737	525,046	4,054,690	0.62092	2,517,644
2028/29	4,716,798	535,547	4,181,251	0.56447	2,360,207
2029/30	4,858,302	546,258	4,312,044	0.51316	2,212,760
2030/31	5,004,051	557,183	4,446,867	0.46651	2,074,496
2031/32	5,154,172	568,327	4,585,845	0.42410	1,944,846
2032/33	5,308,797	579,693	66,942,691 *	0.38554	25,809,305
Estimated Market Value					\$47,286,635
(SAY)					\$47,300,000
Per Room					320,000
Reversion Analysis					
11th Year's EBITDA Less Reserves (not					\$5,468,061
Capitalization Rate (loaded with tax rate)					8.5%
Total Sales Proceeds					\$64,137,719
Less: Transaction Costs @ 3.0%					1,924,132
Net Sales Proceeds (Say)					62,213,587

*10th year NOI after taxes, plus the reversionary value.

Our discounted cash flow analysis indicates a net present value for the proposed subject property of \$47,300,000 or \$320,000 per room.

Based on our review of investor surveys, sales transactions, and interviewing market participants, we have selected a discount rate of 10.0% and a terminal cap rate of 8.5% in our analysis. Due to the subject property's California location and the higher property tax implications upon the sale at the end of the hold, the terminal capitalization rate is loaded with the tax rate and is applied to the NOI estimate prior to property taxes.

The below cost estimates are derived from the 2020 HVS Development Cost Survey, as well as our market and industry knowledge.

FIGURE 4-35 COST COMPARABLES

Item	Comp #1		Comp #2		Comp #3		Comp #4	
	Primary, CA		Secondary, CA		Secondary, CA		Primary, CA	
	Full-Service		Full-Service		Full-Service		Full-Service	
	Approx. 180 Rooms		Approx. 140 Rooms		Approx. 150 Rooms		Approx. 130 Rooms	
	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total
Building	\$287,295	72.4 %	\$238,879	75.3 %	\$267,715	73.5 %	\$206,118	81.1 %
Soft Costs	47,666	12.0	46,300	14.6	30,298	8.3	31,986	12.6
Furniture, Fixtures, & Equipment	32,116	8.1	17,857	5.6	44,371	12.2	16,000	6.3
Pre-Opening Costs & Working Capital	24,450	6.2	14,286	4.5	11,921	3.3	0	0.0
Developer Fee (if Applicable)	5,503	1.4	0	0.0	9,934	2.7	0	0.0
Total (Excluding Site Cost)	\$397,030	93.4 %	\$317,321	91.9 %	\$364,238	92.8 %	\$254,104	100.0 %
Site Cost	\$28,090	6.6 %	\$27,939	8.1 %	\$28,146	7.2 %	\$0	0.0 %
Total (Including Site Cost)	\$425,120	100.0 %	\$345,261	100.0 %	\$392,384	100.0 %	\$254,104	100.0 %

FIGURE 4-36 HVS DEVELOPMENT COST POSITIONING – UPPER UPSCALE

Item	Minimum		Maximum		Average		Subject Property	
	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total	Per Room	% of Total
Building	\$206,118	72.4 %	\$287,295	81.1 %	\$250,002	75.6 %	\$250,000	67.3 %
Soft Costs	30,298	8.3	47,666	14.6	39,063	11.9	40,000	10.8
Furniture, Fixtures, & Equipment	16,000	5.6	44,371	12.2	27,586	8.0	35,000	9.4
Pre-Opening Costs & Working Capital	0	0.0	24,450	6.2	12,664	3.5	12,000	3.2
Developer Fee (if Applicable)	0	0.0	9,934	2.7	3,859	1.4	5,000	1.3
Total (Excluding Site Cost)	\$254,104		\$397,030		\$333,174		\$342,000	92.1 %
Site Cost	\$0	0.0 %	\$28,146	8.1 %	21,044	7.3 %	\$29,333	7.9 %
Total (Including Site Cost)	\$254,104		\$425,176		\$354,217		\$371,333	100.0 %

FIGURE 4-37 HVS DEVELOPMENT COST ESTIMATE – UPPER UPSCALE

Item	Cost per Room	Cost
Building	\$250,000	\$37,500,000
Soft Costs	40,000	6,000,000
Furniture, Fixtures, & Equipment	35,000	5,250,000
Pre-Opening Costs & Working Capital	12,000	1,800,000
Developer Fee (if Applicable)	5,000	750,000
Land	29,333	4,400,000
Total Cost New Before Incentive	\$371,000	\$55,700,000

The derived net present value of \$47,300,000 is -15.1% below the estimated replacement cost of \$55,700,000.

Based on our market analysis, there is insufficient market support for the proposed, upper-upscale, full-service hotel scenario. Our assumption of replacement cost was developed utilizing development costs from comparable full-service properties in California, derived from the 2020 HVS Development Cost Survey. We have utilized a discounted cash flow (DCF) analysis to come to our conclusion of value upon completion of the project. The when-complete value is notably below the assumed replacement cost, deeming the project not feasible.

This analysis indicates that a hotel development of this caliber or higher is not feasible at this time in this market.

5. Method of Study & Statement of Assumptions and Limiting Conditions

Method of Study

The methodology used to develop this study is based on the market research and valuation techniques set forth in the textbooks authored by HVS for the American Institute of Real Estate Appraisers and the Appraisal Institute, entitled *The Valuation of Hotels and Motels*,² *Hotels, Motels and Restaurants: Valuations and Market Studies*,³ *The Computerized Income Approach to Hotel/Motel Market Studies and Valuations*,⁴ and *Hotels and Motels: A Guide to Market Analysis, Investment Analysis, and Valuations*.⁵

1. The subject site has been evaluated from the viewpoint of its physical utility for the future operation of a hotel, as well as access, visibility, and other relevant location factors.
2. The surrounding economic environment, on both an area and neighborhood level, has been reviewed to identify specific hostelry-related economic and demographic trends that may have an impact on future demand for hotels.
3. Dividing the market for transient accommodations into individual segments defines specific market characteristics for the types of travelers expected to utilize the area's hotels. The factors investigated include purpose of visit, average length of stay, required facilities and amenities, seasonality, daily demand fluctuations, and price sensitivity.
4. An analysis of existing and proposed competition provides an indication of the current accommodated demand, along with market penetration and the degree of competitiveness.

² Stephen Rushmore, *The Valuation of Hotels and Motels*. (Chicago: American Institute of Real Estate Appraisers, 1978).

³ Stephen Rushmore, *Hotels, Motels and Restaurants: Valuations and Market Studies*. (Chicago: American Institute of Real Estate Appraisers, 1983).

⁴ Stephen Rushmore, *The Computerized Income Approach to Hotel/Motel Market Studies and Valuations*. (Chicago: American Institute of Real Estate Appraisers, 1990).

⁵ Stephen Rushmore, *Hotels and Motels: A Guide to Market Analysis, Investment Analysis, and Valuations*. (Chicago: Appraisal Institute, 1992).

5. The subject property's proposed improvements have been evaluated or recommended for optimal capture of demand in this market and at the subject site's location.
6. Documentation for an occupancy and average rate projection is derived utilizing the build-up approach based on an analysis of lodging activity.
7. A detailed projection of income and expense made in accordance with the Uniform System of Accounts for the Lodging Industry sets forth the anticipated economic benefits of the subject property.

Date of Inspection

The subject property was inspected by Marc Greeley on November 9, 2021

Statement of Assumptions and Limiting Conditions

1. This report is set forth as a summary of findings only for a market study of the proposed subject hotel; this is not an appraisal report.
2. This report is to be used in whole and not in part.
3. No responsibility is assumed for matters of a legal nature, nor do we render any opinion as to title, which is assumed marketable and free of any deed restrictions and easements. The property is evaluated as though free and clear unless otherwise stated.
4. We assume that there are no hidden or unapparent conditions of the sub-soil or structures, such as underground storage tanks, that would affect the property's development potential. No responsibility is assumed for these conditions or for any engineering that may be required to discover them.
5. We have not considered the presence of potentially hazardous materials or any form of toxic waste on the project site. We are not qualified to detect hazardous substances and urge the client to retain an expert in this field if desired.
6. The Americans with Disabilities Act (ADA) became effective on January 26, 1992. We have assumed the proposed hotel would be designed and constructed to be in full compliance with the ADA.
7. We have made no survey of the site, and we assume no responsibility in connection with such matters. Sketches, photographs, maps, and other exhibits are included to assist the reader in visualizing the property. It is assumed that the use of the described real estate will be within the boundaries of the property described, and that no encroachment will exist.
8. All information, financial operating statements, estimates, and opinions obtained from parties not employed by TS Worldwide, LLC are assumed true and correct. We can assume no liability resulting from misinformation.

9. Unless noted, we assume that there are no encroachments, zoning violations, or building violations encumbering the subject site.
10. The property is assumed to be in full compliance with all applicable federal, state, local, and private codes, laws, consents, licenses, and regulations (including the appropriate liquor license if applicable), and that all licenses, permits, certificates, franchises, and so forth can be freely renewed or transferred to a purchaser.
11. All mortgages, liens, encumbrances, leases, and servitudes have been disregarded unless specified otherwise.
12. None of this material may be reproduced in any form without our written permission, and the report cannot be disseminated to the public through advertising, public relations, news, sales, or other media.
13. We are not required to give testimony or attendance in court because of this analysis without previous arrangements and shall do so only when our standard per-diem fees and travel costs have been paid prior to the appearance.
14. If the reader is making a fiduciary or individual investment decision and has any questions concerning the material presented in this report, it is recommended that the reader contact us.
15. We take no responsibility for any events or circumstances that take place subsequent to the date of our field inspection.
16. The quality of a lodging facility's onsite management has a direct effect on a property's economic viability. The financial forecasts presented in this analysis assume responsible ownership and competent management. Any departure from this assumption may have a significant impact on the projected operating results.
17. The estimated operating results presented in this report are based on an evaluation of the overall economy, and neither consider nor make provision for the effect of any sharp rise or decline in local or national economic conditions. To the extent that wages and other operating expenses may advance during the economic life of the property, we expect that the prices of rooms, food, beverages, and services will be adjusted to at least offset those advances. We do not warrant that the estimates will be attained, but they have been prepared based upon information obtained during the course of this study and are intended to reflect the expectations of a typical hotel investor.
18. This analysis assumes continuation of all provisions of the Internal Revenue Code of 1986, as amended to date.

19. Many of the figures presented in this report were generated using sophisticated computer models that make calculations based on numbers carried out to three or more decimal places. In the interest of simplicity, most numbers have been rounded to the nearest tenth of a percent. Thus, these figures may be subject to small rounding errors.
20. It is agreed that our liability to the client is limited to the amount of the fee paid as liquidated damages. Our responsibility is limited to the client; the use of this report by third parties shall be solely at the risk of the client and/or third parties. The use of this report is also subject to the terms and conditions set forth in our engagement letter with the client.
21. Evaluating and comprising financial forecasts for hotels is both a science and an art. Although this analysis employs various mathematical calculations to provide value indications, the final forecasts are subjective and may be influenced by our experience and other factors not specifically set forth in this report.
22. This study was prepared by TS Worldwide, LLC. All opinions, recommendations, and conclusions expressed during the course of this assignment are rendered by the staff of TS Worldwide, LLC as employees, rather than as individuals.

Luigi Major, MAI

EMPLOYMENT

2007 to present

HVS CONSULTING AND VALUATION SERVICES
Los Angeles, California

EDUCATION AND OTHER TRAINING

BS – Hotel & Restaurant Management, University of Houston

Other Specialized Training Classes Completed:

Uniform Standards of Professional Appraisal Practice – 15 hours

Basic Appraisal Procedures – 30 hours

Basic Appraisal Principles – 30 hours

General Appraiser Income Approach (Parts I and II) – 60 hours

General Appraiser Sales Comparison Approach – 30 hours

General Appraiser Market Analysis and HBU – 30 hours

General Appraiser Site Valuation and Cost Approach – 30 hours

General Appraiser Report Writing and Case Studies – 30 hours

Business Practices and Ethics – 7 hours

Statistics, Modeling and Finance – 15 hours

Advanced Income Capitalization – 40 hours

Advanced Sales Comparison & Cost Approach – 40 hours

Report Writing and Valuation Analysis – 40 hours

Advanced Applications – 40 hours

Fundamentals of Separating Real, Personal Property, and Intangible Business Assets – 15 hours

General Demonstration Report Writing

The Appraiser as an Expert Witness: Preparation and Testimony – 16 hours

California Law – 4 hours

Mortgage Fraud – Protect Yourself – 7 hours

Supervisor Trainee Course for Texas – 7 hours

Appraisal of Land Subject to Ground Lease – 7 hours

Basic Hotel Appraising – 7 hours

Advanced Hotel Appraising – 7 hours

Appraisal of Land Subject to Ground Lease – 7 hours

CA Supervisor/Trainee – 4 hours

The Dirty Dozen – 3 hours

**EDUCATION
(CONTINUED)**

Income Approach – 7 hours
 Small Hotel/Motel Valuation – 7 hours
 NV Law – 3 hours
 Basics of Expert Witness – 7 hours
 Appraisal of Owner-Occupied Commercial Properties – 7 hours
 CA Law – 4 hours
 Biennial USPAP Updates

STATE CERTIFICATIONS

Arizona, California, Hawaii, Nevada, Texas

**PROFESSIONAL
AFFILIATIONS**

Appraisal Institute – Designated Member (MAI)

PUBLISHED ARTICLES

<i>HVS Journal</i>	"COVID-19's Impact on the Los Angeles Hotel Market," April 2021
<i>HVS Journal</i>	"U.S. Hotel Development Cost Survey 2020," October 2020
<i>HVS Journal</i>	"Impact of COVID-19 on the Tucson Hotel Market," July 2020
<i>HVS Journal</i>	"Impact of COVID-19 on Los Angeles & Southern California Hotel Markets," April 2020
<i>HVS Journal</i>	"U.S. Hotel Development Cost Survey 2018/19," September 2019
<i>HVS Journal</i>	"Market Pulse: Los Angeles, CA," March 2019
<i>HVS Journal</i>	"HVS Hotel Development Cost Survey 2017/18," November 2018
<i>HVS Journal</i>	"Blurred Lines between Hotels and Airbnb," September 2018
<i>HVS Journal</i>	"Market Pulse: Palm Springs & Desert Cities," February 2018
<i>HVS Journal</i>	"Top 6 Hotel Success Factors," August 2017
<i>HVS Journal</i>	"In Focus: Houston, Texas," February 2016
<i>HVS Journal</i>	"Four Key Takeaways: Meet the Money 2015," co-authored with Li Chen and Susan Furbay, May 2015
<i>HVS Journal</i>	"In Focus: Houston, Texas," co-authored with Yimei Tang, July 2014
<i>HVS Journal</i>	"Effects of Major Renovations on Hotel Market Penetration and Net Present Value," February 2014
<i>HVS Journal</i>	"HVS Market Intelligence Report 2013: Houston," June 2013

<i>HVS Journal</i>	"HVS Market Intelligence Report: Houston Hotels in 2012," April 2012
<i>HVS Journal</i>	"HVS Report: Foreign Direct Investment, Commercial Real Estate, and Hotel Development in Mexico City." Co-authored by Raul Duarte and Richard Katzman, February 2011
<i>HVS Journal</i>	"San Miguel de Allende – A Beacon for the Tourism Potential of Colonial Towns and Villages," January 2009
<i>HVS Journal</i>	"Mexico's Growing Trend: Master-Planned Resort-Residential Communities," November 2008
<i>HVS Journal</i>	"Guadalajara – Preparing for the Future," May 2008
<i>HVS Journal</i>	"HVS Market Intelligence Report: San Juan, Puerto Rico," November 2007
<i>HVS Journal</i>	"HVS Market Intelligence Report: Liberia, Costa Rica," September 2007

EXAMPLES OF PROPERTIES APPRAISED OR EVALUATED**PORTFOLIO ANALYSIS**

Portfolio of 6 Embassy Suites Hotels, Various Locations
 Portfolio of 5 Proposed Hotels, Colombia
 Ladder Capital Portfolio of 6 Hotels, Colorado and Texas
 Ladder Capital Package of 4 Hotels, Texas
 Portfolio of 8 Embassy Suites Hotels, Various Locations
 Lone Star Portfolio of 38 Hyatt Hotels, Various Locations
 Portfolio of 13 Hotels for JPMorgan Chase, Texas and New Mexico
 Portfolio of 5 Extended-Stay Hotels throughout the South
 Portfolio of 3 Hotels, San Diego
 Portfolio of 2 Full-Service Hotels, Houston
 Portfolio of 8 Marriott or Embassy Suites Hotels, California and Nevada
 Portfolio of 2 Proposed Hotels, Mesa, Arizona
 Portfolio of 2 Ayres Hotels, Southern California
 Portfolio of 2 Hotels, Beverly Hills

ALABAMA

Hampton Inn, Birmingham
 City Lodge, Florence
 Holiday Inn, Hoover
 Hampton Inn, Pell City

ARIZONA

Proposed EVEN Hotel Avondale, Avondale
 Proposed Home2 Suites by Hilton, Avondale
 Proposed Hotel, Campe Verde
 Holiday Inn, Casa Grande
 Proposed Limited-Service Hotel at the Promenade, Casa Grande

Proposed Hotel near Gilbert Heritage District, Gilbert
 Proposed SpringHill Suites by Marriott, Lake Havasu
 Proposed Hotel near Harrah's Ak-Chin Casino, Maricopa
 Proposed La Quinta Maricopa, Maricopa
 Proposed Hotel, Mesa
 Proposed Hotel near Phoenix Mesa Gateway Airport, Mesa
 Proposed Resort Page, Page
 Courtyard Phoenix Airport, Phoenix
 Four Points by Sheraton Phoenix North, Phoenix
 Proposed Dual-Brand AC/Element, Phoenix
 Proposed Hampton Inn at Metro Center, Phoenix
 Proposed Holiday Inn Express & Suites - Phoenix Airport North, Phoenix
 Proposed Home2 Suites by Hilton Phoenix Airport North, Phoenix
 Proposed Hotel at Park Central Mall, Phoenix
 Proposed Hotel Central Station, Phoenix
 Proposed Hyatt Place Downtown Phoenix, Phoenix
 Proposed La Quinta - Banner-University Medical Center, Phoenix
 Proposed La Quinta Inn & Suites McDowell Road, Phoenix
 Proposed Marriott Tribute, Phoenix
 Proposed Midtown Hotel, Phoenix
 Proposed WoodSpring Suites Happy Valley, Phoenix
 Ramada, Phoenix
 Red Roof Inn Phoenix Bell Road, Phoenix
 Residence Inn by Marriott at Mayo Clinic, Phoenix
 Proposed Quartzsite Limited-Service Hotel, Quartzsite
 Proposed Hotel, Queen Creek
 Proposed Hotel, Rancho Sahuarita

Navajoland Inn & Suites / Saint Michaels Arizona, Saint Michaels
 Proposed Ceasars Hotel at Scottsdale Fashion Square, Scottsdale
 Proposed Hilton Hotel at Cavasson, Scottsdale
 Proposed Holiday Inn, Scottsdale
 Proposed Hyatt Place and Hyatt House Dual-Branded Hotel, Scottsdale
 Talking Stick Resort, Scottsdale
 Las Posadas of Sedona, Sedona
 Aloft, Tempe
 Comfort Suites Airport, Tempe
 MOXY Phoenix Tempe/ASU Area, Tempe
 Proposed Full-Service Hotel, Tempe
 Proposed Residence Inn by Marriott, Tempe
 Proposed Westin Tempe, Tempe
 Proposed Best Western, Topock
 Four Points by Sheraton Tucson Airport, Tucson
 Proposed Graduate Hotel Tucson, Tucson
 Proposed Hotels at the Marketplace, Tucson
 Radisson Suites, Tucson
 Westin La Paloma Resort & Spa, Tucson
 Proposed Grand Canyon Resort, Tusayan
 Grand Canyon Railway Hotel, Williams

ARKANSAS

Proposed Hotel, Fairfield Bay
 Proposed Hotel, Hot Springs
 La Quinta Inn & Suites, Russellville

CALIFORNIA

Proposed Hotel Adelanto, Adelanto
 Proposed Holiday Inn Express Alameda, Alameda
 Alhambra Inn & Suites, Alhambra
 Fremont Inn, Alhambra

Proposed Hotel American Canyon, American Canyon	Proposed Candlewood Suites, Elk Grove	Proposed Found Santa Monica, Los Angeles
Candlewood Suites Anaheim - Resort Area, Anaheim	Hyatt Place, Emeryville	Proposed Hampton Inn & Suites Koreatown, Los Angeles
Four Points by Sheraton, Anaheim	Proposed Home2 Suites by Hilton, Fairfield	Proposed Hotel Koreatown, Los Angeles
Gaia Hotel & Spa, Anderson	La Quinta Inn & Suites, Fresno	Proposed Hyatt Place Olive Street, Los Angeles
Apple Valley Lodge, Apple Valley	San Joaquin Hotel, Fresno	Proposed Spring Street Hotel, Los Angeles
Best Western, Bakersfield	Proposed Tapestry Collection by Hilton Fullerton, Fullerton	Proposed SpringHill Suites by Marriott, Marina
Proposed Best Western Bakersfield, Bakersfield	Hampton Inn, Goleta	Proposed Staybridge Suites Los Angeles, Los Angeles
Proposed Staybridge Suites, Bakersfield	Holiday Inn Express, Grover Beach	Proposed Unscripted Hotel, Los Angeles
Holiday Inn Express Hotel & Suites Barstow Outlet Center, Barstow	Home2 Suites by Hilton Hanford Lemoore, Hanford	Proposed Wellness Hotel Malibu, Malibu
Proposed Dual-Branded Marriott, Barstow	Proposed Home2 Suites, Hanford	Proposed Hotel Mammoth Village, Mammoth Lakes
Hampton Inn & Suites Buellton/Santa Ynez Valley, Buellton	Proposed Dual-Branded Hotel, Hawthorne	Proposed Resort Mammoth Lakes, Mammoth Lakes
Proposed Aloft Buena Park, Buena Park	TownePlace Suites by Marriott Los Angeles LAX Hawthorne, Hawthorne	Proposed Hampton Inn & Suites, Marina
Proposed Stanford Hotel, Buena Park	Proposed Hotel, Hermosa Beach	Best Western, Merced
The Hotel at the Source, Buena Park	Proposed Kokoro Wellness Resort, Howard Springs	Mountain Home Inn, Mill Valley
Quality Inn Burbank, Burbank	Paséa Hotel & Spa, Huntington Beach	Proposed Montebello Hotel, Montebello
Proposed Cabazon Glamping Recreation Center, Cabazon	Miramonte Indian Wells Resort & Spa	Comfort Inn & Suites Temecula Wine Country, Murrieta
DoubleTree by Hilton Golf Resort Palm Springs Area, Cathedral City	Curio Collection by Hilton, Indian Wells	Best Western Elm House Inn, Napa
Staybridge Suites Cathedral City Golf Resort, Cathedral City	Irvine Marriott, Irvine	Hampton by Hilton Napa, Napa
Proposed Gaylord Pacific Resort & Convention Center, Chula Vista	Holiday Inn San Diego La Mesa, La Mesa	Aloft Silicon Valley, Newark
Motel 6 Coalinga East, Coalinga	Best Western Laguna Brisas Spa Hotel, Laguna Beach	TownePlace Suites by Marriott, Newark
Proposed Everhome Suites Corona, Corona	Coast Inn, Laguna Beach	Proposed Hotel North Hollywood, North Hollywood
Proposed Boutique Hotel, Diablo Grande	Pacific Edge Hotel, Laguna Beach	Proposed Select-Service Hotel, Northridge
Proposed Hampton Inn, Diamond Bar	Seaside Laguna Inn & Suites, Laguna Beach	Proposed Homage Oakland, Oakland
Proposed Select Service Hotel Downey, Downey	Hilton Garden Inn, Lompoc	Courtyard by Marriott Oceanside, Oceanside
Proposed Home 2 Suites by Hilton, El Centro	Hampton Inn Long Beach Airport, Long Beach	Proposed Cambria Hotel Ontario, Ontario
Proposed Residence Inn El Centro, El Centro	Proposed Breakers Hotel Long Beach, Long Beach	Proposed Dual-Branded Homewood Suites by Hilton and Hampton by Hilton Ontario, Ontario
Proposed Hotel El Dorado Hills, El Dorado Hills	Dixie Hollywood Hotel, Los Angeles	
Holiday Inn Express, Elk Grove	hClub, Los Angeles	
	InterContinental Los Angeles Downtown, Los Angeles	
	Loews Hollywood, Los Angeles	
	Mr C Beverly Hills, Los Angeles	

Proposed Element by Westin Ontario, Ontario	DoubleTree by Hilton San Diego Del Mar, San Diego	Travelodge Yucca Valley, Twentynine Palms
Proposed Dual-Branded Residence Inn & Courtyard by Marriott Orange, Orange	Fairmont Grand Del Mar, San Diego	Embassy Suites by Hilton, Valencia
Hampton Inn Channel Islands Harbor, Oxnard	Holiday Inn Express Hotel & Suites Otay Mesa, San Diego	Hotel Erwin, Venice Beach
Proposed Tru, Oxnard	Holiday Inn Express & Suites San Diego Mission Valley, San Diego	Four Points by Sheraton Ventura Harbor Resort, Ventura
Ivy Palm Resort & Spa, Palm Springs	Lafayette Hotel Swim Club & Bungalows, San Diego	Proposed Avid Hotel Victorville, Victorville
Proposed Andaz Palm Springs, Palm Springs	Marriott San Diego Del Mar, San Diego	Marriott, Walnut Creek
Proposed BODE: Palm Springs, Palm Springs	The Monsaraz Inn, Tapestry Collection by Hilton, San Diego	Proposed Hyatt Place Walnut Creek, Walnut Creek
Riviera Palm Springs, a Tribute Portfolio Resort, Palm Springs	Proposed Fairfield Inn, San Diego	Proposed Residence Inn Walnut Creek, Walnut Creek
Tova Hotel & Beach Club, Palm Springs	Proposed Hotel, San Diego	Proposed Home2 Suites by Hilton Watsonville, Watsonville
Travelodge Palm Springs, Palm Springs	San Diego Marriott Del Mar, San Diego	Hampton Inn, West Covina
Holiday Inn Palmdale Lancaster, Palmdale	SpringHill Suites by Marriott San Diego Mission Valley, San Diego	Holiday Inn West Covina, West Covina
Motel 6 Paso Robles, Paso Robles	US Grant, San Diego	The Charlie Hotel, West Hollywood
Proposed Hotel Ava, Paso Robles	Proposed Boutique Hotel San Dimas, San Dimas	London West Hollywood at Beverly Hills, West Hollywood
Proposed Patterson Hotel, Patterson	Holiday Inn Fisherman's Wharf San Francisco, San Francisco	DoubleTree by Hilton Whittier Los Angeles, Whittier
Proposed Hotel Perris, Perris	Proposed Fairfield Inn & Suites by Marriott South San Francisco, South San Francisco	Comfort Suites Woodland, Woodland
Sheraton Sonoma County Petaluma, Petaluma	San Jacinto Inn, San Jacinto	Marriott Warner Center, Woodland Hills
Motel 6, Pittsburg	Proposed Hyatt Place, San Jose	Proposed Staybridge Suites Woodland, Woodland
Comfort Inn Near Fairplex Pomona, Pomona	Proposed Dual-Brand Hotel San Marcos, San Marcos	COLORADO
Comfort Inn & Suites, Rancho Cordova	Proposed La Quinta Inn & Suites, San Pablo	Proposed Gaylord Rockies Hotel & Convention Center, Aurora
Proposed Hampton Inn, Rancho Cucamonga	Proposed AC Hotel by Marriott San Rafael, San Rafael	Hyatt Summerfield Suites, Broomfield
Proposed Hotel at The River Mall, Rancho Mirage	Proposed Homewood Suites, Santa Clarita	Best Western Academy Hotel, Colorado Springs
Proposed Home2 Suites, Ridgecrest	Hampton Inn, Santa Cruz	Proposed EVEN Hotel Victory Ridge, Colorado Springs
Proposed Roseville Hotel, Roseville	Proposed Hampton by Hilton Santa Cruz, Santa Cruz	DISTRICT OF COLUMBIA
Courtyard by Marriott Cal Expo, Sacramento	Holiday Inn & Suites, Santa Maria	Georgetown Suites Land Valuation
DoubleTree by Hilton, Sacramento	Proper Hotel, Santa Monica	Proposed Maison Kesh Hotel
Fairfield Inn Cal Expo, Sacramento	Hotel Santa Rosa, Santa Rosa	
La Quinta Inn by Wyndham Sacramento North, Sacramento	Proposed Hotel, Sonora	FLORIDA
Quality Inn & Suites, Sacramento	Sonora Inn, Sonora	Marriott, Boca Raton
DoubleTree by Hilton Golf Resort, San Diego	Proposed Galway House, Temecula	Proposed Dual-Branded Residence Inn/SpringHill Suites by Marriott, Clearwater Beach
	Proposed Hampton Inn Three Rivers, Three Rivers	Mayfair Hotel & Spa, Coconut Grove

Hyatt Place, Delray Beach
 Hyatt Place at Coconut Point, Estero
 Hyatt Place, Fort Lauderdale
 Hilton Garden Inn, Fort Myers
 Four Points, Ft. Walton Beach
 Holiday Inn, Houston
 Proposed Courtyard, Jacksonville
 Wyndham Riverwalk, Jacksonville
 Terrace Hotel, Lakeland
 Proposed Holiday Inn & Suites, Miami
 Proposed Hotel, Miami
 Proposed Le Meridien, Miami
 Proposed Meininger Hotel, Miami
 Beach
 Proposed Hilton, Miami Beach
 The Raleigh Hotel, Miami Beach
 Proposed SpringHill Suites by
 Marriott, Navarre
 Embassy Suites Orlando Lake Buena
 Vista, Orlando
 Holiday Inn Express Hotel & Suites
 Orlando International Airport,
 Orlando
 Proposed WoodSpring Suites, Orlando
 Proposed Comfort Inn & Suites
 Panama City Beach, Panama City
 Beach
 Sheraton Suites Fort Lauderdale
 Plantation, Plantation
 Proposed Hotel, St. Augustine
 SpringHill Suites by Marriott, Sarasota
 Sawgrass Grand Hotel & Suites,
 Sunrise
 Hampton Inn, Tallahassee
 Hampton Inn Veterans Expressway,
 Tampa

GEORGIA

Proposed Curio - A Collection by
 Hilton, Alpharetta
 Courtyard by Marriott, Atlanta
 Holiday Inn Atlanta Perimeter
 Dunwoody, Atlanta
 Proposed Radisson, College Park
 Country Inn & Suites, Hiram
 Candlewood Suites, Lithia Springs

Proposed Full-Service Tribute Hotel,
 Macon
 Holiday Inn Express, St. Simons Island
 Island Inn, St. Simons Island

HAWAII

Sheraton Keauhou Bay Resort & Spa,
 Kailua
 Proposed Kona Village, a Rosewood
 Resort, Kailua-Kona
 Four Seasons Resort O'ahu at Ko
 Olina, Kapolei

IDAHO

Proposed Hotel Boise Airport, Boise
 Proposed Economy Extended Stay,
 Coeur D'Alene

ILLINOIS

Proposed Extended-Stay Hotel,
 Bolingbrook
 Proposed Hampton Inn, Burr Ridge
 SpringHill Suites by Marriott, Burr
 Ridge
 Renaissance Chicago O'Hare Suites,
 Chicago
 SpringHill Suites by Marriott,
 Elmhurst

INDIANA

Proposed Aloft, Indianapolis

IOWA

Proposed Waterpark Hotel,
 Davenport
 Proposed University of Iowa Hotel,
 Iowa City

KANSAS

Crowne Plaza Kansas City Overland
 Park, Lenexa

LOUISIANA

Proposed Residence Inn by Marriott,
 Bossier City
 Hampton Inn, Houma
 Hotel Acadiana, Lafayette

Wyndham Garden, Lafayette
 Proposed Candlewood Suites,
 Leesville
 Astor Crowne Plaza, New Orleans
 Hilton Garden Inn French Quarter,
 New Orleans
 Hyatt Regency, New Orleans
 Proposed Hotel Alessandra, New
 Orleans
 Troubadour Hotel New Orleans,
 Tapestry Collection by Hilton, New
 Orleans
 Wyndham Chateau Bourbon, New
 Orleans
 Holiday Inn, Ruston
 Holiday Inn Express Hotel & Suites,
 Ruston
 Proposed La Quinta Inn & Suites,
 Ruston
 Nottoway Plantation Resort, White
 Castle

MARYLAND

Proposed Hilton Garden Inn,
 Baltimore
 Sheraton Washington North, Beltsville
 Country Inn & Suites by Carlson,
 Frederick
 Proposed Hotel Sorella, Rockville

MINNESOTA

Loews, Minneapolis
 Westin, Minneapolis

MISSISSIPPI

Four Points, Biloxi
 Proposed SpringHill Suites, Biloxi
 South Beach Biloxi Hotel, Biloxi
 Hampton Inn, Brookhaven
 Magnuson Hotel Hattiesburg, North
 Hattiesburg

MISSOURI

Hilton Kansas City Airport, Kansas
 City

MONTANA

Proposed Hotel, Big Sky
 Proposed Hotel Gardiner, Gardiner
 Proposed Best Western, Shelby
 Holiday Inn Express, Sidney

NEVADA

Hampton Inn, Las Vegas
 Proposed Delta Las Vegas, Las Vegas
 Proposed Fairfield Inn & TownePlace
 Suites Dual-Branded Hotel, Las
 Vegas
 Proposed Hotel Raiders Stadium, Las
 Vegas
 Proposed Limited/Select-Service
 Hotel, Las Vegas
 Vegas Vacant Land, Spring Valley

NEW JERSEY

Proposed Holiday Inn, Bayonne
 TownePlace Suites by Marriott, Mount
 Laurel
 Holiday Inn, Princeton

NEW MEXICO

Proposed Home2 by Hilton
 Alamogordo, Alamogordo
 Proposed Downtown Hotel,
 Albuquerque
 Proposed TownePlace Suites
 Albuquerque, Albuquerque
 Sleep Inn & Suites, Hobbs
 Proposed La Quinta Inn, Los Lunas
 Holiday Inn Express, Portales
 Proposed Hotel, Ruidoso
 Hotel Santa Fe, Santa Fe
 Inn at Loretto, Santa Fe
 Proposed Boutique Hotel, Santa Fe
 Hampton Inn, Santa Rosa
 Holiday Inn Express, Santa Rosa
 La Quinta Inn, Santa Rosa
 Sagebrush Inn, Taos

NEW YORK

Marriott, Buffalo
 Proposed Hampton Inn, Dewitt
 Courtyard by Marriott New York
 LaGuardia Airport, East Elmhurst

Proposed Tryp by Wyndham Long
 Island City, Long Island City
 Residence Inn, White Plains
 Proposed Selina Woodstock,
 Woodstock

NORTH CAROLINA

Proposed Fairfield Inn by Marriott,
 Maggie Valley
 Courtyard by Marriott, Raleigh

OHIO

Proposed Hilton, Chippewa Lake
 Proposed Baldwin Hotel, Cincinnati
 Holiday Inn, West Chester
 Proposed Holiday Inn & Conference
 Center, West Chester
 Radisson Hotel at the University of
 Toledo, Toledo

OKLAHOMA

Hilton Skirvin, Oklahoma City

OREGON

Hilton, Eugene

PENNSYLVANIA

DoubleTree by Hilton Pittsburgh
 Garden Tree, Pittsburgh

SOUTH CAROLINA

Proposed 5-Star Hotel, Charleston
 Proposed Marion Square Hotel,
 Charleston
 3 Palms Hotel, Myrtle Beach

TENNESSEE

Holiday Inn, Chattanooga
 Proposed Select-Service Hotel,
 Knoxville
 Holiday Inn Memphis Downtown
 Beale Street, Memphis
 Proposed Dual-Brand Tru & Hampton
 Inn, Nashville

TEXAS

Holiday Inn Express, Allen

Proposed 21c Hotel, Austin
 Proposed Hotel Granduca, Austin
 Proposed SpringHill Suites, Baytown
 Value Place, Beaumont
 Homewood Suites by Hilton, Bedford
 Proposed Hotel Texas A&M
 University, College Station
 Proposed Tryp by Wyndham, College
 Station
 Proposed Staybridge Suites, The
 Colony
 Fairfield Inn & Suites Houston Conroe,
 Conroe
 Candlewood Suites, Corpus Christi
 Comfort Suites Calallen, Corpus
 Christi
 Embassy Suites, Corpus Christi
 Holiday Inn Airport, Corpus Christi
 Holiday Inn Downtown, Corpus
 Christi
 Holiday Inn Express, Corpus Christi
 La Quinta Inn & Suites, Corpus Christi
 Proposed Schlitterbahn Resort,
 Corpus Christi
 Staybridge Suites, Corpus Christi
 Proposed Hotel, Cypress
 Le Méridien The Stoneleigh, Dallas
 Proposed Aloft/Element Dual-
 Branded Hotel, Dallas
 Proposed Autograph Collection
 Trinity Groves, Dallas
 Proposed Residence Inn by Marriott,
 Dallas
 Proposed Residence Inn and AC by
 Marriott Dual-Branded Hotel, Dallas
 Proposed Saint Elm Hotel, Dallas
 Hilton Garden Inn Denison Sherman
 at Texoma Event Center, Denison
 Proposed Hotel, Edinburg
 Proposed Hyatt Place, Edinburg
 Proposed Artisan Hotel Conversion, El
 Paso
 Sheraton Fort Worth Downtown
 Hotel, Fort Worth
 Proposed Hilton Garden Inn, Frisco
 Westin Stonebriar, Frisco

Sheraton Fort Worth Downtown Hotel, Fort Worth
 SpringHill Suites by Marriott Fort Worth University, Fort Worth
 Proposed Full-Service Hotel Baybrook Mall, Friendswood
 Courtyard by Marriott, Galveston
 Proposed Beachfront Hotel, Galveston
 Proposed Beachtown Grand Hotel, Galveston
 Proposed Courtyard by Marriott, Galveston
 Proposed Downtown Hotel, Galveston
 Proposed TownePlace Suites, Galveston
 TownePlace Suites by Marriott, Galveston
 Proposed Hotel, Georgetown
 Best Western Fountainview, Houston
 Crowne Plaza, Houston
 Crowne Plaza Suites, Houston
 DoubleTree Suites by Hilton Houston Galleria, Houston
 DoubleTree IAH, Houston
 Four Seasons, Houston
 Hampton Inn Houston Interstate 10 West, Houston
 Hampton Inn & Suites Houston Medical Center, Houston
 Hilton Garden Inn Houston Bush Intercontinental Airport, Houston
 Hilton Garden Inn Houston Northwest, Houston
 Hilton Houston North, Houston
 Hilton Houston Westchase, Houston
 Holiday Inn Southwest, Houston
 Holiday Inn Westchase, Houston
 Homewood Suites by Hilton, Houston
 Hotel Icon, Houston
 Hyatt Regency, Houston
 Intercontinental Houston Medical Center, Houston
 Magnolia Hotel, Houston
 Marriott Houston North Greenspoint, Houston
 Proposed 314 Hotel, Houston

Proposed AC Hotel Houston Downtown, Houston
 Proposed Aloft, Houston
 Proposed Embassy Suites, Houston
 Proposed Hampton Inn/Homewood Suites Downtown, Houston
 Proposed Heights Hotel, Houston
 Proposed Holiday Inn & Conference Center Willowbrook, Houston
 Proposed Holiday Inn Downtown, Houston
 Proposed Homewood Suites by Hilton, Houston
 Proposed Hotel Alessandra, Houston
 Proposed Hotel Galleria, Houston
 Proposed Hotel Zaza & Apartments, Houston
 Proposed Hyatt Place and Hyatt House Dual-Brand Hotel, Houston
 Proposed Hyatt Place, Houston
 Proposed InterContinental Hotel, Houston
 Proposed JW Marriott, Houston
 Proposed Le Méridien, Houston
 Proposed Lifestyle Hotel, Houston
 Proposed Luxury Hotel Houston Galleria, Houston
 Proposed Marriott Marquis, Houston
 Proposed Montrose Hotel, Houston
 Proposed Select-Service Hotel, Houston
 Proposed SpringHill Suites, Houston
 Proposed Triple-Branded Hotel Houston Downtown, Houston
 Sam Houston Hotel (Curio Conversion), Houston
 Sheraton Houston North, Houston
 Sheraton Houston West, Houston
 Staybridge Suites, Houston
 Staybridge Suites Houston IAH Beltway 8, Houston
 Staybridge Suites Houston West Energy Corridor, Houston
 Staybridge Suites Houston Willowbrook, Houston
 Westin Galleria, Houston
 Westin Oaks, Houston

Wingate by Wyndham Houston Bush Intercontinental, Houston
 Proposed Hotel & Conference Center, Huntsville
 Studio 6, Ingleside
 Proposed Westin, Irving
 Wingate Las Colinas, Irving
 Sleep Inn & Suites, Jourdan
 Super 8, Karnes City
 Homewood Suites by Hilton Houston/Katy Mills Mall, Katy
 Proposed Homewood Suites by Hilton, Katy
 South Shore Harbour Resort & Spa, League City
 Best Western, Luling
 Renaissance, McAllen
 Proposed Home2 Suites by Hilton, McKinney
 Proposed SpringHill Suites by Marriott, McKinney
 Proposed Westin, McKinney
 Proposed Limited-Service Hotel, Melissa
 Proposed Extended-Stay Hotel, Midland
 Candlewood Suites, Monahan
 La Toretta del Lago Resort & Spa, Montgomery
 Candlewood Suites, Odessa
 Proposed Home2 Suites by Hilton, Pasadena
 Courtyard by Marriott Houston Pearland, Pearland
 Proposed Pearland Hotel, Pearland
 Proposed Fairfield Inn by Marriott, Pecos
 TownePlace Suites by Marriott Plano, Plano
 Holiday Inn Express Hotel & Suites, Port Aransas
 Holiday Inn Express, Port Arthur
 Proposed Hilton Garden Inn Porter, Porter
 Holiday Inn Express, Rockport
 Microtel Inn & Suites, Round Rock

Proposed Holiday Inn (land), San Angelo
 Hilton San Antonio Airport, San Antonio
 Homewood Suites by Marriott, San Antonio
 Marriott Plaza, San Antonio
 Microtel Inn & Suites Airport, San Antonio
 Microtel Inn & Suites SeaWorld, San Antonio
 Proposed Thompson Hotel, San Antonio
 Baymont Inn & Suites, Snyder
 Proposed Fairfield Inn by Marriott, Snyder
 Schlitterbahn Resort, South Padre Island
 Proposed Home2 Suites, Stafford
 Marriott Hotel and Conference Center, Sugar Land
 Proposed Red Lion Inn & Suites, Texas City
 Baymont Inn & Suites, Victoria
 Proposed Hotel, Webster
 Proposed Hotel & Conference Center, Webster
 Proposed Extended-Stay Hotel, The Woodlands
 Woodlands Resort & Conference Center, The Woodlands

UTAH

Peery Hotel, Salt Lake City
 Proposed Inn at St. George, St. George

VIRGINIA

Wingate Inn Dulles Airport, Chantilly
 Proposed Staybridge Suites, Charlottesville
 Delta Hotels, Chesapeake
 Westin Tysons Corner, Falls Church
 Proposed Hampton Inn, Gordonsville
 Holiday Inn, Lynchburg
 Magnuson Hotel & Convention Center at Oyster Point, Newport News
 Proposed Hotel Norfolk, Norfolk

Holiday Inn Express & Suites Petersburg Fort Lee, Petersburg
 TownePlace Suites by Marriott, Stafford

WASHINGTON

Proposed AC Hotel, Bellevue
 Holiday Inn Express, Marysville
 Proposed Homewood Suites, Richland
 Proposed 4/C Tower Hotel, Seattle
 Holiday Inn Express, Sumner

WISCONSIN

Holiday Inn, Milwaukee

INTERNATIONAL

Colombia

Proposed Hyatt Place, Bogota
 Conrad, Cartagena
 Proposed City Express Hotel, Cartagena
 Proposed Luxe Resort by The Charlee, Guatapé
 Proposed City Express Hotel, Medellín
 Proposed Courtyard by Marriott, Medellín
 Proposed Marriott, Medellín
 Proposed Hilton Garden Inn, Rionegro
 Proposed Airport Hotel, Rionegro

Costa Rica

Proposed Andaz, Guanacaste
 Proposed Boutique Resort, Guanacaste
 Proposed Paradisus Papagayo Bay Resort & Luxury Villas, Guanacaste
 Proposed Resort, Guanacaste
 Punta Cacique Proposed Resort, Guanacaste
 Proposed Boutique Resort, Guanacaste
 Proposed Limited-Service Hotel, Liberia
 Proposed Wellness Boutique Hotel, Matapalo
 Marriott Los Suenos, Playa Herradura

Proposed Extended-Stay, San Jose
 Proposed Hyatt Place Pinares, San Jose
 Proposed Select-Service Hotel, San Jose
 Marriott Costa Rica, San Jose
 Proposed Hyatt Place, San Jose
 Proposed Lifestyle Hotel & Club, San Jose
 Proposed Luxury Hotel, San Jose

Dominican Republic

Proposed Auberge Resort, El Seibo
 Proposed Four Seasons, El Seibo

El Salvador

Proposed Full-Service Hotel, San Salvador
 Proposed Select-Service Hotel, San Salvador

Guatemala

Proposed Four Seasons, Antigua
 Proposed Hotel, Guatemala City

Honduras

Proposed Hotel, San Pedro Sula

Mexico

Fairmont Acapulco Princess, Acapulco
 Fairmont Pierre Marques, Acapulco
 Proposed Hotel, Acapulco
 Bacalar Land Parcels, Bacalar
 Proposed Bacalar Hotel, Bacalar
 Cabo de Cortes Fairmont/Raffles Development, Cabo San Lucas
 Cabo San Cristobal, Cabo San Lucas
 Proposed Luxury Hotel & Villa Project, Campeche
 Proposed Master-Planned Development (2), Campeche
 Dreams Resort, Cancun
 Elan Resort & Spa, Cancun
 El Pueblito, Cancun
 Fiesta Americana Condesa Cancun, Cancun
 Le Meridien, Cancun

Yalmakan Resort, Cancun
 Westin Soberano, Chihuahua
 Proposed Quinta Real Hotel
 Development, Culiacán
 Proposed Banyan Tree, Ensenada
 Proposed Boutique Hotel Project,
 Guadalajara
 Proposed Fiesta Inn del Tapatio,
 Guadalajara
 Proposed Hotel Project, Guadalajara
 Proposed Mixed-Use Development,
 Guadalajara
 Proposed Vi Hotel, Guadalajara
 Hotel Condesa, Leon, Guanajuato
 Tesoro, Ixtapa
 Proposed Hotel & Residential
 Development, Ixtapan de la Sal
 Proposed Park Hyatt, Kanai
 Proposed St. Regis, Kanai
 Proposed W Hotel, Kanai
 Desire Resort, Los Cabos
 Esperanza Resort, Los Cabos
 Proposed Thompson Hotel, Los
 Veneros
 Tesoro Manzanillo, Manzanillo
 Embassy Suites, Mexico City
 Le Méridien, Mexico City
 Proposed City Express Hotel, Mexico
 City
 Proposed Limited-Service Hotel,
 Mexico City
 Proposed Hotel & Condo, Monterrey
 Proposed Hotel, Monterrey
 Proposed Limited-Service Hotel, Playa
 del Carmen
 Proposed Resort, Playa del Carmen
 Ceiba del Mar, Puerto Morelos
 Paraiso de la Bonita, Puerto Morelos
 Proposed Puerto Telchac Hotel &
 Residential Project, Puerto Progreso
 Presidente InterContinental, Puerto
 Vallarta
 Proposed City Express Hotel,
 Queretaro
 Proposed Capella Punta Maroma,
 River Maya
 Proposed Grand Hyatt, Riviera Maya

El Dorado Ranch Hotel & Excess Land,
 San Felipe
 Proposed Hotel, San Miguel de
 Allende
 Proposed Quinta Real Hotel &
 Residential, San Miguel de Allende
 Dreams Resort, Tulum
 Secrets Capri Resort, Tulum

Panama

Proposed Boutique Hotel, Panama
 City
 Proposed Full-Service Hotel, Panama
 City
 Proposed Limited-Service Hotel,
 Panama City

Peru

Proposed Hyatt Place, Lima

Puerto Rico

Hilton, Caribe
 Embassy Suites San Juan Hotel &
 Casino, Carolina
 Proposed Boutique Hotel, Ponce
 Proposed El Vigía Hotel and
 Residences, a Tribute Portfolio
 Resort, Ponce
 Courtyard by Marriott (Expansion),
 San Juan
 Proposed 1,000-Room Hotel & Casino
 San Juan, San Juan

Saint Lucia

Proposed Master Planned
 Development

Spain

Villaitana Wellness Golf & Business
 Sun Resort, Benidorm

Proposed Laguna Hills Hotel

AVENIDA DE LA CARLOTA

OFFICE 4
41,518 SQ. FT.

OFFICE 1
47,141 SQ. FT.

OFFICE 2
41,841 SQ. FT.

OFFICE 3
4,518 SQ. FT.

PARKING STRUCTURE A
5,141/745 STALLS

PARKING STRUCTURE B
4,141/637 STALLS

RETAIL BUILDING
117,375 SQ. FT.

RETAIL ANCHOR 1
128,000 SQ. FT.

RETAIL ANCHOR 2
145,000 SQ. FT.

SHOPS 1
14,000 SQ. FT.

SHOPS 2
117,000 SQ. FT.

VILLAGE PARK

HOTEL
100,000 SQ. FT.

RETAIL
16,000 SQ. FT.

RESIDENTIAL I
200 UNITS & 444 STALLS

RESIDENTIAL II
300 UNITS & 579 STALLS

RESIDENTIAL III
300 UNITS & 579 STALLS

RESIDENTIAL IV
337 UNITS & 617 STALLS

RESIDENTIAL V
271 UNITS & 505 STALLS

RESIDENTIAL VI
308 UNITS & 604 STALLS

PAD 1
14,100 SQ. FT.

PAD 2
7,900 SQ. FT.

PAD 3
14,600 SQ. FT.

PAD 4
14,100 SQ. FT.

PAD 5
14,600 SQ. FT.

EL TORO ROAD

CALLE DE LA LOUISA

CALLE DE LOS CABALLEROS

CALLE ZOCALO

HVS Consulting & Valuation
Division of TS Worldwide, LLC
8430 Santa Monica Boulevard, Suite 200
West Hollywood, California 90069

Packet Pg. 528



December 14, 2021

Stephen T. Logan
Merlone Geier Partners
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200

West Hollywood, California 90069

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+1 (415) 896-0516 FAX

www.hvs.com

Re: Proposed Laguna Hills Hotel
Laguna Hills, California
HVS Reference: 2021022179

Dear Mr. Logan:

Pursuant to your request, we herewith submit our response pertaining to your question on the feasibility of an upscale full-service hotel for the above-referenced project in the Laguna Hills, California, area.

As a reminder STR categorizes hotels by ADR. Therefore, an upscale full-service hotel would not be expected to have a significantly higher ADR than an upscale select-service hotel. Starting from this understanding, it would be challenging to make an upscale full-service hotel feasible if ADR levels will be relatively similar to the select-service scenario, since construction costs for the full-service scenario will be much higher.

If we take it a step further, we have in our competitive set one upscale full-service hotel, which can provide an understanding of ADR levels for this specific product. The DoubleTree by Hilton Irvine Spectrum in our competitive achieved an ADR of ~\$185 in 2019. We also have the Sonesta Laguna Hills, which is categorized as upscale, but one could argue that falls between select and full service. The Sonesta is seeking to move more toward a full-service offering. The Sonesta had an ADR of ~\$145 in 2019.

Our selected ADR for the upscale select-service scenario was \$175 in 2019 dollars and \$205 for the upper-upscale full-service scenario. The above information means that on a best-case scenario we would be looking at an ADR of \$185-\$190 for upscale full-service scenario, ultimately falling between the two scenarios previously studied.

As such, the upscale full-service scenario is likely to achieve an ADR increase of \$10 to \$15 over the select-service scenario, or approximately 5% to 9% higher. However, construction costs are likely to fall between the select service upscale and the full-service upper-upscale category. Development costs for select-service were about \$275,000 per room and for full-service \$375,000. Construction costs for a full-service hotel would be higher due to the additional requirements that arise from the inclusion of an expanded food and beverage offering as well larger meeting venues. Furthermore, the clientele and brand expectations for a full-service property would demand a higher level of quality, which would result in higher costs associated with flooring and wall finishes, furniture, fixtures, and

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hospitality intelligence. Everywhere.

equipment. As such, the development of an upscale full-service hotel is likely to fall in the middle, at approximately \$325,000 or higher, or approximately 18% higher than the select-service scenario.

As illustrated in the select-service scenario, the valuation at opening was expected to be 1.5% higher than the estimated development costs. In this new upscale full-service scenario, with ADR being 9% higher but costs at least 18% higher, the full-service upscale scenario would not be feasible.

We hereby certify that we have no undisclosed interest in the property, and our employment and compensation are not contingent upon our findings. This memo is meant to be part of the summary of findings previously completed for the above-referenced subject property and is subject to the comments made throughout that report and to all assumptions and limiting conditions set forth therein.

Sincerely,
TS Worldwide, LLC



Luigi Major, MAI, Managing Director
lmajor@hvs.com, +1 (310) 270-3240



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Legislative Update for the 2022 Regular Session and Overview of Initiative No. 21-0042A1

RECOMMENDATION: That the City Council receive and file the report and take a Watch position on Legislation until later in the Legislative Session.

SUMMARY:

The California State Legislature reconvened in early January, and since that time the Senate and the Assembly have each introduced hundreds of legislative bills to be heard in the current legislative session. Each year, the City actively monitors the activity of the Legislature and advocates on legislation that may have an impact, either positive or negative, on the Laguna Hills community.

The purpose of this report is to provide the City Council with 1) a review of legislative resources that are currently available to the City as it pertains to the identification, monitoring, and advocacy of bills, 2) an overview of key legislative dates as outlined by the State Legislature's 2022 Legislative Calendar, and 3) a summary of legislation that Staff has identified as being of particular importance to the City. In addition, as requested by City Council, Staff is also providing an overview of the initiative process including an overview of proposed Initiative No. 21-0042A1.

BACKGROUND:

The State Legislature reconvened on January 3, 2022, for its 2022 Regular Session. The Legislature has been busy since the start of its session, and together, both the Senate

and the Assembly introduced over 2,000 legislative bills.

Many of the bills introduced in the current legislative session are related to local control of zoning, housing development, and homelessness, all of which have been, and continue to be, key policy and legislative priorities for the Legislature and the Governor. Given that such priorities may have severe long-term consequences on the City's ability to maintain its authority over local issues, it is important for the City Council to be informed and for the City to actively monitor and advocate bills during this legislative session.

1) Legislative Resources

As it pertains to legislative affairs and advocacy, the City has a variety of resources available to it which are coordinated by the City Manager's Office.

- *Lobbying and Legislative Monitoring*: The City's long-term partner, Gonsalves & Son, provides lobbying and legislative services, which includes analysis of bills and policies from the Legislature. Additionally, Gonsalves & Son provides legislative monitoring services to the City and notifies the City of potentially problematic legislation.
- *Legal Analysis*: The City Attorney provides detailed legal analysis of legislation and assists the City Manager's Office with the identification of policy language that may be of significance to the City.
- *Association of California Cities – Orange County*: The City is a member of the Association of California Cities – Orange County (ACC-OC), which represents the interests of Laguna Hills and Orange County cities on regional public policy issues. ACC-OC has numerous policy committees and working groups that advocate on behalf of the City.
- *CalCities*: The League of California Cities provides bill briefs, bill analyses, and advocacy letter.
- *Legislative Calendar*: Each year, the Legislature adopts a new Legislative Calendar that identifies key legislative deadlines for each house and provides an overview of important activities throughout the session.

2) Key Deadlines on the Legislative Calendar

Legislative Update for the 2022 Regular Session

March 22, 2022

Page 3

With these resources, and by utilizing the deadlines of the Legislative Calendar, the City can develop a strategy to maximize its advocacy efforts during the legislative session. To that end, there are a few important dates on this year's Legislative Calendar that may be of particular importance to the City Council.

- Friday, February 18, 2022: This was the last day for the Assembly and the Senate to introduce bills. A summary of bills of interest to the City is provided later in this report.
- Friday, May 27, 2022: This is the last day for each house to pass bills introduced in that house. After this date, the City will know which bills are still active, and staff can provide a legislative update to the City Council.
- Friday, June 30, 2022: This is the last day for a legislative measure, such as an initiative, to qualify for the November 8, 2022, General election ballot.
- Friday, August 31, 2022: This is the last day for any bill to be passed. After this date, the City will know which bills have passed the committee process and are headed to the Governor's desk to be signed into law or vetoed. At this point, staff can provide a legislative update to the City Council with its recommendations to continue, or not, to advocate a position on a bill.
- Friday, September 30, 2022: This is the last day for the Governor to sign into law or veto a bill. After this date, staff can provide the City Council with a legislative update describing which bills of interest to the City were signed into law, including any impact the bill will have on the City, if any.

3) Legislative Update

Since February 18, 2022, the deadline for the Legislature to introduce bills, Staff has identified a number of bills that the City may be interested in taking a position on in the near future. A summary of each bill is provided below, and it should be noted that this is not an exhaustive or complete list of bills that the City may take a position on during the legislative session.

Assembly Bill (AB) 682 (Bloom) – Planning and zoning: density bonuses: cohousing buildings.

Status: This is an active bill in the Senate, currently in the Senate Committee on Rules awaiting committee assignment.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: Current law, commonly referred to as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the city or county with a density bonus and other incentives or concessions, as specified, if the developer agrees to construct, among other options, specified percentages of units for moderate-income, lower income, or very low income households and meets other requirements. This bill would additionally require that a density bonus be provided under these provisions to a developer who agrees to construct a housing development that is a cohousing building, as defined, that meets specified requirements and will contain either 10% of the total square footage for lower income households, as defined, or 5% of the total square footage for very low income households, as defined.

AB 916 (Salas) – Zoning: accessory dwelling units: bedroom addition.

Status: This is an active bill in the Senate, currently being heard by the Senate Committee on Rules.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: This bill would prohibit a city or county legislative body from adopting or enforcing an ordinance requiring a public hearing as a condition of adding space for additional bedrooms or reconfiguring existing space to increase the bedroom count within an existing house, condominium, apartment, or dwelling. The bill would include findings that ensuring adequate housing is a matter of statewide concern and is not a municipal affair, and that the provision applies to all cities, including charter cities.

AB 1551 (Santiago) – Planning and zoning: development bonuses: mixed-use projects.

Status: This is an active bill in the Senate, currently in the Senate Committee on Rules awaiting committee assignment.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: The Density Bonus Law requires a city or county to provide a developer that

proposes a housing development within the city or county with a density bonus and other incentives or concessions if the developer agrees to construct specified percentages of units for lower income, very low income, or senior citizen housing, among other things, and meets other requirements. Previously existing law, until January 1, 2022, required a city, county, or city and county to grant a commercial developer a development bonus when an applicant for approval of a commercial development had entered into an agreement for partnered housing with an affordable housing developer to contribute affordable housing through a joint project or 2 separate projects encompassing affordable housing. This bill would reenact the above-described provisions regarding the granting of development bonuses to certain projects.

AB 1599 (Kiley) – Proposition 47: repeal.

Status: This is an active bill in the Assembly, currently being heard by the Assembly Committee on Public Safety. The next hearing date is scheduled for March 18, 2021.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: This bill would repeal the changes and additions made by Proposition 47, except those related to reducing the penalty for possession of concentrated cannabis. Upon passage by the legislature and approval by the Governor, this repeal to Proposition 47 is to be placed on the general election ballot on November 8, 2022, and requires a majority vote for final approval.

AB 2063 (Berman) – Density bonuses: affordable housing impact fees.

Status: This is an active bill in the Assembly, currently being heard by the Assembly Committee on Housing and Community Development. The next hearing date is scheduled for March 23, 2022.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: The Density Bonus Law requires a city or county to provide a developer that proposes a housing development in the city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to, among other

things, construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents, including lower income students. This bill would prohibit affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and public benefit fees, from being imposed on a housing development's density bonus units.

AB 2221 (Quirk-Silva) – Accessory dwelling units.

Status: This is an active bill in the Assembly, currently being heard by the Assembly Committee on Housing and Community Development.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Current law requires a permitting agency to act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within specified timeframes. This bill would provide that the requirement for an agency to act on an application means either to return in writing a full set of comments to the applicant with a comprehensive request for revisions or to return the approved permit application. The bill would require the permitting agency to complete all required service upgrades within 60 days of request if service upgrades are required for the project to pass final inspection.

AB 2328 (Flora) – Local ordinances: home experience sharing.

Status: This is an active bill in the Assembly located in the Assembly Committee on Local Government.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: Current law defines "hosting platform" as a marketplace that is created for the primary purpose of facilitating the rental of a residential unit. This bill would prohibit a city or county from prohibiting or effectively prohibiting the use of property as a home experience sharing unit. The bill would define "home experience sharing unit" as a privately owned, noncommercial property or residential dwelling unit that is rented

partially for a fee for a period of fewer than 18 continuous hours and that does not provide sleeping accommodations to transients. The bill would authorize a city or county to reasonably regulate home experience sharing units to protect the public's health and safety.

AB 2339 (Bloom) – Housing element: emergency shelters: regional housing need.

Status: This is an active bill in the Assembly located in the Assembly Committee on Housing and Community Development.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city that includes a housing element. This bill would revise the requirements of the housing element in connection with zoning designations that allow residential use, including mixed use, where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The bill would prohibit a city or county from establishing overlay districts to comply with these provisions.

AB 2449 (Rubio) – Open Meetings: local agencies: teleconferences.

Status: This is an active bill in the Assembly, currently located in the Assembly Committee on Local Government.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: Current law, until January 1, 2024, authorizes a local agency to use teleconferencing without complying with specified teleconferencing requirements in specified circumstances when a declared state of emergency is in effect, or in other situations related to public health. This bill would authorize a local agency to use teleconferencing without complying with those specified teleconferencing requirements if at least a quorum of the members of the legislative body participates in person from a singular location clearly identified on the agenda that is open to the public and situated within the local agency's jurisdiction. The bill would impose prescribed requirements for

this exception relating to notice, agendas, the means and manner of access, and procedures for disruptions.

AB 2668 (Grayson) – Planning and zoning: housing: streamlined, ministerial approval.

Status: This is an active bill in the Assembly, currently located in the Assembly Committee on Housing and Community Development.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: This bill would prohibit a local government from determining that a development, including an application for a modification, is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains sufficient information that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

Senate Bill (SB) 897 (Wieckowski) – Accessory dwelling units: junior accessory dwelling units.

Status: This is an active bill in the Senate and is currently located in the Senate Committee on Housing. The next scheduled hearing date is March 24, 2022.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: The Planning and Zoning Law authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use, as specified. Current law authorizes a local agency to impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, and maximum size of a unit. This bill would require that the standards imposed on accessory dwelling units be objective. For purposes of this requirement, the bill would define “objective standard” as a standard that involves no personal or subjective judgment by a public official and is uniformly verifiable.

SB 1100 (Cortese) – Open Meetings: orderly conduct.

Status: This is an active bill in the Senate and is currently located in the Senate

Committee on Governance and Finance.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate. This bill would authorize the members of the legislative body conducting a meeting to remove an individual for willfully interrupting the meeting. The bill, except as provided, would require removal to be preceded by a warning by the presiding member of the legislative body that the individual is disrupting the proceedings, a request that the individual curtail their disruptive behavior or be subject to removal, and a reasonable opportunity to respond to the warning.

SB 1464 (Pan) – Law enforcement: public health orders.

Status: This is an active bill in the Senate and is currently located in the Senate Committee on Health.

City Recommended Position: Watch.

Other entities' positions: Cal Cities has taken a Watch position.

Summary: Current law requires all sheriffs to execute all lawful orders of a department in their counties. Current law authorizes each sheriff to enforce all orders of the State Department of Public Health or of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. This bill would instead require those sheriffs and peace officers to enforce those orders.

Initiative Process Overview

In a special election held on October 10, 1911, California became the 10th state to adopt the initiative process. The initiative is the power of the people of California to propose statutes and to propose amendments to the California Constitution. Generally, any matter that is a proper subject of legislation can become an initiative measure; however, no initiative measure addressing more than one subject area may be submitted to the voters or have any effect.

The steps for an initiative to become law are as follows:

1. Proponent writes the text of the proposed law, referred to as an initiative draft.
2. Proponent submits the initiative draft to the Attorney General for official title and summary.
3. Initiative petitions are circulated to collect enough signatures from registered voters.
4. Signatures are turned into county election officials for verification.
5. The initiative will either be qualified for ballot or be failed by the Secretary of State.
6. If qualified for ballot, California voters will approve or deny the initiative.

Required Number of Signatures

In order to qualify for the ballot, the initiative petition must be signed by a specified number of registered voters depending on the type of proposed initiative measure submitted. The number of signatures for petitions proposing initiative statutes or initiative referendums must be equal to at least 5% of the total votes cast for the office of the Governor at the last gubernatorial election. The number of signatures for petitions proposing initiative constitutional amendments must be equal to at least 8% of the total votes cast for the office of the Governor at the last gubernatorial election. The following table shows the number of signatures required for an initiative to qualify for the November 8, 2022, General Election.

Type of Initiative	Number of Signatures Required
Initiative Statute	623,212
Initiative Constitutional Amendment	997,139
Initiative Referendum	623,212

Circulation Period

Proponents are allowed a maximum of 180 days from the official summary date to circulate petitions, collect signatures, and file petitions with county elections officials. If the petition reaches the number of valid signatures required, it will qualify for the next statewide general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. Proponents may shorten the 180-day circulation period in order to ensure that the proposed initiative measure is certified at least 131 days before a particular election.

Overview of Initiative No. 21-0042A1, The Taxpayer Protection and Government Accountability Act

Initiative No. 21-0042A1, an initiative constitutional amendment, would change the rules for how state and local governments can impose taxes, fees, and other charges.

For new state taxes, the Initiative would require approval by two-thirds of each house of the legislature and by majority vote of the statewide electorate. New local taxes would require approval by two-thirds of local voters, and local governments would be required to identify the type and amount or rate of the tax, including its duration.

New state and local government fees would require approval by majority vote of the legislature or local government body. The Initiative would also prohibit state and local governments from delegating fee changes to administrative entities. Furthermore, certain categories of fees could not exceed actual costs.

According to a fiscal analysis prepared by the Legislative Analyst's Office, the Initiative may lead to substantially lower annual state and local tax and fee revenues. Additionally, state and local governments may have increased costs to adjust certain fee levels.

To qualify for the ballot, the Initiative requires at least 997,139 signatures from registered voters during the 180-day circulation period beginning on February 3, 2022. Additional information about this initiative is attached. Staff will further advise the City Council on the status of this initiative during the 180-day period and if it qualifies for a future ballot.

ATTACHMENTS:

- 2022 Legislative Calendar

Legislative Update for the 2022 Regular Session

March 22, 2022

Page 12

- Initiative No. 21-0042A1

2022 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE & THE OFFICE OF THE ASSEMBLY CHIEF CLERK
Revised 10-21-2021

JANUARY						
S	M	T	W	TH	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY						
S	M	T	W	TH	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

MARCH						
S	M	T	W	TH	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

APRIL						
S	M	T	W	TH	F	S
					1	2
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17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY						
S	M	T	W	TH	F	S
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

DEADLINES

- [Jan. 1](#) Statutes take effect (Art. IV, Sec. 8(c)).
- [Jan. 3](#) Legislature **reconvenes** (J.R. 51(a)(4)).
- [Jan. 10](#) Budget must be submitted by Governor (Art. IV, Sec. 12 (a)).
- [Jan. 14](#) Last day for **policy committees** to hear and report to fiscal Committees fiscal bills introduced in their house in 2021 (J.R. 61(b)(1)).
- [Jan. 17](#) Martin Luther King, Jr. Day.
- [Jan. 21](#) Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2021 (J.R. 61(b)(2)).
- [Jan. 21](#) Last day to submit **bill requests** to the Office of Legislative Counsel.
- [Jan. 31](#) Last day for each house to pass **bills introduced in 2021** in their house (Art. IV, Sec. 10(c)), (J.R. 61(b)(3)).

- [Feb. 18](#) Last day for bills to be **introduced** (J.R. 61(b)(4)), (J.R. 54(a)).
- [Feb. 21](#) Presidents' Day.

- [Apr. 1](#) Cesar Chavez Day observed
- [Apr. 7](#) **Spring Recess** begins upon adjournment of this day's session (J.R. 51(b)(1)).
- [Apr. 18](#) Legislature reconvenes from **Spring Recess** (J.R. 51(b)(1)).
- [Apr. 29](#) Last day for **policy committees** to hear and report to fiscal Committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).
- [May 6](#) Last day for **policy committees** to hear and report to the floor **non-fiscal** bills introduced in their house (J.R. 61(b)(6)).
- [May 13](#) Last day for **policy committees** to meet prior to May 31 (J.R. 61(b)(7)).
- [May 20](#) Last day for **fiscal committees** to hear and report to the Floor bills introduced in their house (J.R. 61 (b)(8)). Last day for **fiscal committees** to meet prior to May 31 (J.R. 61 (b)(9)).
- [May 23-27](#) **Floor Session only.** No committee, other than conference or Rules, may meet for any purpose (J.R. 61(b)(10)).
- [May 27](#) Last day for bills to be **passed out of the house of origin** (J.R. 61(b)(11)).
- [May 30](#) Memorial Day.
- [May 31](#) Committee meetings may resume (J.R. 61(b)(12)).

*Holiday schedule subject to final approval by the Rules Committee

2022 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE & THE OFFICE OF THE ASSEMBLY CHIEF CLERK
Revised 10-21-2021

JUNE						
S	M	T	W	TH	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

JULY						
S	M	T	W	TH	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

AUGUST						
S	M	T	W	TH	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June 15 Budget Bill must be passed by **midnight** (Art. IV, Sec. 12 (c)).

June 30 Last day for a legislative measure to qualify for the Nov. 8 General election ballot (Elec. Code Sec. 9040).

July 1 Last day for **policy committees** to meet and report bills (J.R. 61(b)(13)). **Summer Recess** begins at the end of this day’s session if Budget Bill has been passed (J.R. 51(b)(2)).

July 4 Independence Day.

Aug. 1 Legislature reconvenes from **Summer Recess** (J.R. 51(b)(2)).

Aug. 12 Last day for **fiscal committees** to meet and report bills to the Floor (J.R. 61(b)(14)).

Aug. 15 - 31 **Floor Session only.** No committees, other than conference and Rules, may meet for any purpose (J.R. 61(b)(15)).

Aug. 25 Last day to **amend** bills on the Floor (J.R. 61(b)(16)).

Aug. 31 Last day for **each house to pass bills** (Art. IV, Sec. 10(c)), (J.R. 61(b)(17)).

Final Recess begins at end of this day’s session (J.R. 51(b)(3)).

IMPORTANT DATES OCCURRING DURING FINAL RECESS

- 2022
Sept. 30
- Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor’s possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).
- Nov. 8
- General Election.
- Nov. 30
- Adjournment Sine Die at midnight (Art. IV, Sec. 3(a)).
- Dec. 5
- 12 m. convening of the 2023-24 Regular Session (Art. IV, Sec. 3(a)).
- 2023
Jan. 1
- Statutes take effect (Art. IV, Sec. 8(c)).

BELL, McANDREWS & HILTACHK, LLP

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www.bmhlaw.com

21 - 0042 Amdt. # 1

January 4, 2022

RECEIVED

JAN 04 2022

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Anabel Renteria
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Initiative 21-0042 - Amendment Number One

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 21-0042 "The Taxpayer Protection and Government Accountability Act." The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

Thank you for your time and attention processing my request.

Sincerely,



Thomas W. Hiltachk

Attachment: Initiative No. 21-0042A1 (2793 : Legislative Update for the 2022 Regular Session)

The Taxpayer Protection and Government Accountability Act

[Deleted codified text is denoted in ~~strikeout~~. Added codified text is denoted by *italics and underline*.]

Section 1. Title

This Act shall be known, and may be cited as, the Taxpayer Protection and Government Accountability Act.

Section 2. Findings and Declarations

(a) Californians are overtaxed. We pay the nation's highest state income tax, sales tax, and gasoline tax. According to the U.S. Census Bureau, California's combined state and local tax burden is the highest in the nation. Despite this, and despite two consecutive years of obscene revenue surpluses, state politicians in 2021 alone introduced legislation to raise more than \$234 *billion* in new and higher taxes and fees.

(b) Taxes are only part of the reason for California's rising cost-of-living crisis. Californians pay billions more in hidden "fees" passed through to consumers in the price they pay for products, services, food, fuel, utilities and housing. Since 2010, government revenue from state and local "fees" has more than doubled.

(c) California's high cost of living not only contributes to the state's skyrocketing rates of poverty and homelessness, they are the pushing working families and job-providing businesses out of the state. The most recent Census showed that California's population dropped for the first time in history, costing us a seat in Congress. In the past four years, nearly 300 major corporations relocated to other states, not counting thousands more small businesses that were forced to move, sell or close.

(d) California voters have tried repeatedly, at great expense, to assert control over whether and how taxes and fees are raised. We have enacted a series of measures to make taxes more predictable, to limit what passes as a "fee," to require voter approval, and to guarantee transparency and accountability. These measures include Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010).

(e) Contrary to the voters' intent, these measures that were designed to control taxes, spending and accountability, have been weakened and hamstrung by the Legislature, government lawyers, and the courts, making it necessary to pass yet another initiative to close loopholes and reverse hostile court decisions.

Section 3. Statement of Purpose

(a) In enacting this measure, the voters reassert their right to a voice and a vote on new and higher taxes by requiring any new or higher tax to be put before voters for approval. Voters also intend that all fees and other charges are passed or rejected by the voters themselves or a governing body elected by voters and not unelected and unaccountable bureaucrats.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to increase transparency and accountability over higher taxes and charges by requiring any tax measure placed on the ballot—

either at the state or local level—to clearly state the type and rate of any tax, how long it will be in effect, and the use of the revenue generated by the tax.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of state government revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a vote of the Legislature and signature of the Governor to ensure that the purposes for such charges are broadly supported and transparently debated.

(d) Furthermore, the purpose and intent of the voters in enacting this measure is also to ensure that taxpayers have the right and ability to effectively balance new or increased taxes and other charges with the rapidly increasing costs Californians are already paying for housing, food, childcare, gasoline, energy, healthcare, education, and other basic costs of living, and to further protect the existing constitutional limit on property taxes and ensure that the revenue from such taxes remains local, without changing or superseding existing constitutional provisions contained in Section 1(c) of Article XIII A.

(e) In enacting this measure, the voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter approval requirements for government revenue increases created by the courts including, but not limited to, *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v. Air Resources Board*, *Schmeer v. Los Angeles County*, *Johnson v. County of Mendocino*, *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Commission*, and *Wilde v. City of Dunsmuir*.

Section 4. Section 3 of Article XIII A of the California Constitution is amended to read:

Sec. 3(a) Every levy, charge, or exaction of any kind imposed by state law is either a tax or an exempt charge.

(b)(1) (a) Any change in state statute law which results in any taxpayer paying a new or higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, and submitted to the electorate and approved by a majority vote, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed. Each Act shall include:

(A) A specific duration of time that the tax will be imposed and an estimate of the annual amount expected to be derived from the tax.

(B) A specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from the tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for "unrestricted general revenue purposes" shall be included in a separate, stand-alone section. Any proposed change to the use of the revenue from the tax shall be adopted by a separate act that is passed by not less than two-thirds of all members elected to each of the two houses of the Legislature and submitted to the electorate and approved by a majority vote.

(2) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, including a measure proposed by an elector pursuant to Article II, include:

(A) The type and amount or rate of the tax;

(B) The duration of the tax; and

(C) The use of the revenue derived from the tax.

(c) Any change in state law which results in any taxpayer paying a new or higher exempt charge must be imposed by an act passed by each of the two houses of the Legislature. Each act shall specify the type of exempt charge as provided in subdivision (e), and the amount or rate of the exempt charge to be imposed.

(d) ~~(b)~~ As used in this section and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed by the State ~~state law that is not an exempt charge~~, except the following:

(e) As used in this section, "exempt charge" means only the following:

(1) ~~a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.~~

(1) ~~(2)~~ A reasonable charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the State of providing the service or product to the payor.

(2) ~~(3)~~ A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(3) A levy, charge, or exaction collected from local units of government, health care providers or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program, and the revenues of which are primarily used to finance the non-federal portion of Medi-Cal medical assistance expenditures.

(4) A reasonable charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(5) A fine, or penalty, ~~or other monetary charge~~ including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.

(6) A levy, charge, assessment, or exaction collected for the promotion of California tourism pursuant to Chapter 1 (commencing with Section 13995) of Part 4.7 of Division 3 of Title 2 of the Government Code.

(f) ~~(e)~~ Any tax or exempt charge adopted after January 1, ~~2022~~ 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.

(g) ~~(1) (d)~~ The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction is an exempt charge and not a tax. The State bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor., that the amount is no more than necessary to cover the reasonable costs of the governmental activity and

that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by state law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be a factor in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(h) As used in this section:

(1) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(2) "Extend" includes, but is not limited to, doing any of the following with respect to a tax or exempt charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

(3) "Impose" means adopt, enact, reenact, create, establish, collect, increase or extend.

(4) "State law" includes, but is not limited to, any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government. "State law" does not include actions taken by the Regents of the University of California, Trustees of the California State University, or the Board of Governors of the California Community Colleges.

Section 5. Section 1 of Article XIII C of the California Constitution is amended, to read:

Sec. 1. Definitions. As used in this article:

(a) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(b) "Extend" includes, but is not limited to, doing any of the following with respect to a tax, exempt charge, or Article XIII D assessment, fee, or charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

(c) {a} "General tax" means any tax imposed for general governmental purposes.

(d) "Impose" means adopt, enact, reenact, create, establish, collect, increase, or extend.

(e) {b} "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity, or an elector pursuant to Article II or the initiative power provided by a charter or statute.

(f) "Local law" includes, but is not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.

(g) {c} "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(h) {d} "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

(i) {e} As used in this article, and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind, imposed by a local government law that is not an exempt charge, ~~except the following:~~

(i) As used in this section, "exempt charge" means only the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(1) {2} A reasonable charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the local government of providing the service or product.

(2) {3} A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(3) {4} A reasonable charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(4) {5} A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or a local government administrative enforcement agency pursuant to adjudicatory due process, as a result of to punish a violation of law.

(5) {6} A charge imposed as a condition of property development. No levy, charge, or exaction regulating or related to vehicle miles traveled may be imposed as a condition of property development or occupancy.

(6) {7} An Assessments and property related fees assessment, fee, or charge imposed in accordance with the provisions of subject to Article XIII D, or an assessment imposed upon a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district.

(7) A charge imposed for a specific health care service provided directly to the payor and that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the health care service. As used in this paragraph, a "health care service" means a service licensed or exempt from licensure by the state pursuant to Chapters 1, 1.3, or 2 of Division 2 of the Health and Safety Code.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Section 6. Section 2 of Article XIII C of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) Every levy, charge, or exaction of any kind imposed by local law is either a tax or an exempt charge. All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local law government, whether proposed by the governing body or by an elector, may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b). (d) No local law government, whether proposed by the governing body or by an elector, may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(d) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, include:

(1) The type and amount or rate of the tax;

(2) the duration of the tax; and

(3) The use of the revenue derived from the tax. If the proposed tax is a general tax, the phrase "for general government use" shall be required, and no advisory measure may appear on the same ballot that would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.

(e) Only the governing body of a local government, other than an elector pursuant to Article II or the initiative power provided by a charter or statute, shall have the authority to impose any exempt charge. The governing body shall impose an exempt charge by an ordinance specifying the type of exempt charge

as provided in Section 1(j) and the amount or rate of the exempt charge to be imposed, and passed by the governing body. This subdivision shall not apply to charges specified in paragraph (7) of subdivision (j) of Section 1.

(f) No amendment to a Charter which provides for the imposition, extension, or increase of a tax or exempt charge shall be submitted to or approved by the electors, nor shall any such amendment to a Charter hereafter submitted to or approved by the electors become effective for any purpose.

(g) Any tax or exempt charge adopted after January 1, 2022, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted in compliance with the requirements of this section.

(h)(1) The local government bears the burden of proving by clear and convincing evidence that a levy, charge or exaction is an exempt charge and not a tax. The local government bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor.

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by a local law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind imposed by a local law as being paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be factors in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

Section 7. Section 3 of Article XIII D of the California Constitution is amended, to read:

Sec. 3. Property Taxes, Assessments, Fees and Charges Limited

(a) No tax, assessment, fee, ~~or~~ charge, or surcharge, including a surcharge based on the value of property, shall be assessed ~~by any agency~~ upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax ~~imposed pursuant to~~ described in Section 1(a) of Article XIII and Section 1(a) of Article XIII A, and described and enacted pursuant to the voter approval requirement in Section 1(b) of Article XIII A.

(2) Any special non-ad valorem tax receiving a two-thirds vote of qualified electors pursuant to Section 4 of Article XIII A, or after receiving a two-thirds vote of those authorized to vote in a community facilities district by the Legislature pursuant to statute as it existed on December 31, 2021.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Section 8. Sections 1 and 14 of Article XIII are amended to read:

Sec. 1 Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

(c) All proceeds from the taxation of property shall be apportioned according to law to the districts within the counties.

Sec. 14. All property taxed by state or local government shall be assessed in the county, city, and district in which it is situated. Notwithstanding any other provision of law, such state or local property taxes shall be apportioned according to law to the districts within the counties.

Section 9. General Provisions

A. This Act shall be liberally construed in order to effectuate its purposes.

B. (1) In the event that this initiative measure and another initiative measure or measures relating to state or local requirements for the imposition, adoption, creation, or establishment of taxes, charges, and other revenue measures shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(2) In furtherance of this provision, the voters hereby declare that this measure conflicts with the provisions of the "Housing Affordability and Tax Cut Act of 2022" and "The Tax Cut and Housing Affordability Act," both of which would impose a new state property tax (called a "surcharge") on certain real property, and where the revenue derived from the tax is provided to the State, rather than retained in the county in which the property is situated and for the use of the county and cities and districts within the county, in direct violation of the provisions of this initiative.

(3) If this initiative measure is approved by the voters, but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

C. The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not

declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

D. If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(1) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(2) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(3) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(4) Nothing in this section shall prohibit the proponents of this Act, or a bona fide taxpayers association, from intervening to defend this Act.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Proposed Office Lease for Suite 203 with Premier Group International for 24031 El Toro Road, Suite 203, Laguna Hills, California

RECOMMENDATION: That the City Council approve an office lease with Premier Group International, a California corporation, for 24031 El Toro Road, Suite 203, Laguna Hills, California, and authorize the City Manager to execute the Lease.

SUMMARY:

Staff has negotiated a three (3) year lease renewal with Premier Group International, a California corporation, for 24031 El Toro Road, Suite 203. Premier Group International operates a general office for an investigative and security company and has been a tenant in the Civic Center since 2019. The following is a summary of the key lease terms and financial analysis:

Commencement Date:	May 1, 2022
Term:	Three (3) years
Rentable Square Feet:	1,377
Upfront Capital:	\$ 2,962
Rate:	Years 1 - 3: \$ 2.39/ sq. ft.
Total Rent Payments:	\$ 118,477
Net Present Value:	\$ 75,688 (12% Discount Rate)

The final lease has been included as an attachment and staff is recommending approval

Proposed Civic Center Lease for Suite 203 with Premier Group International

March 22, 2022

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FISCAL IMPACT:

The lease has a positive net present value of \$75,688 and requires upfront capital of \$2,962.

ATTACHMENTS:

- Proposed Lease



STANDARD MULTI-TENANT OFFICE LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only March 22, 2022, is made by and between The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("Lessor") and Premier Group International, a California Corporation ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain Portion of the Project (as defined below), commonly known as (street address, suite, city, state): 24031 El Toro Road, Suite 203 Laguna Hills, CA 92654 ("Premises"). The Premises are located in the County of Orange, and consist of approximately 1,151 rentable square feet and approximately 1,377 useable square feet. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 51,946 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** 4/1000sf unreserved and N/A reserved vehicle parking spaces at a monthly cost of N/A per unreserved space and N/A per reserved space. (See Paragraph 2.6)

1.3 **Term:** 3 years and 0 months ("Original Term") commencing May 1, 2022 ("Commencement Date") and ending April 30, 2025 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$3,291.03 per month ("Base Rent"), payable on the First day of each month commencing May 1, 2022. (See also Paragraph 4)



If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 4.4. (See Addendum Paragraph 1)

1.6 **Lessee's Share of Operating Expense Increase:** two point six five percent (2.65 %) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$3,291.03 for the period May 1, 2022 - May 31, 2022.

(b) **Security Deposit:** \$3,291.03 on File ("Security Deposit"). (See also Paragraph 5)

(c) **Parking:** N/A for the period N/A.

(d) **Other:** N/A for N/A.

(e) **Total Due Upon Execution of this Lease:** \$3,291.03.

1.8 **Agreed Use:** General Office. (See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2019. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Essex Realty Management, Inc. License No. 00965485 Is the broker of (check one): ☐ the Lessor; or ☒ both the Lessee and Lessor (dual agent).

Lessor's Agent Angela Draper License No. 01972882 Is (check one): ☐ the Lessor's Agent (salesperson or broker associate); or ☒ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm License No. Is the broker of (check one): ☐ the Lessee; or ☐ both the Lessee and Lessor (dual agent).

Lessee's Agent License No. Is (check one): ☐ the Lessee's Agent (salesperson or broker associate); or ☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of or % of the total Base Rent) for the brokerage services rendered by the Brokers.~~

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by Joseph Dalu, personally in his individual capacity ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- ☐ Janitorial services
☐ Electricity

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Attachment: Proposed Lease (2800) : Proposed Civic Center Lease for Suite 203 with Premier Group International

☐ Other (specify): _____

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 1 through 6 ;
- ☒ a plot plan depicting the Premises; **Exhibit "A"**
- ☒ a current set of the Rules and Regulations; **Exhibit "B"**
- ☒ a Work Letter **/Requirements for Improvements or Alterations by Lessee; Exhibit "D"**
- ☐ a janitorial schedule;
- ☒ other (specify): Exhibit "C" Waiver and Release; Exhibit "E" Personal Guaranty .

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

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Attachment: Proposed Lease (2800 : Proposed Civic Center Lease for Suite 203 with Premier Group International)

2.6 Vehicle Parking. So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). **Paragraph 8 of the Lease (See Addendum Paragraph 3)** Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Operating Expense Increase. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase", in accordance with the following provisions:

(a) "Base Year" is as specified in Paragraph 1.9.

(b) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a

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governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "Operating Expenses":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during

such Year exceed Lessee's Share, ~~Lessee~~ **Lessor** shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor

the sum of **\$2575** in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in

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financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use. (See Addendum Paragraph 2)

~~6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after

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the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations. Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

In addition to and without limiting the other requirements of this Paragraph 7.3, all utilities, installations, and alterations made by Lessee shall also be subject to the provisions of Exhibit "D" attached to this Lease.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of

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the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity. (See Addendum Paragraph 3)

8.1—Insurance Premiums. ~~The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).~~

8.2—Liability Insurance.

(a) ~~**Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.~~

(b) ~~**Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.~~

8.3—Property Insurance—Building, Improvements and Rental Value.

(a) ~~**Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.~~

(b) ~~**Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.~~

(c) ~~**Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.~~

(d) ~~**Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.~~

8.4—Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) ~~**Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.~~

(b) ~~**Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a "Waiver of Subrogation" endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.~~

(c) ~~**Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.~~

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~~(d) —No Representation of Adequate Coverage. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.~~

~~8.5 —Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII-, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~

~~8.6 —Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.~~

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in **Paragraph 8 of this Lease (See**

Addendum Paragraph 3)Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or

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assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, ~~except as provided in Paragraph 8.6.~~

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definitions. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

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11.1 Services Provided by Lessor. Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 Services Exclusive to Lessee. Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2(vi), if a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 Hours of Service. Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 Excess Usage by Lessee. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 Interruptions. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.6 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

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(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8 (See Addendum Paragraph 3) is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this

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Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor. (See Addendum Paragraph 4)

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

~~**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

~~**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder.~~

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~~Brokers shall be third party beneficiaries of the provisions of Paragraphs 1, 10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

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(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor:** (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a

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Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE., attached hereto as **Exhibit "E"**.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 Definition. "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase,

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the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. Reservations.

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any Lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

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48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☐ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: 24031 El Toro Road, Suite 100, Laguna Hills, CA 92654

On: _____

By LESSOR:

The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California

By: _____

Name Printed: Kenneth H. Rosenfield

Title: Interim City Manager

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

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Executed at: 24031 El Toro Road, Suite 203

On: _____

By LESSEE:

Premier Group International, a California Corporation

By: _____

Name Printed: Joseph Dalu

Title: President

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: Joseph Dalu

Title: CFO

Phone: _____

Fax: _____

Email: _____

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Attachment: Proposed Lease (2800) : Proposed Civic Center Lease for Suite 203 with Premier Group International

Fax: _____

Email: _____

Address: _____

Federal ID No.: _____

Address: _____

Federal ID No.: _____

BROKEREssex Realty Management, Inc.Attn: Angela DraperTitle: Property ManagerAddress: 17744 Sky Park Circle, Suite 100, Irvine CA 92614Phone: 949-798-8100

Fax: _____

Email: adraper@essexrealty.com

Federal ID No.: _____

Broker/AGENT DRE License #: 00965485 / 01972882**BROKER**

Attn: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Federal ID No.: _____

Broker/AGENT DRE License #: _____

AIR CRE. 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email contracts@aircre.com

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ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this “Addendum”) shall constitute part of that certain STANDARD MULTI-TENANT OFFICE LEASE – GROSS (“Lease”), dated as of March 22, 2022, between **The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California** (“Lessor”), and **Premier Group International, a California Corporation** (“Lessee”). The terms of this Addendum shall be incorporated into the Lease for all purposes. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control.

1. Base Rent Increase. Paragraph 4.4. is hereby added to the Lease to read as follows:

4.4.1 The monthly Base Rent payable as set forth Paragraph 1.5 and as set forth in Paragraph 1.7 (a) of the Lease shall be adjusted annually on the Commencement Date of the Lease, and on such other dates stated, to the amounts set forth below:

04/01/22-04/30/25	\$3,291.03	\$2.39 PSF
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2. Use. Paragraph 6.1 of the Lease is hereby deleted in its entirety and replaced by the following:

“6.1. Use. The Premises shall be used only for the Agreed Use and for no other use. Lessee’s use of the Premises shall be in compliance with and subject to all Applicable Requirements relating to or affecting the Project, the Premises or the Building or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the “ADA”) as the same may be amended from time to time, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee, the Premises, the Building, or the Project (“Environmental Laws”), any transportation or traffic management plan in satisfaction of any requirement imposed on the Project by a governmental agency with jurisdiction over the Project, and any CC&Rs or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, “Applicable Laws”). Lessee shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Lessee’s use or occupancy of the Premises. Lessee shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Lessor shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Lessor’s failure to enforce, any of the rules or regulations or CC&Rs or any other terms or provisions of such tenant’s or occupant’s lease. Lessee shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, the Building or the Project.

3. Insurance; Indemnity. Paragraph 8.1 through 8.6 of the Lease are hereby deleted in their entirety and replaced by the following:

“8.1 Lessor’s Insurance. Lessor shall maintain insurance through individual or blanket policies insuring the Building against fire and extended coverage (including, if Lessor elects, “all risk” coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as selected by Lessor, together with rental abatement insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Lessor may also carry such other insurance as Lessor may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Lessor shall determine. Lessee shall pay to Lessor, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Lessor’s cost of any self-insurance deductible or retention.

8.2 Lessee’s Compliance with Insurance Requirements. Lessee shall obtain, maintain, and keep in full force and effect during the term of this Lease, at its sole cost and expense, and in a form and content satisfactory to Lessor, all insurance required under this Paragraph 8 against claims for injuries to persons or damages to property which may arise from or in connection with Lessee’s operation and use of the Premises and the activities of the Lessee, its guests, agents, representatives, employees, or subcontractors. Lessee shall not take possession of the Premises unless and until it has provided evidence satisfactory to Lessor that it has secured all insurance required by this Paragraph 8.

8.3 Types of Insurance Required of Lessee. Without limiting the indemnity provisions set forth in this Lease, Lessee shall obtain and maintain in full force and effect during the term of this Lease, including any extension thereof, the following policies of insurance:

(a) Commercial General Liability Insurance. A policy of Commercial General Liability insurance written on an occurrence basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least Two Million Dollars (\$2,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Premises/location, or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for: (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to this Lease.

(b) Automobile Liability Insurance. A policy of Automobile Liability Insurance written on a per occurrence basis with limits of at least One Million Dollars (\$1,000,000) combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

(c) Workers’ Compensation and Employer’s Liability Insurance. A policy of Workers’ Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Lessee agrees to waive and obtain endorsements from its workers’ compensation insurer waiving all subrogation rights under its workers’ compensation insurance policy against Lessor, its officials, officers, employees, agents and volunteers. Lessee shall obtain and maintain, in full force and effect throughout the term of this Lease, a policy of Employer’s Liability Insurance written on a per occurrence basis with limits of at least One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(d) Property Insurance. A policy of Property Insurance against all risk of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

(e) Equipment Breakdown/ Boiler & Machinery Insurance. A policy of Equipment Breakdown / Boiler & Machinery Insurance with limits of not less than actual replacement costs

for all property and improvements, encompassing explosion and breakdown. Lessee shall obtain and deliver to Lessor, along with copies of all policies of insurance required herein, a joint loss endorsement for the Property Insurance and Equipment Breakdown /Boiler & Machinery Insurance policies. Lessor is to be included as an additional insured on the Equipment Breakdown /Boiler & Machinery Insurance coverage.

(f) Business Interruption. Loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all peril commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

8.4 General.

(a) Acceptability of Insurers. Insurance required by this Paragraph 8 shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Line Insurers (LASLI), by the latest edition of A.M. Best's Key Rating Guide, except that Lessor will accept workers' compensation insurance from the State Compensation Fund. In the event Lessor determines that Lessee's use of the Premises creates an increased or decreased risk of loss to Lessor, Lessee agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from Lessor. Lessee shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

(b) Insurance Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to Lessor for written approval. Required insurance policies shall contain the following provisions, or Lessee shall provide endorsements on forms approved by Lessor to add the following provisions to the insurance policies:

(i) Additional Insured. Lessee's policy or policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be endorsed to include Lessor, its officials, officers, employees, agents and volunteers, Lessor's lender, and any property management company of Lessor for the Premises. The additional insured endorsement shall not (1) be restricted to "ongoing operations", (2) exclude "contractual liability", (3) restrict coverage to "sole" liability of Lessee, or (4) contain any other exclusions contrary to this Lease; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

(ii) Notice. Each insurance policy required by this Paragraph 8, except for workers' compensation and employer's liability insurance, shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to Lessor. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Lessee's failure to pay the insurance premium, the notice provided to Lessor shall be by ten (10) days prior written notice.

(iii) Primary and Non-Contributing Insurance. All policies of insurance maintained by Lessee pursuant to this Paragraph 8, except for workers' compensation and employer's liability insurance, shall be primary and any other insurance, deductible, or self-insurance maintained by Lessor, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(iv) Waiver of Subrogation. All policies of insurance maintained by Lessee pursuant to this Paragraph 8 shall contain or be endorsed to waive subrogation against Lessor, its officials, officers, employees, agents and volunteers, or shall specifically allow Lessee to waive its right to recovery prior to a loss. Lessee hereby agrees to waive its own right of recovery against Lessor, its officials, officers, employees, agents and volunteers.

(c) Evidence of Coverage. Concurrently with the execution of this Lease, Lessee shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this Paragraph 8. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to Lessor for written approval. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with Lessor. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Lessee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with Lessor evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. Lessee shall promptly furnish, at Lessor's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents Lessor requires to verify coverage.

(d) Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Lease are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing contained herein shall be construed as limiting in any way the indemnification provision contained in this Lease, or the extent to which Lessee may be held responsible for payments of damages to persons or property.

(e) Enforcement of Agreement (Non-Estoppel). Lessee acknowledges and agrees that actual or alleged failure on the part of the Lessor to inform Lessee of any non-compliance with any of the insurance requirements set forth herein imposes no additional obligation on the Lessor nor does it waive any rights hereunder.

(f) Notification of Incidents. Lessee shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas or the Project which could give rise to a claim under any of the insurance policies required under this Paragraph 8.

8.5 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Lessee pursuant to this Paragraph 8:

(a) Lessee shall provide immediate written notice to Lessor if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

(b) All insurance coverage and limits provided by Lessee and available or applicable to this Lease are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Lease or any other agreement relating to Lessor or its operations shall limit the application of such insurance coverage.

(c) None of the insurance coverages required herein will be in compliance with the requirements of this Paragraph 8 if they include any limiting endorsement which substantially

impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to Lessor and approved in writing.

(d) Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay Lessee's occupancy of the Premises. It is Lessee's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

(e) Lessee agrees to ensure that its subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Lessee, provide the same minimum insurance coverage required of Lessee. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Paragraph 8. Lessee agrees that upon request, all agreements with subconsultants, subcontractors and others engaged in the Project will be submitted to Lessor for review."

4. Breach by Lessor; Performance by Lessee on Behalf of Lessor. Paragraph 13.6(c) is hereby added to the Lease to read as follows:

"13.6(c). Lessee's Remedies. Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged default by Lessor, Lessee's sole and exclusive remedy shall be either to seek either specific performance or monetary damages, provided that Lessor shall not be liable for loss of business profits or consequential damages, and provided further, that any recourse for monetary damages by Lessee against Lessor shall be limited solely and exclusively to an amount which is equal to the amounts paid by Lessee to Lessor under the Lease (and Lessee hereby expressly waives and releases personal liability of Lessor in excess of such amount on behalf of itself and all persons claiming by through, or under the lease) Further, in no event shall the obligations of Lessor under the Lease constitute the personal obligations of Lessor or its elected or appointed officers and officials, employees, agents, and volunteers, and Lessee shall have no right to seek recourse against Lessor's elected or appointed officers and officials, employees, agents, and volunteers, or any of their personal assets for the satisfaction of any liability of Lessor with respect to the Lease. Lessee expressly waives all remedies except those specifically set forth in the Lease, including, without limitation, any right of offset or abatement except as specifically set forth in the Lease, any right to terminate the Lease under Civil Code Sections 1932(2), 1933(4) and 1941 or any other successor statute, or any statutory, legal or equitable self-help remedy including, without limitation, Civil Code Section 1942 or any other current or future law. Nothing contained in the Lease shall entitle Lessee to terminate the Lease as a result of Lessor's default nor excuse Lessee from paying Rent or Additional Rent due hereunder."

5. Estoppel Certificates. All references in the Lease to "Estoppel Certificate", including, but not limited to the definition in Paragraph 16(a), shall refer to Lessor's standard form certificate.

6. Recordation. Lessee shall not have any right to cause the Lease or any short form or memorandum thereof to be recorded.

Signatures on the following page

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of the Lease.

“Lessor”

THE CITY OF LAGUNA HILLS

By: _____
 Name Printed: Kenneth H. Rosenfield
 Its: **Interim City Manager**

By: _____
 Name Printed: **Melissa Au-Yeung**
 Its: **City Clerk**

“Lessee”

Premier Group International, a California Corporation

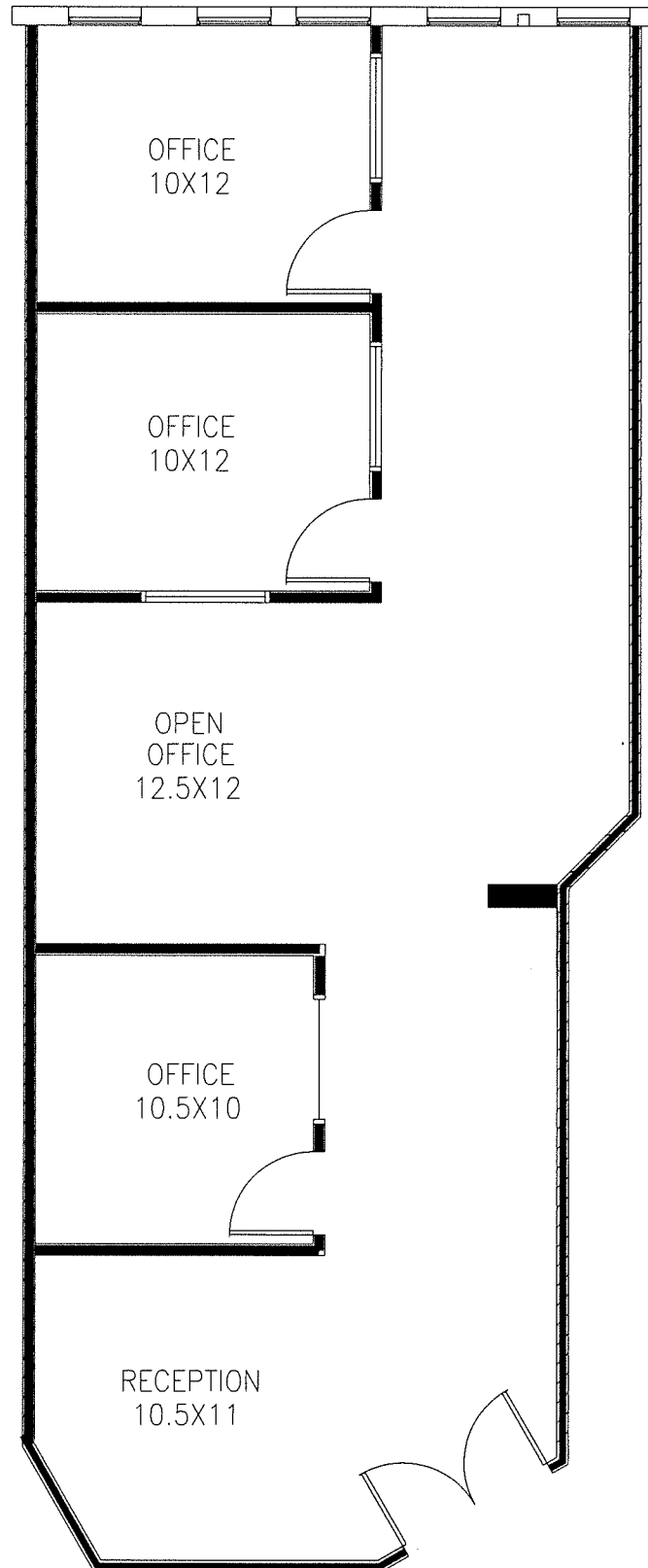
By: _____
 Name Printed: Joseph Dalu
 Its: President

By: _____
 Name Printed: Joseph Dalu
 Its: CFO

Attachment: Proposed Lease (2800 : Proposed Civic Center Lease for Suite 203 with Premier Group International)

SUITE 203

1377 RSF



Attachment: Proposed Lease (2800 : Proposed Civic Center Lease for Suite 203 with Premier Group International)

EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term “personal goods or services vendors” means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. “Personal goods or services” include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee’s vendors and suppliers in connection with Lessee’s operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee’s vendor’s suppliers in connection with Lessee’s operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the

Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt

on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or

waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

- (a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.
- (b) Automobiles must be parked entirely within the stall lines.
- (c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.
- (d) Parking is prohibited in areas not striped for parking.
- (e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.
- (f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.

- (g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.
- (h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.
- (I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: _____

Date: _____

Lessor's Initials: _____

Lessee's Initials: _____

EXHIBIT "C"**Waiver and Release.**

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the Lease term, that Lessee, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Lessor, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commencing with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Date: _____

Date: _____

Lessor's Initials: _____ Lessee's Initials: _____

EXHIBIT "D"

WORK LETTER/REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial improvements to be constructed by Lessor, if any) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee ("Lessee's Work"), then Lessee shall comply with the requirements set forth herein. If Lessee's Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

1. **SUBMITTAL OF PLANS.** Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. **CHECKLIST.** With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee's Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. **CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.**

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee's contractors shall comply with all Applicable Laws pertaining to the performance of Lessee's Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee's contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies

satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

- (i) Comprehensive General Liability with a \$1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.
- (ii) Comprehensive Automobile Liability with a \$1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.
- (iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

- (i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.
- (ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.
- (iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.
- (iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.
- (v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.
- (vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's

contractor's request.

- (vii) Lessee's contractor shall notify Lessor or Lessor's project manager of any planned work to be done on weekends or other than normal job hours.
- (viii) Lessee's contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee's Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee's Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR'S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bonds to insure Interior Work

6. MECHANIC'S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic's, materialman's, contractor's or subcontractor's lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee's Work and Lessor shall have the right to post and record a notice of no responsibility in conformity with applicable law. Within ten (10) days following completion of Lessee's Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee's Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee's leasehold interest therein as a result of Lessee's work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney's fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorney's fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee's Work. Lessee shall repair or replace (or, at Lessor's election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor's equipment or any of Lessor's real or personal property damaged, lost or destroyed in the performance of Lessee's Work.

8. BUILDING STANDARDS. All work shall conform to Lessor's established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

Attachment 1 to "Exhibit D"**ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT**

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation, Employer's Liability and original Endorsement.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Builts.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.



Exhibit E

GUARANTY OF LEASE

WHEREAS, [The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California](#), hereinafter "Lessor", and [Premier Group International, a California Corporation](#), hereinafter "Lessee", are about to execute a document entitled "Lease" dated [March 22, 2022](#) concerning the premises commonly known as (street address, city, state, zip) [24031 El Toro Road, Suite 203 Laguna Hills, CA 92654](#) wherein Lessor will lease the premises to Lessee, and

WHEREAS, [Joseph Dalu](#) hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without the consent of or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to provide estoppel statements and financial statements to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorneys' fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity. Signatures to this Guaranty accomplished by means of electronic signature or similar technology shall be legal and binding.

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Attachment: Proposed Lease (2800 : Proposed Civic Center Lease for Suite 203 with Premier Group International)

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by AIR CRE, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

GUARANTORS

Joseph Dalu

Executed At: _____

On: _____

By: _____

Name Printed: Joseph Dalu

Title: President

Address: _____

By: _____

Name Printed: _____

Title: _____

Address: _____

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer	☐ Seller	☒ Lessor	☐ Lessee	<u>The City of Laguna Hills</u>	Date: <u> </u>
☐ Buyer	☐ Seller	☐ Lessor	☒ Lessee	<u>Premier Group International</u>	Date: <u> </u>

Agent: Essex Realty Management DRE Lic. #: 00965485
Real Estate Broker (Firm)

By: Angela Draper DRE Lic. #: 01972882 Date: 3/22/2022
(Salesperson or Broker-Associate)

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Attachment: Proposed Lease (2800 : Proposed Civic Center Lease for Suite 203 with Premier Group International)

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

Attachment: Proposed Lease (2800 : Proposed Civic Center Lease for Suite 203 with Premier Group International)

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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: **(a)** The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(C) CONFIRMATION: The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Seller's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Janice Reyes
Finance Director

ISSUE: Resolution Establishing Banking Relations with Bank of the West and Designating the Persons Authorized to Transact Business on Behalf of the City

RECOMMENDATION: That the City Council adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, establishing banking relations with Bank of the West, designating the persons authorized to transact business on behalf of the City, and rescinding Resolution No. 2010-08-24-1."

SUMMARY:

The City currently maintains a primary banking relationship with one depository institution in order to maximize cash flow and minimize administrative burden. City Council Policy No. 105 requires a competitive Request for Proposal ("RFP") process in the selection of a primary banking service provider on a ten-year timeframe basis. Staff has completed a competitive RFP process at this time and is recommending that the City Council adopt the proposed Resolution, as attached to this report as Attachment A, establishing banking relations with Bank of the West. The proposed agreement for banking services, the Contract for Deposit of Public Funds, a standardized agreement, along with other related banking forms are available in the City Clerk's department for inspection.

BACKGROUND:

The City currently maintains its primary banking services with one depository institution, Union Bank, which was established by Resolution No. 2010-08-24-1 after the completion

Banking Services

March 22, 2022

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of the RFP process in August 2010. In accordance with City Council Policy No. 105, the City must use a competitive public Request for Proposal on a ten-year timeframe in the selection of a banking service provider. Given the challenges created by the lockdowns from the COVID-19 pandemic and in the interest of maintaining operational stability, the 10-year RFP process was deferred and the banking contract with Union Bank was extended. The current contract for depository services with Union Bank will expire April 1, 2022.

In late December 2021, Staff released an RFP to qualified institutions for the provision of depository and other various banking services. The intent of the competitive selection process is to provide all qualified commercial banks with an equal opportunity to submit a proposal to handle the City primary deposit accounts. This RFP process provides the means to obtain quality services at a competitive price. The RFP encouraged proposing financial institutions to submit the most comprehensive proposal possible, offering the highest level of quality services while providing opportunities for improving the current management of cash flow.

To be considered for selection, the proposing financial institution must have met all of the following qualifications:

1. Be a Federal or State of California chartered financial institution.
2. Be a member of the Federal Reserve System and have access to all services.
3. Be a qualified State depository of public funds under the governing federal and State laws and insurance of funds with FDIC/SAIF.
4. Be a full-service bank in good standing among other comparable banks.
5. Be sufficiently capitalized to accommodate the City's cash management needs.
6. Be able to perform its obligations under this proposal in compliance with all applicable federal and State laws, regulations, statutes, and policies, as well as compliance with the City's own investment policy.
7. Be in compliance and good standing with the Community Reinvestment Act.
8. Have a home office or branch facilities located within, or reasonably close, to City limits.
9. Be able to assign experienced and dedicated staff committed and capable of providing services to a public agency.

-
10. Have the capacity to collateralize its public funds deposits as stipulated under State law.

The selection of a bank is based on the bank's qualifications as presented in their proposal, overall pricing and costs, experience and success in providing services to similar clients, and ability to provide the services outlined in the RFP.

Three (3) banks submitted a proposal to the City: (1) Union Bank, (2) U.S. Bank, and (3) Bank of the West.

Their proposals were evaluated in accordance with the evaluation criteria described below:

- Financial strength and ability to protect and collateralize City deposits
- Overall best value and ability to guarantee pricing for the contract period
- Overall experience and dedication to the government market
- Qualifications, strength and reliability of the relationship management team
- Ability to meet minimum required service levels and bank products
- Ability to offer product and service enhancements
- Ability to support products and provide training on-site
- Location of bank offices

Determination of best value to the City was based upon, but not limited to, the following considerations:

- Cost
- The ability, capacity, and skill of the proposer to provide the services
- The ability of the provider to deliver timely services
- The character, integrity, reputation, judgment, experience, and efficiency of the provider
- The quality of the provider's performance on previous contracts with the City and

other government references

Each proposing bank was asked to meet with Staff to clarify their submitted bid sheet and scope of proposed services in more depth. After a review of the three submitted proposals and meeting with each of the three banks, Staff determined that all three banks demonstrated the ability to meet the requirements as established in the RFP, maintain the City's current level of service, as well as the ability to provide potential improvements to the current management of cash. Nevertheless, Bank of the West was able to offer the best overall pricing while delivering the same quality of service.

Hence, after considerable evaluation of all the information and material presented, Staff is recommending that the City establish its banking relations with Bank of the West on the basis of overall pricing and best value with extensive government banking experience, as well as its financial condition and ability to protect and collateralize the City's deposits.

Overall Pricing and Best Value

Based on a comparative analysis of the proposed cost estimates to maintain the City's existing service level submitted by each bank, Bank of the West's net estimated monthly charge for services was significantly less than the estimates of the other two banks. The following table provides the estimated service charge from each bank's proposed fee schedule, utilizing the City's banking activity for the month of November 2021 as a model.

	Monthly Service Fee
Union Bank	\$ 1,310.77
Bank of the West	\$ 875.31
U.S. Bank	\$ 1,125.63

Additionally, Bank of the West is offering the City an attractive Earning Credit Rate (ECR) at 35 BPS, which is higher than the average effective yield of 21 BPS reported by the State's Local Agency Investment Fund (LAIF) in its Quarterly Performance Report for the quarter ended December 31, 2021, where the City's short-term excess cash is primarily invested. The cost of banking services is offset by applying the ECR to the City's collected balances in non-interest bearing, business checking accounts. These balances result in an earnings credit that is used to offset all or a portion of the City's monthly fees.

Bank of the West will also provide the City with a generously discounted Deposit Administration Fee, when compared with the rates and fees from the other two banks. The Deposit Administration Fee is a bank fee associated with the assessment charges and other charges provided by law, which include administrative expenses incurred by the bank in providing depository services, such as FDIC fees, based on the City's collected balances.

The table below provides a comparison of the net allowance, using the City's actual bank balances from November 2021.

	Earnings Credit Rate	ECR Allowance	Less Deposit Admin. Fee	Net ECR Allowance
Union Bank	0.25%	\$ 322.91	\$ 199.32	\$ 123.59
Bank of the West	0.35%	\$ 452.07	\$ 127.57	\$ 324.50
U.S. Bank	0.20%	\$ 258.33	\$ 205.76	\$ 52.57

Furthermore, Bank of the West is also offering an "implementation incentive" in the form of a waiver of banking service fees for the first three months up to an amount of \$9,400, to assist with offsetting fees incurred due to the transition process. U.S. Bank offered a transition credit of \$7,500, plus a "new service assistance" credit of \$3,500 to implement new services. Union Bank offered the City a "loyalty credit" of \$10,000 to offset fees, which would expire after twelve months.

The terms of the contract stipulated in the RFP requires fixed pricing for the first five (5) years of the contract.

Experience in Government Banking

Bank of the West has been servicing the public sector since its establishment in 1874, with experience working with states, counties, cities, and special districts. Their government banking services were determined to be on par with those provided by the other two proposing banks.

In 2008, Bank of the West established a Government Banking Division, which includes a core team of ten bankers that specialize in providing the unique banking needs of municipalities and local government. Bank of the West also has over twenty bankers across various bank departments, including, but not limited to, public finance, customer service, implementation, product management, treasury management fixed income, merchant services, commercial card and operations.

Banking Services

March 22, 2022

Page 6

In addition, the City will be provided with a local, dedicated Government Customer Service Specialist team that can handle all of the City's day-to-day banking services inquiries. This customer service team's specific focus on governmental agencies should ensure the City receives the same level of service it has become accustomed to with its current banking relationship.

On an as-needed basis, the closest branch to the City to conduct walk-in branch deposits, in the rare occasion that the need arises, is located at 26941 Crown Valley Parkway, in Mission Viejo. The main City deposit activity is completed through virtual remote deposit or via armored transport services.

Financial Condition

Bank of the West is chartered in the State of California and is insured by the FDIC. The bank also has a full relationship with the Federal Reserve and is managed through the National Account Program with access to their full suite of services. It is one of the largest banks headquartered in California and the 31st largest commercial bank in the United States by assets.

In addition, Bank of the West is a designated State Depository Bank for the State of California and maintains a direct banking relationship with the State Treasurer's Office and the State Controller's Office. As of December 31, 2021, Bank of the West has over \$8.4 billion in public fund deposits and over 3,300 accounts that are collateralized in accordance with the State's Government Code and other applicable laws.

Bank of the West has also demonstrated financial strength and strong credit rates. A copy of Bank of the West's 2021 Annual Profile Report is included as Attachment B to the Staff Report. Also, provided below is a snapshot of the credit ratings for both the bank and its holding company, as well as its capital ratios.

Banking Services

March 22, 2022

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	Standard & Poor's Rating	Moody's Investor Services	Fitch Ratings
Firm / Bank			
Short-Term Unsecured Senior Debt	A-1	P-1	F1
Long-Term Unsecured Senior Debt	A	Aa3	A
Bank Holding Company			
Short-Term Unsecured Senior Debt	A-1	P-1	F1
Long-Term Unsecured Senior Debt	A+	Aa3	A+

- a. Total Risk Based Capital Ratio:** 15.62%
- b. Tier 1 Risk Based Capital Ratio:** 14.37%
- c. Tier 1 Leverage Capital Ratio:** 10.00%

Furthermore, as recently announced, BNP Paribas, Bank of the West's parent company, has reached an agreement for Bank of the West to combine with BMO Financial Group, which is the eighth largest bank in North America and has an established presence in the U.S. The completion of this transaction is expected in late 2022.

The proposed agreement for banking services with Bank of the West, the "Contract for Deposit of Public Funds", a standardized agreement, along with other related banking forms are available in the City Clerk's department for inspection.

FISCAL IMPACT:

Given the discounted banking fees and ECR allowance offered by Bank of the West, a substantial net cost savings is anticipated when compared with the City's current contract with Union Bank. Staff estimates roughly a 50% reduction in net banking fees.

ATTACHMENTS:

- Attachment A - Proposed Resolution
- Attachment B - BOTW 2021 Annual Profile Report

RESOLUTION NO. 2022-03-22-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING BANKING RELATIONS WITH BANK OF THE WEST, DESIGNATING THE PERSONS AUTHORIZED TO TRANSACT BUSINESS ON BEHALF OF THE CITY, AND RESCINDING RESOLUTION NO. 2010-08-24-1.

WHEREAS, pursuant to City Council Policy No. 105, Financial Policies, in the selection of banking services, a competitive public request for proposal process must be issued on a ten (10) year basis; and

WHEREAS, the City's current banking relationship has reached the ten-year timeframe and a Request for Proposal was issued to all commercial banking institutions for the provision of depository and other various needed banking services; and

WHEREAS, after considerable evaluation of all the information and materials received in each Proposal, it was determined the City will be best served by establishing a new primary banking relationship with Bank of the West.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

- SECTION 1. This Resolution rescinds Resolution No 2010-08-24-1, effective upon the final and orderly transfer of the City's bank accounts and termination of such other banking activities with Union Bank.
- SECTION 2. The City Council hereby establishes banking relations with Bank of the West (the "Bank") upon such terms as set forth in the Contract for Deposits of Public Funds ("Agreement"). The Mayor, City Manager, or Finance Director are authorized to execute the Agreement to provide banking services and open and maintain the City's deposit accounts.
- SECTION 3. The City Council hereby authorize the Mayor, Mayor Pro Tempore, City Manager, or Finance Director of the City of Laguna Hills to draw checks on the City's Accounts and the Bank is authorized to honor and pay all checks if properly signed, including those drawn to the order of any officer or any other persons authorized to sign them.
- SECTION 4. This resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 22nd day of March 2022.

DAVE WHEELER, MAYOR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2022-
03-22-X adopted by the City Council of the City of Laguna Hills, California, at a Regular
Meeting thereof held on the 22nd day of March, 2022, by the following vote:

AYES:

NOES: None

ABSENT: None

ABSTAIN: None

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

CORPORATE PROFILE

At Bank of the West, we offer customers retail, wealth, corporate, commercial, and business banking products and services. Headquartered in San Francisco, California, we are an FDIC-insured bank with community banking roots dating back more than 140 years.

As a leader in sustainable banking, Bank of the West uses its financial strength to support growth that protects the planet and contributes to a more equitable society. Bank of the West has the strongest environmental stance of any major bank, a diverse leadership team, and a global reach and impact unmatched by any other bank operating in the United States.

Through digital channels, more than 500 branches, and offices across 24 states, we provide financial tools and resources to individuals, families and businesses. We also offer investment and insurance services through our subsidiary, BancWest Investment Services, a registered broker/dealer.

As the bank for a changing world, along with our parent BNP Paribas, Bank of the West has a mission to drive responsible, sustainable growth that makes our planet and economy thrive today and for future generations.

2021 RESULTS

Bank of the West achieved full year 2021 earnings of \$974.5 million. It was a record high result, up 64.2% vs. prior year primarily driven by higher net banking income, flat expenses and significantly lower cost of risk.

Net banking income grew 2.5% compared to prior year with strong syndication income, securities gain on sale and improved transactional fees, while net interest income was lower with better cost of funds offset by lower loan volume and lower net interest margin. Operating expenses remained flat to prior year reflecting solid expense control.

Total average customer deposits rose 10.5% from prior year, continuing the growth since 2020 due to strong customer liquidity, while the loan portfolio decreased by 6.9% vs. prior year due to lower line usage and faster prepayments for most of the year.

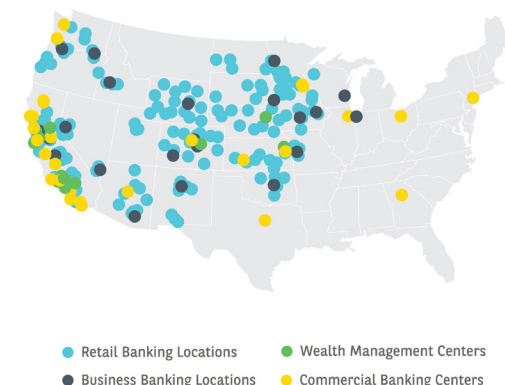
Efficiency ratio improved to 61.4% for 2021, better by 146bps compared to prior year. RONE increased to 17.02%, up 676bps compared to prior year with strong earning and lower RWA, while capital ratios remain strong (Tier 1 Capital Ratio 14.18% or 45bps favorable to prior year).

Bank of the West's parent company BNP Paribas earned 9.5 billion euros in the year ending 31 December 2021, up 34.3% compared to prior year.



BANK OF THE WEST
BNP PARIBAS

4.8.b



KEY FIGURES

As of 12/31/2021

ASSETS	ATMS
\$104.8B	1,023
DEPOSITS	**CUSTOMERS
\$89.5B	1.7M
LOANS & LEASES	TEAM MEMBERS
\$57.4B	9,329
*RETAIL BANKING LOCATIONS	COMMUNITY CONTRIBUTIONS (ANNUAL)
502	\$5.9M

*Does not include satellite and hub locations
**Customer count includes bank-wide individual and business accounts (does not include secondary customers)

LEADERSHIP

Bank of the West is one of the largest banks headquartered in California and the 32nd largest¹ commercial bank in the U.S. by assets.

While Bank of the West is one of the largest banks in the U.S., we take pride in preserving our local focus, our award-winning relationship banking approach, and being among the industry-leading banks for customer service.

The bank is the third-largest agriculture production loans bank lender², and a leading bank lender in the RV/Marine and religious institution sectors³.

Bank of the West also serves clients through offices in Atlanta, Chicago, Dallas and New York, our international offices in Tokyo and Taipei, and works in tandem with the Network Business Development Desk of BNP Paribas China which has branches in Shanghai, Beijing, Tianjin, Guangzhou and a representative in Chengdu.

AWARDS & ACCOLADES

Disability Equality Index

Best Places to Work for Disability Inclusion, 2021

Family Wealth Report: Family Wealth Counseling

Private Asset Management: Best Consulting Firm for Family Offices, 2018

Global Finance

Best Private Bank U.S. West, 2019

Fast Company

World Changing Ideas, 2020-2021

Forbes

America's Best-In-State Employers 2020-2021

Best Employers for Diversity, 2020

Best Employers for Women, 2019-2020

Human Rights Campaign (HRC) Foundation Corporate Equality Index

Bank of the West earns 100% Score, 2019-2022

World Finance

Best Commercial Bank U.S. West, 2014-2020

CREDIT RATINGS

As of 12/31/2021

	Long-term issuer	Short-term issuer	Long-term deposits	Short-term deposits
MOODY'S	A3	P-1	Aa3	P-1
FITCH	A	F1	A+	F1
STANDARD & POOR'S	A	A-1		

CAPITAL RATIOS

As of 12/31/2021

TIER I RISK-BASED
CAPITAL RATIO

14.18%

TOTAL RISK-BASED
CAPITAL RATIO

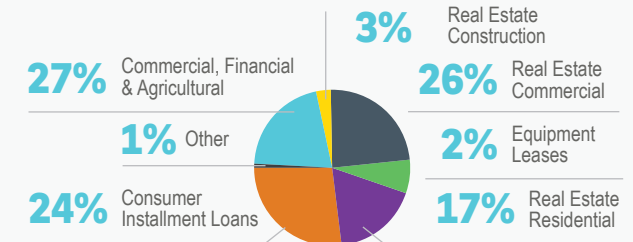
15.37%

TIER I
LEVERAGE RATIO

10.05%

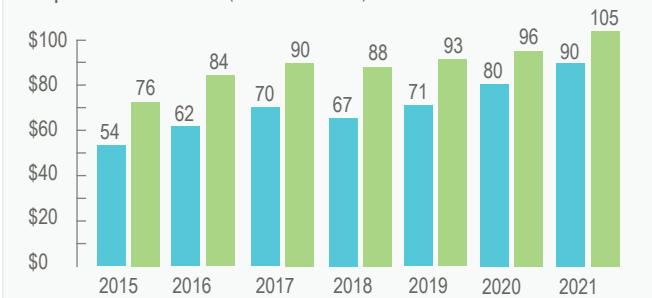
LOAN PORTFOLIO

As of 12/31/2021



FINANCIAL HIGHLIGHTS

Deposits & Assets (dollars in billions)



¹ S&P Global Market Intelligence (based on FDIC data as of 12/31/2021)

² S&P Global Market Intelligence (based on FDIC data as of 12/31/2021)

³ Market Share Reporting via Statisticalsurveys.com



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Larry Longenecker
Community Development Director
ISSUE: 2021 General Plan Annual Progress Report

RECOMMENDATION: That the City Council approve and direct Staff to forward the 2021 General Plan Annual Progress Report and Housing Element Annual Progress Report-Housing Implementation to the State of California Department of Housing and Community Development (HCD).

SUMMARY:

State law requires each city to submit an annual progress report to the State describing steps it took to implement its General Plan during the previous calendar year. In addition to documenting the City's general progress for the State, the annual report provides the City Council with a snapshot of how the City has implemented the General Plan and assists the State in understanding how each jurisdiction is progressing toward meeting its assigned regional housing needs.

Attached is the City's 2021 General Plan Annual Progress Report (APR), which provides the status of the City's General Plan implementation efforts and the purpose of each General Plan Element (i.e. Land Use, Mobility, Conservation and Open Space, Community Services and Facilities, Safety, Noise, and Housing). The activities described in the APR depict the major accomplishments during 2021, and do not reflect every aspect of an adopted goal or policy which may be more routine in nature.

BACKGROUND:

The City's General Plan was updated in 2009 and includes an Updated Housing Element,

2021 General Plan Annual Progress Report
March 22, 2022
Page 2

for the planning period covering 2013-2021. Government Code Section 65400 requires that all cities and counties submit to their legislative bodies an annual report on the status of the General Plan and progress made in its implementation. Senate Bill No. 375 (adopted in 2008) requires that the Annual Progress Report (APR) include a section describing the actions taken by the local government to complete the programs and meet the deadlines specified in the Housing Element. SB 375 builds on the existing framework of regional planning to tie together the regional allocation of housing needs and regional transportation planning in an effort to reduce greenhouse gas (GHG) emissions.

Previously, there were no consequences if a local government failed to prepare an APR. However, with the enactment of SB 375, failure to comply with the reporting requirements can now lead to court injunctions and sanctions. The APR must be submitted to HCD and the Governor's Office of Planning and Research by April 1st of each year. Further, the enactment of SB 35 by the State in 2017 could lead to negative consequences for the City if an APR is not filed. Generally, failure by the City to file an APR could require the City to approve any proposed housing development if it meets State-mandated affordable housing requirements.

The State of California has created a standardized format that each city is expected to use in preparing the APR on the status of the Housing Element and the City's progress in implementing its goals and programs. These forms are included in the attached City's APR. Following the City Council's review of the 2021 APR, Staff will forward the APR to the State of California by the deadline established in law.

CEQA FINDINGS:

A General Plan Annual Report is not considered a "project" subject to the California Environmental Quality Act (CEQA).

ATTACHMENTS:

- Attachment A - 2021 General Plan Annual Progress Report
- Attachment B - HCD FORM



General Plan Annual Progress Report 2021

City of Laguna Hills | Community Development Department

March 22, 2022

24035 El Toro Road, Laguna Hills, 92653

949-707-2600

www.lagunahillsca.gov



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OVERVIEW

Government Code Section 65400 mandates that all cities and counties submit to their legislative bodies an annual report on the status of the General Plan and progress in its implementation; otherwise referred to as the “Annual Progress Report.” The Annual Progress Report is intended as a tool for informing local legislative bodies of the jurisdiction’s effectiveness in implementing its General Plan. A copy of the Annual Progress Report must also be sent to the Governor’s Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD).

The purpose and intent of this statute is to ensure that the General Plan directs all land use decisions and remains an effective guide for the long-term physical development of a community. The Annual Progress Report is a tool for doing this. The Annual Progress Report provides a correlation between land use decisions that have been made during the 12-month reporting period and the goals, policies and implementation programs of the adopted General Plan.

Providing a copy of the Annual Progress Report to OPR provides information that allows OPR to monitor local planning activities and to identify trends in land use planning and decision-making throughout the State of California. The information is necessary for OPR to serve in its capacity as the statewide planning agency. It can also provide the State with information to identify necessary modifications and improvements to its General Plan Guidelines, while serving to apprise state government of local planning activities and facilitating the legislative process as it pertains to land use and local planning issues.

Providing a copy of this report to HCD fulfills a statutory requirement to report certain housing information, including the local agency’s progress in meeting its share of regional housing needs and local efforts to remove governmental constraints to the development of housing (as defined in Government Code Sections 65584 and 65583(c)(3)).

The focus of the Annual Progress Report should be on implementation of the General Plan’s goals, policies and implementation measures. It can provide information to identify necessary “course adjustments” or modifications to the General Plan and means to improve local implementation. Since there is no specific form provided by OPR, the Annual Progress Report can vary in format and approach from jurisdiction to jurisdiction.

General Plan Background

After an extensive two-year process, the City adopted a Comprehensive Update to the General Plan in July 2009. This was the first comprehensive revision of the General Plan since the City’s first general Plan was adopted in 1994. The General Plan is based on extensive research and analysis of existing conditions, changing local and regional conditions, evolving trends in urban planning and a collaborative partnership with community members through an extensive public participation process.

The Laguna Hills General Plan is organized into ten sections. The sections include an introduction, seven General Plan elements, a general Plan Implementation Program, description of related plans and programs, and a glossary of terms used throughout the General Plan.

The following seven Laguna Hills General Plan elements encompass all of the elements required by California General Plan law: Land Use, Mobility, Conservation and Open Space, Community Services and Facilities, Safety, Noise, and Housing. The Laguna Hills General Plan combines the mandatory Open Space and Conservation Elements required by State law, and includes a separate, optional element on Community Services and Facilities.

The seven elements are generally organized in a similar format. Each element contains an Introduction, Background, and Plan section. The “Introduction” indicates the purpose of each element and how it will help Laguna Hills achieve its vision for the community as articulated through the eight Guiding Themes. The “Background” provides the reader with the existing conditions and/or the environmental setting particular to that element topic. The “Plan” section is composed of three sections: issues, goals and policies, and approach. The issues section describes issues and concerns expressed by the community, City staff, and the City Council. The goals and policies section sets both broad and specific direction for the future of the City based on the identified issues and concerns. The approach section provides a general description and summary of the City’s course of action to achieve the goals and policies.

The Laguna Hills General Plan also contains the following appendices, which are integral parts of the General Plan: 1) Implementation Program - The Implementation Program follows the elements and identifies the specific actions that will achieve the goals, policies, and plans identified in each element; 2) Related Plans and Programs - This section identifies plans and programs related to the General Plan and applicable to future activities and land use decisions within Laguna Hills; 3) Glossary - This section provides definitions for technical terms used throughout the General Plan.

DEVELOPMENT ACTIVITY

In 2021, the City reviewed numerous projects through the development review process and participated in numerous planning efforts. The following summaries provide a general overview of the projects, programs, and permits that were reviewed. These summaries are general and are not intended to be exhaustive.

Planning Activity

Noteworthy Projects

- The Village at Laguna Hills (formerly Five Lagunas)
 - After beginning various construction and development activities in 2017, Merlone-Geier Partners (MGP), the owner of the former Laguna Hills Mall, had announced in 2018 that it was taking a strategic pause in the redevelopment of the Mall. This action by MGP was prompted by the 2018 closures of Macy's and JC Penney, and all of the businesses in the Mall's interior. MGP submitted a new project plan in November, 2019, and the City is currently processing this application, with public hearings anticipated to conclude in early-2022.
- Redevelopment of Former Automobile Dealership (24888 Alicia Parkway)
 - The Planning Agency approved permits for two new drive-thru restaurants on a portion of the property, completing the full development of the site. The approved project includes the construction of a new 2,175 square-foot building with a drive-thru for Starbucks and a new 2,503 square-foot building with a drive-thru for Plant Power. Previously, the Planning Agency approved the ActivCare Assisted Living Facility, which opened in 2021, and a Taco Bell, which is currently under construction.

Current Planning

- The Community Development Department approved several Site Development Permits in 2021, including ones for a new local museum, medical offices, and group fitness/martial arts studios.
- The Community Development Department approved multiple Temporary Use Permits in 2021, including Emergency Temporary Use Permits to allow for outdoor dining opportunities in response to the COVID-19 Pandemic.

Advanced Planning

- The Community Development Department commenced the next update to the Housing and Safety Elements of the General Plan. The Housing Element Update process included both virtual and in-person outreach workshops in 2021, and is anticipated to conclude in mid-2022.

New Businesses

- In an effort to promote a business-friendly environment, the City has emphasized providing resources and support for the local business community and to businesses looking to locate in the City. Consequently, the Community Development Department has met with several commercial property owners and has maintained a regular dialogue regarding issues that impact parking, leasing, uses, and signage. In addition, staff has assisted several owners in evaluating conceptual plans for remodeling activities.

With the support of the Community Development Department, several businesses have been able to locate in the City. The Department issued nearly 50 Certificates of Use and Occupancy for new businesses. By providing assistance to businesses regarding best practices in obtaining zoning permits necessary to begin tenant renovations, staff has contributed to processes that support businesses.

Building Permit Activity

- In 2021, the Building Division issued approximately 1,372 building permits. General remodeling activity in residential (355 permits) and commercial (47 permits) properties continues to drive building activity in the City. For building inspection, the City provided approximately 3,260 inspections.

Code Compliance Activity

- In 2021, the City's Code Compliance services continued to obtain voluntary compliance from residents and businesses through frequent engagement, maintaining a consistent presence in commercial areas prone to violations, and the implementation of code enforcement processes that resolve potential violations before the need for formal prosecution. Complaints concerning potential violations on residential properties generated over 385 calls for service, while complaints regarding commercial properties resulted in over 100 calls for service. In a few instances, cases had to be referred to the City Attorney's office for additional assistance.

GENERAL PLAN ELEMENTS

General Plan Implementation Status

The tables below analyze selected General Plan programs and policies that made notable progress in 2021. These are not a comprehensive list of all programs, policies, and action items in the General Plan; many are under ongoing implementation, and may not be listed here. As the majority of the General Plan policies and related items have been implemented through the adoption of ordinances or resolutions, incorporated into the regular governmental activities of the respective departments, or included in development proposals as they are reviewed for consistency with the City's policies, the purpose of providing the implementation statuses below is simply to highlight annual progress. A comprehensive list of all General Plan policies and action items with status and/or implementation can be viewed in the General Plan and prior General Plan Annual Progress Reports.

Land Use Element

The Land Use Element is the foundation of the General Plan and serves as a compass that guides citizens, planners, and decision makers on the desired pattern of growth, development, and change in Laguna Hills. This Element describes both existing and future land use activities and unifies the other elements of the General Plan by providing an overall policy context. The Land Use Element deals with the central issues of development and growth, and the quality of the community, and helps define the desired balance among the social, environmental, and economic costs and benefits associated with growth.

The Land Use Element identifies the distribution, location, and intensity of all land use types throughout the City. Text, maps, and diagrams establish the direction for land uses within the City and describe how these uses are integrated with other General Plan Elements and policies.

As a built-out community with no remaining residential or commercial vacant land, new development opportunities are focused on larger existing developed parcels that are considered underutilized and/or can be reasonably intensified by incorporating parking structures within parking lot areas. The Laguna Hills Mall and the Oakbrook Village Shopping Center are both examples of these new development opportunities and are zoned for a range of mixed land uses, including residential uses. The General Plan focuses on those sites within the community that have redevelopment potential.

Land Use Element Background		
Original Adoption Date	2009 (with Comprehensive General Plan Update)	
Previous Amendments	2000	West-side annexation
	2001	Saddleback Valley Unified School District Surplus Property Land Use Designation Change
	2014	“Hospitality Overlay Zone” in North Laguna Hills
	2017	Amend “Hospitality Overlay Zone” to increase the allowable building area
2021 Amendments	None	

Land Use Element Implementation		
Program	LU-1. Balanced Growth Review discretionary development proposals to assess the project’s effect on the community’s jobs/housing balance and fiscal stability. Ensure developments provide their fair share of infrastructure such as utilities, roads, parks, and recreational opportunities or pay in lieu fees toward the development/extension of these facilities.	
	Policies	LU-1.1, 1.2, 1.3
	Status	Ongoing The planning projects approved in 2021, particularly the Starbucks and Plant Power projects, are subject to a variety of development impact fees and in-lieu fees, and have been designed to meet utility and infrastructure requirements.
Program	LU-2. CEQA Review Ensure all projects are reviewed and processed per CEQA.	
	Policies	LU-4.6
	Status	Ongoing All projects have been reviewed per CEQA requirements. To further support staff on CEQA review, the Community Development Department continued to utilize qualified on-call CEQA consultants throughout the year. Furthermore, in September 2021, the City adopted updated Vehicle Miles Traveled Analysis Guidelines which establish thresholds of significance to be used for evaluating transportation impacts within the City. The VMT Guidelines incorporate initial screening criteria which, if met, demonstrate that a project will not result in significant impacts due to VMT without the need for a detailed VMT study.

Program	LU-5. Community Participation Use the City's website, newsletters, advertisements, and other measures to inform the community of and encourage participation at civic and community events. Continue to coordinate the City's Traffic and Community Services Commissions, which provide for resident input on these issues.	
	Policies	LU-1.7, 1.8
	Status	Ongoing Staff continues to provide meeting agendas and project information on the City's website. Staff has promoted and advertised community events in creative ways that ensure all segments of the community are encouraged to participate.
Program	LU-6. Compatibility Assessment and Buffering Review discretionary development proposals to assess the compatibility of proposed development with adjacent/surrounding uses and activities. Require site design, buffers, architectural and buffering techniques, and other measures are incorporated into projects to ensure compatibility between uses and activities.	
	Policies	LU-2.5, 2.6, 2.7, 2.8
	Status	Ongoing Planning projects approved in 2021 were assessed for compatibility with the existing built environment. Where required, landscaping buffers, architectural enhancements, additional setbacks, and conditions of approval were required for projects to remain compatible and to minimize impacts to surrounding neighborhoods and land uses.

Mobility Element

The Mobility Element describes existing and future transportation conditions and systems. The Element establishes goals and policies that will guide the City's mobility system, including streets, transit facilities and services, bicycle and pedestrian facilities, and the recreational trail system. The text, maps, and diagrams are a basis for the development of the City's approach to maintaining and improving the mobility network.

Mobility Element Background		
Original Adoption Date	2009 (with Comprehensive General Plan Update)	
Previous Amendments	2013	Minor changes made to the Orange County Master Plan of Arterial Highways

	2017	Avenida De La Carlota right-of-way configuration
2021 Amendments	None	

Mobility Element Implementation		
Program	M-1. Mobility Planning and Traffic Analysis Review discretionary development proposals for potential impacts to the mobility and infrastructure systems and to ensure the street system meets City standards. The level of service standards established in the Mobility Element will be used to determine the significance of impacts. Intersection level of service will be determined by the volume to capacity ratio and the Highway Capacity Manual calculations. Mitigation in the form of physical improvements and/or impact fees will be required to reduce the significant impacts. As part of this program, the City will coordinate with local jurisdictions to reduce the impacts of development in Laguna Hills on adjacent jurisdictions.	
	Policies	M-1.3
	Status	Ongoing When applicable, the Public Services Department reviewed planning projects in 2021, and if necessary, required projects to minimize traffic impacts and to incorporate mitigation or payment of “fair share” of improvements.
Program	M-2. Capital Improvement Plan Continue to bi-annually update the City of Laguna Hills Six-year Capital Improvement Program, which complies with the requirements of Measure M and the Congestion Management Program (CMP). The Plan identifies and recommends funding for future improvements to the mobility system, as well as other public facilities, including improvements to the existing pedestrian and bicycle network and landscaping right-of-ways.	
	Policies	M-1.3
	Status	Ongoing The Public Services Department continues to comply with the requirements of the Congestion Management Program as part of the City’s bi-annual budget process.

Housing Element

Every California city and county is required to include a Housing Element in its General Plan which establishes housing goals, policies, and programs that respond to community housing conditions and needs. The purpose of the Laguna Hills Housing Element is to identify housing opportunities and solutions specific to the housing issues of the City.

The 2013-2021 Housing Element was adopted in October 2013. The City received State Certification for its 2013-2021 Housing Element in November 2013. In 2021, the City initiated the next update to the Housing Element for the planning period covering 2021-2029. The City is required to plan for 1,985 new housing units, and the update process is anticipated to conclude in 2022.

The following Housing goals and programs were implemented in 2021:

- **Continuum of Care Funding and Consolidated Plan Participation**
The City continues to participate in the Orange County Consolidated Plan Programs and in the Orange County Continuum of Care local housing process to facilitate obtaining funds for affordable housing and related social services for special needs populations.
- **Section 8 Rental Assistance**
The City continues to cooperate with Orange County Housing Authority (OCHA) and provide referral services and information to the City's residents.
- **Annual Progress Reports**
The City prepared a 2020 Annual Report on citywide housing programs as part of its annual General Plan review and distributed the annual report on Housing Implementation to the California Department of Housing and Community Development (HCD) in February 2021.

Note: In addition to the information provided above, the status of the Housing Element and progress in its implementation are described in an attachment to this Annual Progress Report – Annual Element Progress Report - Housing Element Implementation.

Conservation and Open Space

The purpose of the Conservation and Open Space Element is to identify natural, cultural, and open space resources, ensuring a high-quality living environment for residents of Laguna Hills. This Element provides goals, policies, and programs related to open space and conservation as well as a wide range of other topics that together comprise the natural setting of Laguna Hills, including biological, scenic, cultural, and historical resources. The goals and policies contained in this element also address global climate change and sustainable practices related to water conservation, energy conservation, air quality, and water quality.

Conservation and Open Space Element Background		
Original Adoption Date	2009 (with Comprehensive General Plan Update)	
Previous Amendments	None	
2021 Amendments	None	

Conservation and Open Space Element Implementation		
Program	COS-2 Adequate Water Supply Implement applicable provisions in the Moulton Niguel and El Toro water districts' Urban Water Master Plans and ensure that adequate water supplies are available to meet the needs of current and future growth, as well as during an emergency event or drought. Support efforts by these agencies to research and employ new technologies that improve water services and/or sustainability of water supplies serving Laguna Hills.	
	Policies	COS-1.2; CSF-5.1, 5.2
	Status	Ongoing As part of both planning entitlement and building permit review processes, staff continues to coordinate with regional water service providers to plan for emergency water services and drought.
Program	COS--7. Air Quality Management Plan Work with the South Coast Air Quality Management District (SCAQMD) and the Southern California Association of Governments (SCAG) to implement the Air Quality Management Plan and meet all federal and State air quality standards for pollutants. Participate in any future amendments and updates to the Plan. Implement, review, and interpret the General Plan and future discretionary projects in a manner consistent with the Air Quality Management Plan to meet standards and reduce overall emissions from mobile and stationary sources.	
	Policies	COS-3.2
	Status	Ongoing Through the CEQA review process, planning projects approved in 2021 were consistent with requirements of the AQMD. Staff will continue to monitor AQMD and SCAG initiatives regarding reducing air pollutant emissions from mobile and stationary sources.

Noise

The purpose of the Noise Element is to identify and assess existing noise sources in the community, and to discuss the City's role in ensuring comfortable and safe noise levels in the future. As a part of the General Plan process, citizens and City officials identified goals for the future relating to balancing land uses in the City, in part to minimize incompatibilities and exposure to excessive noise while providing the range of uses needed to maintain a high quality of life. The goals, policies, and programs will assist in achieving noise compatibility between land uses.

Noise Element Background		
Original Adoption Date	2009 (with Comprehensive General Plan Update)	
Previous Amendments	None	
2021 Amendments	None	

Noise Element Implementation		
Program	N-4. Commercial Noise Review the locations of proposed projects with the potential to generate noise in relation to sensitive receptors through the discretionary project review process. Limit delivery or service hours for stores and businesses with loading areas, docks, or trash bins that front, side, or gain access on driveways next to residential and other noise sensitive areas. Only approve exceptions if full compliance with the nighttime limits of the noise regulations is achieved.	
	Policies	N-1.1, N-1.2, N-3.1, N-3.2
	Status	Ongoing The City reviewed development proposals to ensure that the noise standards and compatibility criteria set forth in the Noise Element were met. If necessary, conditions of approval were placed on discretionary permits to minimize noise impacts.
Program	N-5. Construction Noise Require all construction activity to comply with the limits (maximum noise levels, hours, and days of allowed activity) established in City noise regulations to reduce impacts associated with temporary construction noise to the extent feasible. Trucks associated with construction activities shall follow designated truck routes, where appropriate.	
	Policies	N-3.1
	Status	Ongoing The Community Development Department and the Orange County Sheriff's Department continue to monitor violation or complaints of the City's construction noise requirements. The City reviewed development proposals to ensure that the noise standards and compatibility criteria set forth in the Noise Element were met.

Safety

The Safety Element establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards.

The Safety Element is currently being updated, as is required when the Housing Element is updated. The Safety Element update is not comprehensive in nature, in that it seeks only to incorporate new information and areas of analysis required by state laws that have been enacted since 2009. The update process is anticipated to conclude in 2022.

Safety Element Background		
Original Adoption Date	2009 (with Comprehensive General Plan Update)	
Previous Amendments	None	
2021 Amendments	None	

Safety Element Implementation		
Program	S-2 Natural Hazards Risk Reduction Reduce the risk to the community from hazards related to geologic conditions, seismic activity, flooding, and structural and wildfires by requiring feasible mitigation of such impacts on discretionary development projects. Assess development proposals for potential hazards pursuant to CEQA. Require measures to mitigate all identified significant public safety hazards.	
	Policies	S-1.2
	Status	Ongoing Through the CEQA review process, planning projects approved in 2021 were evaluated to reduce the risk of impacts from geologic and seismic hazards by applying current and proper land use planning, development engineering, building construction, and retrofitting requirements.
Program	S-5. Orange County Fire Authority Work closely with the Orange County Fire Authority (OCFA) to implement fire hazard education and fire prevention programs, including fuel modification programs and controlled burns. Coordinate with OCFA to ensure that water pressure is adequate for firefighting purposes in all areas of the City, particularly in redevelopment projects/areas. Coordinate with OCFA to implement the Hazardous Materials Area Plan within Laguna Hills.	
	Policies	S-5.1, 5.2, 5.3, 5.4

Program	Status	Ongoing Staff continues to coordinate with the Orange County Fire Authority for permit and project review to ensure that OCFA requirements are being met. Staff continues to cooperate with the Orange County Integrated Waste Management Department to address hazardous materials.
	S-9. Crime Prevention through Environmental Design (CPTED) Review all new development and redevelopment proposals for sensitivity to CPTED principles. Encourage incorporation of design features that employ adequate lighting and place increased emphasis on public areas. Coordinate with the OCSD to develop guidelines on CPTED principles.	
	Policies	S-4.1; LU-3.12
Program	Status	Ongoing When feasible, staff has incorporated Crime Prevention through Environmental Design measures and “visible spaces” into new developments as a means of promoting safe environments. Lighting of public areas have been designed to meet the Municipal Code lighting requirements, while providing adequate lighting for the safety of the public.
	S-12. Project-Related Flood Control and Stormwater Management and Comprehensive Drainage Studies As a condition of project approval, require new development and redevelopment to provide adequate on-site and off-site storm water and flood management facilities to control direct and indirect erosion and discharges of pollutants and/or sediments. To determine the facility and Best Management Practices (BMP) needs, the City will require, when necessary, a hydrological/drainage analysis be performed by a state-licensed and City-approved engineer, with the cost of said analysis the responsibility of the project applicant	
	Policies	S-6.2; COS-1.3
Program	Status	Ongoing All projects approved in 2021 were reviewed and accepted by the City Engineer. Conditions of approval were implemented regarding Water Quality Management Plan requirements and plan check review procedures.

Community Services and Facilities

The purpose of the Community Services and Facilities Element is to assess the current status of community services as well as evaluate their long-term provision to ensure that adequate services and facilities are both planned and provided proportionate with the projected growth, as well as development and redevelopment, as it occurs within the City. The Community Services and Facilities

Element also establishes the City's plan to provide and maintain infrastructure and public services for future growth, without diminishing services to existing development. Community services collectively refer to law enforcement, fire protection, water, sewer, solid waste, electricity and natural gas, communication, and animal care services. Community facilities collectively refer to schools, libraries, parks, and recreational facilities.

Community Services and Facilities Element Background

Original Adoption Date	2009 (with Comprehensive General Plan Update)	
Previous Amendments	None	
2021 Amendments	None	

Community Services and Facilities Element Implementation

Program	CSF-4. Water and Sewer Services for New Development Review development and redevelopment proposals and require necessary studies, as appropriate, and water conservation and mitigation measures to ensure adequate water and sewer service.	
	Policies	CSF-5.1, 5.2, 6.1, 6.2
	Status	Ongoing All development proposals reviewed and approved in 2021 have obtained or have been required to obtain through conditions of approval all required clearances from local water agencies. Staff will continue to monitor and work closely with local and regional water suppliers and distributors to ensure that high-quality water and sewer services is available for the community.
Program	CSF-5. Solid Waste Services Continue to contract for solid waste services from a private sector provider. Ensure that community needs for solid waste disposal are being met.	
	Policies	CSF-7.1
	Status	Ongoing In 2021, staff made progress in establishing a review process and outreach to the development and business community regarding AB 1826 (Mandatory Commercial Organics Recycling), SB 1383 (Short-Lived Climate Pollutants), and AB 341 (Mandatory Commercial Recycling). Staff will continue to work with local service providers to ensure adequate solid waste collection, disposal, and recycling services.

CONCLUSION

This Annual Progress Report documents the City's recent progress in updating and implementing the General Plan. The information contained herein will be forwarded to the Governor's Office of Planning and Research and the Department of Housing and Community Development to serve as the City of Laguna Hills' General Plan Annual Progress Report for calendar year **2021**.

The Laguna Hills City Council reviewed and accepted the report on **March 22, 2022**.

Jurisdiction	Laguna Hills	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

(CCR Title 25 §6202)

Table A
Housing Development Applications Submitted

Project Identifier					Unit Types		Date Application Submitted	Proposed Units - Affordability by Household Incomes							Total Approved Units by Project	Total Disapproved Units by Project	Streamlining	Density Bonus Applications		Application Status	Notes	
1					2	3	4	5							6	7	8	9	10		11	12
Prior APN*	Current APN	Street Address	Project Name*	Local Jurisdiction Tracking ID*	Unit Category (SFA,SFD,2 to 4,5+,ADU,MH)	Tenure R=Renter O=Owner	Date Application Submitted+ (see instructions)	Very Low-Income Deed Restricted	Very Low-Income Non Deed Restricted	Low-Income Deed Restricted	Low-Income Non Deed Restricted	Moderate-Income Deed Restricted	Moderate-Income Non Deed Restricted	Above Moderate-Income	Total PROPOSED Units by Project	Total APPROVED Units by project	Total DISAPPROVED Units by Project	Was APPLICATION SUBMITTED Pursuant to GC 65913.4(b)? (SB 35 Streamlining)	Was a Density Bonus requested for this housing development?	Was a Density Bonus approved for this housing development?	Please indicate the status of the application.	Notes*
Summary Row: Start Data Entry Below								0	0	100	0	100	0	1300	1500	0	0					
	62122102	24155 LAGUNA HILLS MALL	VILLAGE AT LAGUNA HILLS	USE-0010-2019	5+	R	1/22/2021			100		100		1300	1500			No	No	N/A	Pending	

[illegible]

Jurisdiction	Laguna Hills	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

This table is auto-populated once you enter your jurisdiction name and current year data. Past year information comes from previous APRs.
 Please contact HCD if your data is different than the material supplied here

Table B													
Regional Housing Needs Allocation Progress													
Permitted Units Issued by Affordability													
		1	2									3	4
Income Level		RHNA Allocation by Income Level	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	1	-	-	-	-	-	-	-	-	-	-	1
	Non-Deed Restricted		-	-	-	-	-	-	-	-	-	-	
Low	Deed Restricted	1	-	-	-	-	-	-	-	-	-	-	1
	Non-Deed Restricted		-	-	-	-	-	-	-	-	-	-	
Moderate	Deed Restricted	-	-	-	-	-	-	-	-	-	-	292	-
Above Moderate	Non-Deed Restricted	-	-	-	-	291	1	-	-	-	-	-	-
Total RHNA		2	-	-	-	1	1	-	2	5	2	11	-
Total Units			-	-	-	292	2	-	2	5	2	303	2

Note: units serving extremely low-income households are included in the very low-income permitted units totals and must be reported as very low-income units.

Please note: For the last year of the 5th cycle, Table B will only include units that were permitted during the portion of the year that was in the 5th cycle. For the first year of the 6th cycle, Table B will include units that were permitted since the start of the planning period.

Please note: The APR form can only display data for one planning period. To view progress for a different planning period, you may login to HCD's online APR system, or contact HCD staff at apr@hcd.ca.gov.

Jurisdiction	Laguna Hills	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

Table C																	
Sites Identified or Rezoned to Accommodate Shortfall Housing Need and No Net-Loss Law																	
Project Identifier				Date of Rezone	RHNA Shortfall by Household Income Category				Rezone Type	Sites Description							
1				2	3				4	5	6	7	8		9	10	11
APN	Street Address	Project Name ⁺	Local Jurisdiction Tracking ID ⁺	Date of Rezone	Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income	Rezone Type	Parcel Size (Acres)	General Plan Designation	Zoning	Minimum Density Allowed	Maximum Density Allowed	Realistic Capacity	Vacant/Nonvacant	Description of Existing Uses
Summary Row: Start Data Entry Below																	

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Laguna Hills		
Reporting Year	2021	(Jan. 1 - Dec. 31)	
Table D			
Program Implementation Status pursuant to GC Section 65583			
Housing Programs Progress Report			
Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.			
1	2	3	4
Name of Program	Objective	Timeframe in H.E	Status of Program Implementation
H-1. Code Enforcement Program	Enforce building code regulations and abate code violations, nuisances, and existing uses, activities, buildings, or structures that pose a threat to public health, safety, or welfare. Enforcement activities will focus on property maintenance, such as eliminating derelict or abandoned vehicles, outdoor storage, or other situations that may constitute health, safety, or fire hazards.	Ongoing	With the goal of voluntary compliance, the City's Code Enforcement staff continues to monitor and address complaints related to property maintenance. Staff investigated hundreds of complaints associated with housing or property maintenance and took appropriate steps to work with the property owner to resolve code violations, or referred unresponsive owners to the City Attorney's office for prosecution.
H-2. State Franchise Tax Board Code Enforcement	To promote maintenance of existing rental properties, the City shall work with the California State Franchise Tax Board to enforce provisions of California Revenue and Taxation code Sections 17274 and 24436.5, which prohibit owners of substandard rental housing from claiming depreciation, amortization, mortgage interest, and property tax deductions of state income tax. The City will notify the State Franchise Tax Board if substandard rental housing is identified	Ongoing	The City is not aware of any substandard housing within the community. If such housing is identified, the City will notify the State Franchise Tax Board.
H-3. Housing Rehabilitation	The City will continue to work with the Orange County Housing and Community Services Department to receive rehabilitation loans and grants for low and moderate income homeowners and rental property owners, including senior/disabled households, to maintain housing stock. Efforts will focus on rehabilitating approximately 148 units in the Aliso Meadows Condominium Development. The rehabilitation loan and grant program will use CDBG funds distributed by the County as appropriate. The City will publicize the availability of this program in local newspapers, on the City's website, at the Community Development Department, and in information items at Planning Agency Public Hearings	Annually by September of each year or as otherwise required by the County CDBG schedule	Due to staffing/resource limitations, the City did not participate in the CDBG program in FY 20/21. However, the City intends to apply to the County for CDBG funds to use in FY 22/23.
H-4. At-Risk Units	The City will continue to pursue the extension of affordability controls for 51 units, either in the existing Rancho Moulton housing development or as part of new or redevelopment activities in the Via Lomas area or other areas of the City. . The City will annually prepare a "Risk Assessment" report provided by the California Housing Partnership Corporation (CHPC). Projects determined high risk are those most likely to decline continued federal assistance because they currently have rents below market rate(s) and are owned by profit-motivated entities. The City will work with potential purchasers to preserve 51 units in the existing development or in new development by finding an interested nonprofit entity and securing funding to acquire and preserve the property. The City will use HCD resources listed on the HCD website, as well as other resources, to locate potential funding sources as needed for the preservation of affordable housing. As needed, the City will work with tenants of at-risk units and provide them with education regarding tenant rights, notification procedures, and conversion procedures. The City will also provide tenants in at-risk projects information	By January of each year.	In 2021, the city continued to monitor existing at-risk units in the City, and continued to refer prospective tenants to the County of Orange regarding Section 8 housing. In 2021, Rancho Moulton continued to participate in the County's Section 8 rental assistance program.
H-5. Foreclosure Referral Program	Based on current dynamics, the City seeks to address the increased incidence of residents facing foreclosure. The City will provide foreclosure information on the City's website, and provide resources at the City to refer residents to external agencies to assist in reducing incidents of foreclosures in Laguna Hills.	1/1/2014	As necessary, the City has been referring people to the County's foreclosure websites, which provide a wealth of information regarding foreclosures.

Attachment: Attachment B - HCD FORM (2778 : 2021 General Plan Annual Progress Report)

H-6. Urban Village Specific Plan Area for Housing Opportunities	The City shall inform existing property owners and prospective developers that housing opportunities are available in the Urban Village Specific Plan area. Housing opportunities include market rate housing units and could also include housing for low and moderate income households, families, seniors, and special needs households. City staff will inform prospective developers at time of project application meeting(s). Additionally, the City will promote the UVSP area on the City's website and will also promote housing development incentives consistent with Chapter 9-72 of the Zoning Ordinance.	Ongoing	The City has met with multiple developers interested in development within the UVSP that may incorporate housing. Staff referred the developers to a variety of development regulations and density bonus provisions.
H-7. Alicia Gateway for Housing Opportunities	The City shall inform existing property owners and prospective developers that housing opportunities are available in the Alicia Gateway. Housing opportunities could include market rate housing units and could also include housing for low and moderate income households, families, seniors and special needs households. City staff will inform prospective developers at time of project application meeting(s). Additionally, the City will promote Alicia Gateway on the City's website and will also promote housing development incentives consistent with Chapter 9-72 of the Zoning Ordinance.	12/1/2013	During 2021 the city met with multiple developers interested in development within the Alicia Gateway that may incorporate housing. Staff referred the developers to a variety of development regulations and density bonus provisions.
H-8. Zoning Ordinance Update	The implementation of housing goals, policies, and programs will require updating the City's Zoning Ordinance. In addition, certain City rules and regulations may constrain the development of housing affordable to low and moderate income households with special needs. To mitigate potential constraints and implement housing goals, policies, and programs, the City will update the following regulations in the Zoning Ordinance: 1. Consolidate and remove duplicitous definitions of manufactured housing and mobile homes and ensure consistency in the Zoning Ordinance, use regulations, and development standards. 2. Reduce the open space requirement in the High Density Residential district; 3. Increase the maximum lot coverage requirement in the Mixed Use district. 4. Transitional and supportive housing will be permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone.	10/1/2014	Due to staffing/resource limitations, staff has been able to complete numbers 1 and 4, and will be considering addressing numbers 2 and 3 in the next budget cycle (FY 22/23, 23/24)
H-9. Second Units	The City shall continue to implement the Second Unit provisions of the Zoning Ordinance consistent with state law. The City will continue to permit second units by right in all residential zones of the City, requiring only ministerial approval. Residential second units provide a viable option for providing additional housing opportunities which could include affordable housing for lower income seniors, single persons, or small households within existing neighborhoods.	Ongoing	The City has updated the Second Unit provisions to comply with 2018 State Accessory Dwelling Unit regulations. A new Code amendment is pending to be compliant with more recent legislation. Staff will continue to monitor any future updates to ADU law.
H-10. CDBG Funding for Shelter for the Homeless	The City shall apply for United States Department of Housing and Urban Development CDBG funds and allocate a portion of such funds to subrecipients who provide shelter for the homeless.	Annually by September of each year or as otherwise required by the County CDBG schedule	The City of Laguna Hills is a non-entitlement city and therefore relies on the County of Orange to receive and administer CDBG funding on the City's behalf. As in previous years, in 2021 the City relied on the County of Orange to coordinate a comprehensive regional Continuum of Care (CoC) strategy that includes the participation of all thirty-four cities in Orange County, County Agencies, the County's homeless housing and service providers, and other community groups (including non-profits, local governmental agencies, faith-based organizations, the homeless and formerly homeless, interested business leaders, schools, and many other stakeholders) to identify the gaps and unmet needs of the County's homeless. Through cooperative agreements between the City and the County, the County has pursued funding for housing and related social services for the City's homeless population.

H-11. Continuum of Care Funding and Consolidated Plan Participation	The City shall continue to participate in the Orange County Consolidated Plan Programs and in the Orange County Continuum of Care local housing planning process to facilitate obtaining funds for affordable housing and related social services for special needs populations. The Continuum of Care local housing and service delivery system focuses on homeless prevention, outreach, and assessment, emergency shelters, transitional housing, supportive services, and permanent supportive housing for homeless individuals and families. The City shall pursue homeless assistance grants through the Continuum. The City will assist public and private nonprofit housing developers in preparation of funding applications for special needs populations.	Annually by September of each year or as otherwise required by the County CDBG schedule	The City of Laguna Hills is a non-entitlement city and therefore relies on the County of Orange to receive and administer CDBG funding on the City's behalf. As in previous years, in 2021 the City relied on the County of Orange to coordinate a comprehensive regional Continuum of Care (CoC) strategy that includes the participation of all thirty-four cities in Orange County, County Agencies, the County's homeless housing and service providers, and other community groups (including non-profits, local governmental agencies, faith-based organizations, the homeless and formerly homeless, interested business leaders, schools, and many other stakeholders) to identify the gaps and unmet needs of the County's homeless. Through cooperative agreements between the City and the County, the County has pursued funding for housing and related social services for the City's special needs population.
H-12. Section 8 Rental Assistance	The Orange County Housing Authority currently administers the Section 8 Rental Assistance program on behalf of the City. Currently the program assists renter households in the City of Laguna Hills. Based on future congressional appropriations, the County Housing Authority will apply for additional funding which will enable the Housing Authority to administer additional vouchers for families, seniors, and disabled persons over the Housing Element planning period. The City of Laguna Hills will continue to provide referral services and information to the City's residents.	Ongoing	In 2021 the City continued to refer interested residents to the Orange County Housing Authority.
H-13. Affordable Housing Developer Partnerships	The City will continue to develop partnerships with mainstream and/or special needs affordable housing developers that could result in set-asides in existing and planned low income housing projects. These partnerships may include incentives (such as expedited processing, fee waivers, and density bonuses) provided by the City to facilitate the set-asides for planned low income units and actively cooperating with the owners of existing units to secure appropriate federal funding necessary to maintain existing affordability. The City will promote lower income housing development incentives on the City's website, consistent with Chapter 9-72 of the Zoning Ordinance. The City will use HCD's housing resources website to locate available sites and potential funding sources as needed for the development of affordable housing.	Ongoing	In 2021 the city met with multiple developers interested in development within the City that might incorporate affordable housing into their projects. Staff referred the developers to a variety of development regulations and density bonus provisions.
H-14. Fair Housing Program	The City will continue to maintain services and personnel to receive housing complaints and continue to address or resolve complaints. The City will also continue to refer fair housing complaints to the Fair Housing Council if they cannot be resolved at the City level. The City will also continue to disseminate written literature about fair housing laws, resident rights, and remedies for fair housing complaints. The City will ensure that fair housing literature is available in the Community Development Department, on the City's website, and at the Laguna Hills Technology Library. The City will monitor these sites to ensure timely, accurate information is available.	Ongoing	In 2021, city staff continued to monitor and respond to housing complaints, and referred residents to various agencies that provide fair housing services in Orange County.

H-15. Universal Design Features in Housing	The City recognizes that all people have varying abilities and that many people will encounter temporary or permanent changes in ability to conduct the tasks necessary for daily living throughout their lives. Universal design features create housing suited for people of all abilities and can allow residents to stay in their homes over their lifetime. The City will explore programs, an ordinance, and incentives to encourage provision of universal design features in housing. The City will refer to the HCD website for guidelines and a model ordinance consistent with the principles of universal design. The universal design ordinance will address such topics as findings, definitions, scope and application, standards, and enforcement. City staff will encourage prospective developers to provide universal design features at the time of project application meeting(s).	10/1/2014	Staff will continue to explore programs and incentives related to universal design in housing.
H-16. Annual Progress Reports	The City will report annually on progress toward implementation of the Housing Element and residential development activities citywide.	Prepare an annual report for submittal to HCD by April 1 of each year in the planning period	The APR for 2021 is scheduled to be received by the City Council on March 22, 2022. If approved, it will be transmitted to HCD as directed by Government Code Section 65400.
H-17. Housing Issues Monitoring	The City will monitor existing and proposed affordable housing developments in the City. The City will also monitor legislation, trends, and policy issues related to the development and maintenance of affordable housing in Laguna Hills.	Ongoing	In 2021 staff continued to monitor existing and proposed affordable housing developments in the City, as well as legislation, trends, and policy issues related to the development and maintenance of affordable housing.
H-20. Local Housing Efforts Coordination	The City shall coordinate local housing efforts with appropriate federal, state, regional, and local government and/or agencies and cooperate in implementation of intergovernmental housing programs to ensure maximum effectiveness in solving local and regional housing problems. The City will submit CDBG applications to assist in preserving existing affordable housing stock.	12/1/2009	Due to staffing/resource limitations, the City has not continuously participated in the CDBG program. However, the City intends to apply to the County for CDBG funds to use for FY 22/23.

Jurisdiction	Laguna Hills	
Reporting Period	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

Table E									
Commercial Development Bonus Approved pursuant to GC Section 65915.7									
Project Identifier				Units Constructed as Part of Agreement				Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
1				2				3	4
APN	Street Address	Project Name ⁺	Local Jurisdiction Tracking ID ⁺	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
Summary Row: Start Data Entry Below									

Jurisdiction	Laguna Hills	
Reporting Period	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

Table F									
Units Rehabilitated, Preserved and Acquired for Alternative Adequate Sites pursuant to Government Code section 65583.1(c)									
Please note this table is optional: The jurisdiction can use this table to report units that have been substantially rehabilitated, converted from non-affordable to affordable by acquisition, and preserved, including mobilehome park preservation, consistent with the standards set forth in Government Code section 65583.1, subdivision (c). Please note, motel, hotel, hostel rooms or other structures that are converted from non-residential to residential units pursuant to Government Code section 65583.1(c)(1)(D) are considered net-new housing units and must be reported in Table A2 and not reported in Table F.									
Activity Type	Units that Do Not Count Towards RHNA ⁺ Listed for Informational Purposes Only				Units that Count Towards RHNA ⁺ Note - Because the statutory requirements severely limit what can be counted, please contact HCD to receive the password that will enable you to populate these fields.				The description should adequately document how each unit complies with subsection (c) of Government Code Section 65583.1 ⁺
	Extremely Low-Income ⁺	Very Low-Income ⁺	Low-Income ⁺	TOTAL UNITS ⁺	Extremely Low-Income ⁺	Very Low-Income ⁺	Low-Income ⁺	TOTAL UNITS ⁺	
Rehabilitation Activity									
Preservation of Units At-Risk									
Acquisition of Units									
Mobilehome Park Preservation									
Total Units by Income									

Jurisdiction	Laguna Hills	
Reporting Period	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

NOTE: This table must only be filled out if the housing element sites inventory contains a site which is or was owned by the reporting jurisdiction, and has been sold, leased, or otherwise disposed of during the reporting year.

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Table G						
Locally Owned Lands Included in the Housing Element Sites Inventory that have been sold, leased, or otherwise disposed of						
Project Identifier						
1				2	3	4
APN	Street Address	Project Name⁺	Local Jurisdiction Tracking ID⁺	Realistic Capacity Identified in the Housing Element	Entity to whom the site transferred	Intended Use for Site
Summary Row: Start Data Entry Below						

Jurisdiction	Laguna Hills	
Reporting Period	2021	(Jan. 1 - Dec. 31)

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Table H						
Locally Owned Surplus Sites						
Parcel Identifier				Designation	Size	Notes
1	2	3	4	5	6	7
APN	Street Address/Intersection	Existing Use	Number of Units	Surplus Designation	Parcel Size (in acres)	Notes
Summary Row: Start Data Entry Below						

Jurisdiction	Laguna Hills	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	10/15/2013 - 10/15/2021

Building Permits Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	0
Above Moderate		2
Total Units		2

Note: Units serving extremely low-income households are included in the very low-income permitted units totals

Units by Structure Type	Entitled	Permitted	Completed
SFA	0	0	0
SFD	0	0	1
2 to 4	0	0	0
5+	0	0	0
ADU	0	2	1
MH	0	0	0
Total	0	2	2

Housing Applications Summary	
Total Housing Applications Submitted:	1
Number of Proposed Units in All Applications Received:	1,500
Total Housing Units Approved:	0
Total Housing Units Disapproved:	0

Use of SB 35 Streamlining Provisions	
Number of Applications for Streamlining	0
Number of Streamlining Applications Approved	0
Total Developments Approved with Streamlining	0
Total Units Constructed with Streamlining	0

Units Constructed - SB 35 Streamlining Permits			
Income	Rental	Ownership	Total
Very Low	0	0	0
Low	0	0	0
Moderate	0	0	0
Above Moderate	0	0	0
Total	0	0	0

Cells in grey contain auto-calculation formulas

Jurisdiction	Laguna Hills	
Reporting Year	2021	(Jan. 1 - Dec. 31)

ANNUAL ELEMENT PROGRESS REPORT Local Early Action Planning (LEAP) Reporting (CCR Title 25 §6202) Please update the status of the proposed uses listed in the entity's application for funding and the corresponding impact on housing within the region or jurisdiction, as applicable, categorized based on the eligible uses specified in Section 50515.02 or 50515.03, as applicable.					
Total Award Amount	\$ - Total award amount is auto-populated based on amounts entered in rows 15-26.				
Task	\$ Amount Awarded	\$ Cumulative Reimbursement Requested	Task Status	Other Funding	Notes

Summary of entitlements, building permits, and certificates of occupancy (auto-populated from Table A2)

Completed Entitlement Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	0
Above Moderate		0
Total Units		0

Building Permits Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	0
Above Moderate		2
Total Units		2

Certificate of Occupancy Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	0
Above Moderate		2
Total Units		2



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Progress Payment No. 4 for Citywide Pavement Rehabilitation, CIP No. 101-L & Ridge Route Drive Pavement Resurfacing, CIP No. 188

RECOMMENDATION: That the City Council approve Progress Payment No. 4, in the net amount of \$623,861.67, to Petrochem Materials Innovation, LLC, for Citywide Pavement Rehabilitation, CIP No. 101-L & Ridge Route Drive Pavement Resurfacing, CIP No. 188.

SUMMARY:

Work on the Citywide Pavement Rehabilitation CIP No. 101-L & Ridge Route Drive Pavement Resurfacing, CIP No. 188, began on September 7, 2021, and is being performed by Petrochem Materials Innovation, LLC. Work performed in January included application of asphalt concrete overlay, cold planing, raising valves and manholes to grade, and striping. The contractor has submitted the fourth progress payment request for approval.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor's invoice. Procedurally, field staff verifies the contractor's quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for this project, Petrochem Materials

Progress Payment No. 4 for Citywide Pavement Rehabilitation, CIP No. 101-L & CIP 188

March 22, 2022

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Innovation, LLC., has submitted the fourth progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	\$ AMOUNT
BASE BID 1: CITYWIDE PAVEMENT REHABILITATION, CIP NO. 101-I					
5	Striping, Including Raised Pavement Markers, Lane Lines, Legends and Cross Walks	0.25	LS	\$24,247.00	\$6,061.75
BASE BID 2: RIDGE ROUTE DRIVE PAVEMENT RESURFACING, CIP NO. 188					
1	Clearing and Grubbing	0.5	LS	\$26,350.00	\$13,175.00
3	1"AC Cold Plane	219,370.00	SF	\$0.18	\$39,486.60
4	1.5" AC Overlay including Cracksealing	2,225.46	TN	\$84.00	\$186,938.64
5	Adjust Gas Valve to Grade	6	EA	\$500.00	\$3,000.00
6	Adjust Water Valve to Grade	26	EA	\$500.00	\$13,000.00
7	Adjust Manhole to Grade	8	EA	\$1,000.00	\$8,000.00
8	Traffic Loops	4	EA	\$1,275.00	\$5,100.00
9	Striping	0.5	LS	\$13,780.00	\$6,890.00
ALTERNATE BID 1: MILL CREEK DRIVE					
1	Clearing and Grubbing	0.5	LS	\$40,508.00	\$20,254.00
3	6' Wide cold planing/edge grind along gutters and 15' wide transverse cold planing at four join locations	159,591.00	SF	\$0.34	\$54,260.94
4	1.5" AC Overlay including Cracksealing	2,584.74	TN	\$94.00	\$242,965.56
5	Raise Manhole to Grade	21	EA	\$1,120.00	\$23,520.00
6	Raise Water Valve to Grade	51	EA	\$560.00	\$28,560.00
8	Traffic Loops	4	EA	\$1,371.00	\$5,484.00

TOTAL TO DATE	\$2,599,942.59	
LESS PRIOR BILLING	\$1,943,246.10	
TOTAL THIS PERIOD	\$656,696.49	\$656,696.49
LESS 5% RETENTION		\$(32,834.82)
DUE		\$623,861.67

FISCAL IMPACT:

The progress payment is within the Capital Improvement Program Budget for Citywide Pavement Rehabilitation CIP No. 101-L & Ridge Route Drive Pavement Resurfacing, CIP No. 188.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Dan Meehan
Community Services Superintendent
ISSUE: April 2022 Rooted Campaign Event and Arbor Day Recognition

RECOMMENDATION: That the City Council receive and file the report, and authorize the Mayor to sign the attached Arbor Day Proclamation as required by the Arbor Day Foundation for the Tree City USA Certification.

SUMMARY:

A work program in the current 2021-2023 Biennial Budget is to: "Host a quarterly Rooted Volunteer Campaign event to help beautify and make improvements within the City." Three events have already occurred this fiscal year, all of which are described in more detail below:

1. September 4, 2021: Planting at La Paz and Aliso Hills. A total of 350 plants installed by 35 community volunteers.
2. November 13, 2021: Painting project of fences at Beckenham Park, with a total of 28 community volunteers.
3. February 19, 2022: Planting along La Paz Rd between McIntyre and Rickenbacker. A total of 450 plants installed by 45 community volunteers.

The next quarterly Rooted Volunteer Campaign event is scheduled for Saturday, April 16th, beginning at 9:00 am. The event will take place at Costeau Park and include the planting of approximately 20 trees in recognition of Arbor Day, which is required for the City's Tree City USA certification. A combined total of approximately 200 shrubs and

April 2022 Rooted Campaign Event and Arbor Day Recognition

March 22, 2022

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groundcover will also be planted during this event. In order to retain its designation as a Tree City USA, the attached proclamation must be signed by the Mayor.

FISCAL IMPACT:

The Fiscal Year 2021/22 budget for Rooted Volunteer Campaign is \$8,000 to host four (4) quarterly events. The total cost of the three Rooted events already held this fiscal year is \$7,385. This includes the donated plants by Nieves Landscape, Inc., per the Agreement with the City.

Staff estimates event expenditures for the April 16, 2022, event to be \$4,000, for a total estimated cost of \$11,385 for this fiscal year's Rooted Volunteer Campaign event series. The additional cost incurred will be absorbed into the Community Services Department's budget.

ATTACHMENTS:

- Arbor Day Proclamation 2022

PROCLAMATION
ARBOR DAY
APRIL 16, 2022

***WHEREAS**, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and*

***WHEREAS**, this holiday, called Arbor Day was first observed with the planting of more than a million trees in Nebraska; and*

***WHEREAS**, Arbor Day is now observed throughout the nation and the world; and*

***WHEREAS**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and*

***WHEREAS**, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and*

***WHEREAS**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and*

***WHEREAS**, trees, wherever they are planted, are a source of joy and spiritual renewal.*

***NOW, THEREFORE**, I, Dave Wheeler, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby proclaim April 16, 2022, as Arbor Day in the City of Laguna Hills.*

Dated this 22nd day of March 2022.

DAVE WHEELER, MAYOR

Attachment: Arbor Day Proclamation 2022 (2785 : April 2022 Rooted Campaign Event and Arbor Day Recognition)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Gregory E. Simonian
City Attorney
ISSUE: City Manager Recruitment - Appointment of Labor Negotiator

RECOMMENDATION: That the City Council appoint Mayor Pro Tempore Heft to serve as the Council-designated Labor Negotiator for purposes of facilitating the employment contract negotiation process necessary to retain a new City Manager following completion of the pending formal competitive selection process.

SUMMARY:

On March 10, 2022, Interim City Manager Kenneth H. Rosenfield, P.E., submitted a letter of resignation indicating his intent to retire from the City, effective April 1, 2022, after nearly 27-years of dedicated public service. During his tenure with the City, he has served as the City's first Public Services Director/City Engineer and serving as the Interim City Manager for the past 14-months. Mr. Rosenfield's letter of resignation was placed on the March 22, 2022 agenda for City Council review and acceptance. In preparation for selecting a new city manager, a process already initiated by the City Council, it is recommended that the City Council, pursuant to Government Code §54957.6, appoint Mayor Pro Tempore Heft to serve as the Council-designated Labor Negotiator for purposes of facilitating upcoming employment contract negotiations in connection with the ongoing city manager recruitment process.

BACKGROUND:

This item is related to the pending formal competitive selection process for filling the city manager position and has been placed on the agenda at the recommendation of the City Attorney. In preparation for selecting a new city manager, a process already

City Manager Recruitment - Appointment of Labor Negotiator

March 22, 2022

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initiated by the City Council, it is recommended that the City Council, pursuant to Government Code Section 54957.6, select and appoint an individual(s) to serve as its designated representative(s) for purposes of conducting closed session meetings with its authorized labor negotiator to discuss compensation of the city manager, an unrepresented employee position. On March 10, 2022, Interim City Manager Kenneth H. Rosenfield, P.E., submitted a letter of resignation indicating his intent to retire from the City, effective April 1, 2022, after nearly 27-years of dedicated public service. During his tenure with the City, he has served as the City's first Public Services Director/City Engineer and as the Interim City Manager for the past 14-months. Mr. Rosenfield's letter of resignation was placed on the March 22, 2022, agenda for City Council review and acceptance.

As a practical matter, a city council designated Labor Negotiator appointed to facilitate executive employment contract negotiations can be a city council member(s), human relations personnel, professional labor facilitator, an executive recruiter, or the city attorney. Over the years, the City Council has often appointed the Mayor Pro Tempore to fulfill this role – delegating such responsibilities to the Mayor Pro Tempore – to serve as the Council-designated Labor Negotiator in connection with city manager performance evaluations, labor negotiations, and employment contract related issues.

Government Code Section 54957.6 allows the City Council to select and identify its designated representative for purposes of conducting closed session meetings with its authorized Labor Negotiator to discuss compensation of the city manager, an unrepresented employee position. To do so, however, the City Council must first place the designation of a labor negotiator on the open and public session of the agenda and identify its designated Labor Negotiator prior to discussing compensation of an unrepresented employee in closed session.

Under the Brown Act, however, the City Council must take “final action” on the proposed compensation concerning employment of the city manager in open session after meeting and conferring with the council's designated Labor Negotiator. Following completion of the City Council’s ongoing formal competitive process for selecting a new city manager, it is anticipated that the City Council will direct the City Attorney to prepare a new employment agreement, which will be placed on the agenda for a future regular meeting of the City Council, at which time the Council will review and consider approval of the employment contract in open session

CONCLUSION:

City Manager Recruitment - Appointment of Labor Negotiator

March 22, 2022

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The City Council has the option of designating an authorized Council Labor Negotiator for purposes of facilitating the city manager employment contract negotiation process, but is not legally required to do so. It is recommended that the City Council, pursuant to Government Code §54957.6, appoint the Mayor Pro Tempore as the Council-designated Labor Negotiator for purposes of facilitating the contract negotiation process in connection with filling the city manager position.

FISCAL IMPACT:

There is no fiscal impact associated with the City Council designating one of its members to serve as the designated Labor Negotiator for purposes of facilitating the employment contract negotiation process for filling the city manager position.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Chair and Agency Members

FROM: Larry Longenecker
Community Development Director

ISSUE: Site Development Permit (SDP) No. USE-0027-2020 and Joint Parking Use Permit (PUP) No. USE-0084-2022, a Request by GB Architecture on Behalf of Warmington Properties, Inc. for Architectural and Site Upgrades and to Establish Joint Use Parking Facilities at Honali Plaza, Located at 24721 – 24781 Alicia Parkway.

RECOMMENDATION: That the Planning Agency:

- 1) Conduct a public hearing;
- 2) Find and determine that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities);
- 3) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, approving Site Development Permit (SDP) No. USE-0027-2020, a Request by GB Architecture on behalf of Warmington Properties, Inc. for Architectural and Site Upgrades to Honali Plaza, Located at 24721 - 24781 Alicia Parkway, including an exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)”;
- 4) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, approving Joint Parking Use Permit (PUP) No. USE-0084-2022, a Request by GB Architecture on behalf of Warmington Properties, Inc. to Establish Joint Use Parking Facilities at Honali Plaza, Located at 24721 - 24781 Alicia Parkway, including an exemption from the California Environmental Quality Act (CEQA) per

SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza)

March 22, 2022

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CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)”.

SUMMARY:

GB Architecture, on behalf of Warmington Properties, Inc. (“Applicant”) is requesting approval of the following applications for Honali Plaza (“Center”):

- A Site Development Permit (SDP) for a variety of site and architectural improvements to the Center, including a comprehensive building façade upgrade, a new courtyard/outdoor experience area, and renovated landscaping; and,
- A Joint Parking Use Permit (PUP) to establish shared parking for the Center.

The Center is owned by Warmington Properties, Inc., which has authorized the Applicant to apply for the requested Site Development Permit and Joint Parking Use Permit (“Project”).

The Project includes façade upgrades to all six buildings in the Center and does not result in any change to the footprints/square footage of the buildings. The proposed upgrades to the building elevations have been designed to reflect a ‘Contemporary Transitional’ architectural theme. All rooftop mechanical equipment will be screened.

The Project also includes the creation of a new plaza/courtyard area, and would include seating, a children’s play area, and shade structures. Other site improvements include new and upgraded trash enclosures, upgraded landscaping, and new parking lot lighting. Additionally, the Project also includes new pedestrian pathways that provide connections from existing public sidewalks into the Center. A new gate and crosswalk are also proposed, which will provide access to the Aliso Creek Bikeway. The Project also includes multiple improvements and extensions to existing perimeter walls, which will benefit the neighboring community by providing additional screening and security.

The Project will add twenty-two (22) parking stalls to the parking inventory, resulting in a total of 388 parking stalls (including 20 ADA-accessible stalls) that will be shared by tenants and visitors. Based on the parking requirements identified in the Laguna Hills Municipal Code, at full tenant occupancy, the Center would require 422 parking stalls, resulting in a deficit of 34 stalls. The Applicant prepared a parking study which concludes that utilizing a shared parking approach results in an actual peak parking

SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza)

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demand of 363 parking stalls. Shared parking allows multiple uses within a shopping center to share parking stalls to meet parking demand, assuming those uses have staggered parking demand periods throughout the day. When factoring in the existing vacancies and including a 10% buffer, the result is a surplus of 25 parking stalls.

The Project complies with all requirements of the General Plan Land Use Element and Zoning Code. Table LU-1 of the General Plan and Section 9-29.010 of the Zoning Code identify the purpose and intent of land uses within the Neighborhood Mixed Use designation, which include the creation of attractive neighborhood-level centers that promote a more active, vibrant street life; increase pedestrian activity and reduce vehicular traffic; provide storefront style shopping streets; and/or encourage walking and social interaction. The Project is consistent with and enhances these objectives.

This Project is categorically exempt from CEQA pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities). In addition, staff has determined that the Project, subject to conditions of approval, will not result in any significant adverse impacts to the public, health, safety and general welfare. The design of the Project will provide a compatible land use within the Neighborhood Mixed Use zoning district and will expand the types of facilities and services available within the community. As conditioned, the Project will be a pleasant upgrade to Honali Plaza as the Center continues to provide a mix of retail uses and services.

Therefore, staff recommends approval of the Project, subject to the conditions of approval contained within the proposed Resolutions (Attachments A and B).

AUTHORITY:

Title 9 of the Laguna Hills Municipal Code ("LHMC") contains the City of Laguna Hills Development Code (also commonly referred to as the "Zoning Code" or the "Code").

The process the City must follow in reviewing new development projects is found in Chapter 9-92 of the Code. Section 9-92.080 of the Code grants the Community Development Director the authority to review and approve SDPs for commercial properties with development not exceeding 20,000 square feet. However, the proposed SDP is being considered in conjunction with a request for a PUP, which grants the Planning Agency the authority to review and approve (LHMC 9-92.030).

The process the City must follow in reviewing a Joint Parking Use Permit is found in LHMC Chapter 9-44 Access and Parking, and LHMC Chapter 9-92 Application Process and

SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza)

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Submittal Requirements. LHMC Section 9-44.070 (Joint Use of Parking Facilities) describes how the sharing of parking facilities can be approved, as long as there is sufficient parking for all existing and proposed uses within a site. The Planning Agency has review authority over the PUP process in accordance with LHMC Section 9-92.030.

The findings required for the aforementioned application types are found in Section 9-92.080 of the Code and are listed and discussed in the attached Resolutions. Staff has prepared findings demonstrating the applications comply with the Zoning Code and the General Plan as stated in the proposed Resolutions of Approval for the Site Development Permit (Attachment A) and Joint Parking Use Permit (Attachment B).

BACKGROUND:

Honali Plaza is an approximately 8-acre commercial retail center located on the northwest corner of Alicia Parkway and Hon Avenue in the Neighborhood-Mixed Use (NMU) zoning district. The Center was originally approved by the County of Orange and constructed in the late-1970s under the County's jurisdiction (UP79-8P, SP79-5P, VA79-1P). The Center's site layout has remained unchanged from its original approval, and the property maintains coordinated circulation, parking, and landscaping.

The Center includes six multi-tenant buildings and a Wendy's drive-thru restaurant pad on a separate parcel, with a combined total of approximately 72,202 square feet of retail space divided between 27 tenant spaces. The uses in the Center currently consist of a mix of retail, restaurants, and services uses. An approximately 27,000 square foot 'Major Tenant' space (Building A), formerly the location of Performance Bicycle, is currently vacant. However, a veterinary clinic is interested in leasing approximately 2/3 of the space, and has indicated to staff that they will apply for a Conditional Use Permit soon. The Chevron service station and Alicia Auto Spa carwash on the corner of Alicia Parkway and Hon Avenue are not a part of the Center or Project.

The surrounding area consists of existing single-family homes and the Alicia Parkway I-5 exit to the north, existing single-family homes to the west, and existing commercial retail/office centers to the south and east across Hon Avenue and Alicia Parkway. Figure 1 below is a vicinity map of the Project:

SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza)

March 22, 2022

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The Project also includes the creation of a new plaza/courtyard area located between Building C and Building D (Attachment D; Sheet LC-2.0). The approximately 5,717-square foot area would include seating, a children's play area, and shade structures. The plaza would be well-landscaped with accent trees, pots, and planters, as well as a large olive tree as a centerpiece.

In order to accommodate the proposed courtyard, certain areas of the parking lot will need to be restriped and repaved, resulting in the addition of 22 parking stalls (Attachment D; Sheet A-2). Other site improvements include new and upgraded trash enclosures (Attachment D; Sheets A8.1 – A8.2), which will meet the State's new waste management requirements, and new parking lot lighting (Attachment D; Sheet E-5). The Project also includes new pedestrian pathways that provide connections from existing public sidewalks into the Center. Two new walkways are proposed on Hon Avenue providing pedestrian access to Buildings B and F. A new gate and crosswalk near the front of Building A is also proposed, which will provide access to the Aliso Creek Bikeway.

The Project also includes several improvements requested by the City intended to benefit the surrounding community, which are reflected in Site Development Permit Condition of Approval Nos. 16 and 17. These include:

- Extension of the existing block wall along Katie Avenue to the edge of the property. There is currently an approximately 10-foot gap in the wall with chain link fence as the perimeter boundary.
- Payment of funds to the City in support of planting a robust landscaping hedge within the City-owned parkway along Katie Avenue to enhance the screening behind Building A.
- Extend the existing block wall along the Aliso Creek Bikeway from its current point of termination to the new pedestrian access gate near the front of Building A. This length of wall (approximately 150 linear feet) will measure 6-feet in height on the Center's side.
- Increase the height of the existing block wall along the Aliso Creek Bikeway to 6-feet in height measured from the Center's side.

The proposed upgraded architecture of the buildings, new courtyard area, and various site improvements all complement the existing surrounding land uses and comply with

the development standards in the Zoning Code.

Joint Parking Use Permit

The number of parking stalls required for a particular use or type of business are contained in LHMC Table 9-44.A (Number of Parking Stalls Required). The parking requirements for a business are typically calculated by applying the ratio identified by LHMC Table 9-44.A to the gross floor area of the use. For instance, a 1,000 square foot retail store would require five (5) parking stalls since the parking ratio for general retail uses is one (1) stall per 200 square feet. The Code's approach to determining the amount of parking required for a use assumes businesses utilize 100% of the required parking at all times. This is a common approach that cities utilize in determining the parking needs for non-residential uses, but it can overstate required parking.

For commercial centers, required parking is based on the total parking needed to serve all existing businesses, including vacant storefronts. The parking requirements are compared to the total parking inventory of the center to determine if there is a surplus or deficit of parking stalls. Since commercial centers typically have a variety of uses that have differing parking demand periods during a business day, the Code provides the opportunity for the joint use of parking facilities with an approved parking plan (LHMC Section 9-44.070). This approach to calculating parking demand is generally referred to as "shared parking", which is made possible through the approval of a Joint Parking Use Permit by the Planning Agency.

The Applicant has applied for a Joint Parking Use Permit, which includes an Observed Parking Study ("Study") prepared by RK Engineering Group, Inc. (Attachment E). The Study follows standard Institute of Transportation Engineers practices and guidelines for determining parking demands for a neighborhood shopping center. Parking counts were taken at one-hour intervals on Thursday – Saturday, November 14 – 16, 2019 from 7:00 am to 10:00 pm. These days and hours of observation were chosen to capture the busiest weekday and weekend days of the week. The methodology used in the Study is a blended approach to calculating parking using observed actual demand for existing tenants, plus Code required parking for future tenants. The parking surveys were obtained during typical weather conditions and were completed prior to the COVID-19 Pandemic. The peak parking demand observed for the existing tenants was on Saturday at 2:00 pm, when 94% of the parking lot was occupied.

The Study also included simulated requirements for vacant retail space in the Center, which would not be captured by the observed parking counts. Retail businesses are

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permitted by right in the Neighborhood Mixed Use zoning district and require one parking stall per 200 square feet of gross floor area. At the time of the Study, there was 9,520 square feet of vacant space in the Center, which would require 48 parking stalls when using the Code parking requirements for General Retail. The Study also allocated 100 parking stalls for the proposed 20,000 square foot veterinary clinic planned for Building A.

Furthermore, when analyzing shared parking, the City has typically increased required parking by an additional 10% as a best practice to account for potential parking demand fluctuations. When combining the peak parking demand (Saturday, 2:00pm), the required parking for vacant tenant spaces, and the 10% buffer, the actual parking demand is 363 parking stalls for the Center. With a proposed parking inventory of 388 stalls, a projected surplus of 25 stalls will remain available for the Center, which results in an adequate number of parking stalls to accommodate the proposed use mix of tenants during all times of the year assuming a full tenant occupancy scenario. The approval of the proposed CUP/PUP will reflect the Center's actual parking demand, and enable the Applicant to use the Center's surplus parking capacity for a wide range of potential new tenants that may require a higher parking demand, such as health clubs, medical offices, and restaurants.

General Plan Consistency/Alicia Gateway Opportunity Area

In order to approve the Project, the Planning Agency must find that the Project is consistent with the Laguna Hills General Plan. Staff has concluded that the Project is consistent with several General Plan Goals and Policies. Specifically, the Project:

- Creates diverse and vibrant activity centers and events that bring people together as a community. (Goal LU-1).
 - Promote walkability throughout the community through enhanced pedestrian amenities, attractive streetscapes, plazas, and civic gathering areas (Policy LU-1.4).
 - Increases opportunities for pedestrian and bicycle connections to activity centers by well-designed and shaded pathways (Policy LU-1.6).
- Is compatible and interdependent with neighboring uses (Goal LU-2).
 - Improve connections with surrounding uses by enhancing landscaping,

-
- providing pedestrian connections, incorporating green areas, and planting street trees (Policy LU-2.2).
 - Minimize impacts to surrounding neighborhoods and land uses through context-sensitive site design and architecture (Policy LU-2.8).
 - Proposes infill development that involves the revitalization of property in an economically and environmentally sustainable manner (Goal LU-3).
 - Encourages new development that uses land efficiently and offers flexibility to changing resident and shopping needs, contributing to the long-term vitality of the community (Policy LU-3.2).
 - Ensure safe, efficient pedestrian connections are made between adjacent neighborhoods, sidewalks, parking areas, and entrances to stores (Policy LU-3.3).
 - Incorporate open spaces, plazas, and outdoor dining areas into new development and redevelopment to provide visual relief and community gathering spaces (Policy LU-3.4).
 - Creates a safe, inviting, and functional pedestrian and cyclist environments in new public and private development (Policy LU-3.10).
 - Places a high priority on design, architecture, and landscaping that reflect the community's identity and gracious lifestyle (Goal LU-4).
 - Create distinctive gateway architecture, landscaping, and signs at major entries to the community and in community activity centers (Policy LU-4.1).
 - Encourage developers to create unique project identities that enhance the overall character of the City (Policy LU-4.8).
 - Expands the variety of services, shopping, and entertainment opportunities in the community (Goal LU-6).
 - Facilitates the creation and expansion of private sector businesses and associated local career choices for Laguna Hills residents (Goal LU-7).

- Encourages private property owners to revitalize, upgrade, and beautify aging and underperforming commercial and business areas (Policy LU-7.4).

The proposed Project is also located within the Alicia Gateway Opportunity Area (“AGOA”). As part of the City’s 2009 Comprehensive General Plan Update, the City Council adopted the AGOA, which encompasses the entire Neighborhood Mixed Use zoning district, including Honali Plaza. The Planning Agency must determine if the Project is consistent with the vision for the AGOA, which seeks to create a moderate density center and gathering place by promoting:

- A mix of retail, housing, and office uses;
- Walkable connections, plazas, and green space for community gatherings;
- High-quality design and architecture;
- Orientation of buildings toward the street and pedestrians;
- Accessibility to transit; and
- Connectivity to promote walking from nearby neighborhoods to the Gateway.

The proposed Project is consistent with the vision and requirements of the AGOA. The Project:

- Will continue to add to the mix of land uses in the area and provides new services that are otherwise limited in the NMU zoning district;
- Will be walkable to other existing commercial/retail uses within the AGOA;
- Continues the high-quality design and architecture envisioned for the AGOA and is an aesthetic improvement to the neighborhood while providing a compatible development that respects the existing commercial development on Alicia Parkway and the single-family residential neighborhood north of the Center;
- Will provide outdoor dining areas for gatherings oriented toward Alicia Parkway;

CONCLUSION:

Staff supports the Project as it continues to implement the goals and objectives of the General Plan and Alicia Gateway Opportunity Area. The Project will facilitate outdoor

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gathering opportunities and provides new development opportunities that use land efficiently and offer flexibility to changing resident and shopping needs, contributing to the long-term vitality of the community. The incorporated outdoor courtyard area will provide visual relief and community gathering spaces as well as creating a safe, inviting, and functional pedestrian environment.

Given the results of the Observed Parking Study, it is appropriate to establish a shared parking approach at the Center through the City's Joint Parking Use Permit process and allow the Applicant the opportunity to establish a more efficient approach for the use of the Center's parking supply pursuant to LHMC Section 9-44.070. This approach uses actual parking counts to determine parking need, rather than strictly utilizing the City's standard parking requirements found in Table 9-44.A. The Study demonstrates that the Center's peak parking demand is far below the parking required by Code. Therefore, the approval of the PUP will reflect the Center's actual parking demand, and enable the Applicant to use the Center's surplus parking capacity for a wide range of potential new tenants that may require a higher parking demand.

As a standard City practice for PUPs, staff requires applicants to address future changes in parking demand due to tenant turnover and change in the mix of uses once the PUP has been approved. For instance, Joint Parking Use Permit Condition of Approval No. 12 authorizes the Community Development Director to request an update to the Study if the tenant mixture at any time becomes problematic to the Center's parking and circulation.

With the recommended Conditions of Approval, the Project meets development standards and design guidelines of the Code and meets the goals, policies, and procedures of the General Plan. Therefore, staff recommends approval of the proposed Project.

PUBLIC NOTICE:

Neighborhood Outreach

The Applicant held a virtual neighborhood outreach presentation on March 1, 2021. Outreach notices were sent to property owners within 1,000 feet of the property. The virtual presentation was attended by approximately 10 attendees, and questions and concerns primarily focused on Jordan Market and the potential of loading/unloading areas behind Building A. In the time since the outreach presentation, the Applicant has shared that there is no intention for Jordan Market to move to Building A, and there will

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be no loading/unloading/storage of merchandise behind Building A associated with the proposed veterinary clinic.

Public Notice

The proposed Project was advertised in an adjudicated newspaper of general circulation on March 10, 2022. In addition, approximately 287 property owners within 1,000 feet of the Property and all current tenants of Honali Plaza were mailed a public hearing notice, which exceeds LHMC requirement of mailing hearing notices to property owners within 300 feet of the property boundaries. To date, no comments have been received. Any written comments received will be distributed at the Planning Agency Public Hearing.

CEQA FINDINGS:

Staff has reviewed the proposed Project for compliance with the California Environmental Quality Act (CEQA) and determined that this project is categorically exempt from CEQA pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities). This exemption applies to the permitting or minor alteration of existing structures.

ATTACHMENTS:

- Attachment A – Proposed Resolution of Approval (SDP)
- Attachment B – Proposed Resolution of Approval (PUP)
- Attachment C – Letter of Justification
- Attachment D – Plan Set
- Attachment E – Observed Parking Study

RESOLUTION NO. PA2022-X

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT (SDP) NO. USE-0027-2020, A REQUEST BY GB ARCHITECTURE ON BEHALF OF WARMINGTON PROPERTIES, INC. FOR ARCHITECTURAL AND SITE UPGRADES TO HONALI PLAZA, LOCATED AT 24721 – 24781 ALICIA PARKWAY, INCLUDING AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301 OF TITLE 14, CHAPTER 3 OF THE CALIFORNIA CODE OF REGULATIONS (CLASS 1, EXISTING FACILITIES)

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, GB Architecture, on behalf of Warmington Properties, Inc. (the “Applicant”), has filed an application for Site Development Permit (SDP) No. USE-0027-2020 for a variety of site and architectural improvements to the Honali Plaza, including a comprehensive building façade upgrade, a new courtyard/outdoor experience area, and renovated landscaping at 24721 – 24781 Alicia Parkway (“Project Site” or “Center”), in the Neighborhood Mixed Use (NMU) zoning district (“Project”); and,

WHEREAS, the Project is hereby found to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1, Existing Facilities) of Title 14, Chapter 3 of the California Code of Regulations. This exemption applies to the permitting or minor alteration of existing structures; and,

WHEREAS, the Planning Agency held a duly noticed public hearing and considered public comments and written and oral information and testimony presented by City staff, community residents, and other interested parties at a duly noticed public hearing held on March 22, 2022; and,

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

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The Planning Agency hereby determines that the required findings by the City for approval of Site Development Permit No. USE-0027-2020 have been met and made as follows:

Site Development Permit

1. The site design complies with standards of the Development Code.

The current site design and architecture was entitled and constructed under the jurisdiction of the County of Orange. The Project includes an update to the site design, specifically the outdoor courtyard area, which comply with the development standards of the Neighborhood Mixed Use zoning district, including maximum lot coverage, density/FAR, minimum landscape coverage, and other required development standards. With approval of the proposed Joint Parking Use Permit (USE-0084-2022), the parking inventory allows for the proposed updates.

2. The site is suitable for the proposed development.

The site design aspects of the Project will be compatible with, and not detrimental to, surrounding development and with the overall design quality prevalent in the City. These aspects include setbacks, access, landscaping/lighting, and other architectural site design elements (i.e., height, scale, mass, and appearance). The updated buildings reflect a contemporary architectural theme incorporating visual interest and building articulation. Conditions of approval have been included to ensure the Project will be compatible with the surrounding area with respect to noise, parking, and public safety.

3. The project is consistent with the General Plan and applicable design guidelines.

As part of the City's 2009 Comprehensive General Plan Update, the City Council adopted the Alicia Gateway Opportunity Area (AGOA), which encompasses the entire Neighborhood Mixed Use (NMU) zoning district, including the Project Site. The AGOA/NMU seeks to "create a moderate density center and gathering place by promoting a mix of retail, housing, and office uses; walkable connections, plazas, and green space for community gatherings; high-quality design and architecture; orientation of buildings toward the street and pedestrians; accessibility to transit; connectivity to promote walking from nearby neighborhoods to the Gateway" (General Plan Land Use Element pp. LU-20 – 21). The AGOA designation also promotes the development of vertical and horizontal mixed-use. Allowed uses include commercial, retail, office, and residential; however, standalone residential is prohibited (Laguna Hills General Plan, 2009).

The Project is consistent with the vision and requirements of the AGOA. The Project will continue to add to the mix of land uses in the area and provide new opportunities that are otherwise limited in the NMU zoning district. The Project continues the high-quality design and architecture envisioned for the AGOA and is an aesthetic improvement to the neighborhood. The Project will facilitate outdoor gathering opportunities and provides new development opportunities that uses land efficiently and offers flexibility to changing resident and shopping needs, contributing to the long-term vitality of the community. The outdoor courtyard area will provide visual relief and community gathering spaces as well as creating a safe, inviting, and functional pedestrian environment.

4. The site design and structural components are appropriate for the site and function of the proposed uses.

The Project will be of quality design with an appropriately-scaled framework of architectural and landscaping elements. Although the site design remains generally the same as it's current configuration, the site has been designed to accommodate the proposed outdoor courtyard area. In the event circulation/parking issues occur on the site, Joint Parking Use Permit conditions of approval require the Applicant to resolve such conditions by identifying and implementing appropriate circulation improvements working with the City. The new facilities have been designed to meet all development standards. High-quality development features will be provided throughout the Center through site design (e.g., building and outdoor orientation, walls, and screening), architecture (e.g., mass, scale and form, style, material and color) and landscaping (e.g., screening, and parking lot trees and shade). Development of the Project, as conditioned, will be compatible with, and not detrimental to, surrounding development, and with the overall design quality prevalent in the City.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve Site Development Permit No. USE-0027-2020 subject to the following conditions of approval:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to, each of the following: The Project Applicant, GB Architecture, on behalf of Warmington Properties, Inc., the owner(s) and tenant(s) of the property, and each of their respective successors and assigns.
2. Unless the context dictates otherwise, whenever the term "this Permit" is used in the following Conditions of Approval, it shall collectively refer to the Site

Development Permit (SDP) No. USE-0027-2020 approved pursuant to this Resolution, as well as the plans, studies, and exhibits submitted to the City by the Applicant to describe and depict the improvements to be constructed as a part of the Project, and as otherwise modified by these Conditions of Approval.

3. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
4. Approval of this Permit constitutes approval of the proposed Project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the Project regarding any other applicable ordinance, regulation, or requirement.
5. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.
6. The Applicant shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.
7. The conditions of Project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d),

these conditions constitute written notice of the amount of such fees, and/or exactions. The Applicant is hereby notified that the 90-day protest period in which the Applicant may protest the fees, dedications, reservation, or exactions imposed on this Project through the Conditions of Approval, commencing from the date of approval of the Project, has begun.

8. Pursuant to City Council Resolution No. 2017-07-11-2, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's approval.
9. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from March 22, 2022.

Planning Division

10. Prior to the commencement of any work, the Applicant shall provide a contact number for the public to call concerning dust, noise, or other construction-related impacts. The information shall also be posted on site in a manner approved by the Community Development Director.
11. The Applicant shall maintain the Project Site in compliance with all property maintenance standards of the Laguna Hills Municipal Code ("LHMC") Chapter 9-74, and the regulations set forth therein.
12. The Applicant shall maintain the Project in compliance with the noise standards of the City of Laguna Hills Noise Ordinance (LHMC 5-24). Should the City receive complaints related to noise associated with the Project which are in violation of the Noise Ordinance, the Applicant agrees to promptly implement reasonable noise attenuation measures.
13. Prior to issuance of any grading permits, the Applicant shall submit the Project's grading plan to the Community Development Director for review and approval. The grading plan shall be consistent with the architectural site plan as approved by this Permit to the reasonable satisfaction of the Community Development Director.
14. Prior to the issuance of a building permit, the Applicant shall submit a landscape and irrigation plan to the Community Development Director for review and approval. The plan shall demonstrate compliance with Laguna Hills Municipal Code Chapter 9-46 and 9-47, including sufficient wall screening, landscaping, planter size and shade trees along the site perimeter and within the Project parking lot, installation of "Smart" landscape irrigation controllers, low precipitation-rate sprinkler heads, and water efficient landscaping, as applicable.

15. The Applicant shall deposit with the Community Development Department the estimated reasonable cost necessary to retain a qualified landscape professional to review the Applicant's proposed landscape and irrigation plans, as well as inspect the Applicant-installed landscaping to ensure compliance with the approved landscaped plans. The amount deposited shall be in accordance with a written proposal obtained by the City pursuant to its Purchasing Ordinance. Prior to the issuance of building shell final or issuance of a Certificate of Use or Occupancy permit, the Applicant shall pay the actual cost of landscape plan check and inspection or be entitled to a refund of funds deposited, if any. All required landscaping shall be installed prior to issuance of a Certificate of Use and Occupancy.
16. Prior to the issuance of a building permit, the Applicant shall submit a perimeter wall plan to the Community Development Director for review and approval. The plan shall include section views, elevation views, materials of the walls, and shall demonstrate compliance with Laguna Hills Municipal Code Section 9-40.100. The perimeter wall plan shall incorporate the following:
 - a. Extension of the existing block wall along Katie Avenue to the edge of the property. There is currently an approximately 10-foot gap in the wall with chain link fence as the perimeter boundary.
 - b. Extension of the existing block wall along the Aliso Creek Bikeway from its current point of termination to the new pedestrian access gate near the front of Building A. This length of wall shall measure 6-feet in height on the Center's side.
 - c. Increase the height of the existing block wall along the Aliso Creek Bikeway to 6-feet in height measured from the Center's side.
17. Prior to issuance of a building permit, the Applicant shall make payment of \$6,900 to the City of Laguna Hills for the purchase and installation of a landscaped hedge within the City-owned and maintained parkway along Katie Avenue in order to enhance the screening of loading and unloading areas behind Building A. The hedge will consist of sixty (60) 15-gallon Ficus-Nitida, and will be installed by the City to the satisfaction of the City Engineer.
18. The Center shall be permanently maintained in an orderly fashion by the provision of regular and removal of trash and debris, and comply with all property maintenance standards as required by LHMC Chapter 9-74. Specifically, all business shall be permanently maintained in an orderly fashion by the provision of regular and removal of trash and debris, and all business activities and related services shall be conducted entirely within the tenant space.

19. Deliveries are prohibited between the hours of 10:00pm and 7:00am. Delivered materials shall be promptly stored within the tenant space. No equipment or materials shall be permitted to remain outdoors at any time unless contained within an approved enclosure.

Building Division & Orange County Fire Authority

20. The Applicant shall be responsible for ensuring all applicable building permits are obtained from the City of Laguna Hills, as required by Section 103 of the 2019 California Building Code prior to commencement of any work for which a permit is required.
21. Any required documents submitted for the purpose of building permit issuance shall be accurately labeled and reflect all work, as required by Section 107 of the 2019 California Building Code.
22. All construction shall comply with the applicable California Building, Plumbing, Mechanical, Electrical, and Green Building Codes with regard to the appropriate occupancies for each permit requested.
23. Plans submitted for this Project for the purpose of obtaining a building permit shall comply with California Disabled Accessibility requirements, as required by Chapter 11 of the California Building Code.
24. Prior to the issuance of a building permit, the Applicant shall include a copy of this Permit (the signed resolution of approval) in the City building plan sets submitted for the purpose of obtaining a building permit.
25. Prior to issuance of building permits, Applicant shall submit approvals from the Orange County Fire Authority or provide verification of plan submittal.
26. During construction, adequate emergency access shall be maintained to the site at all times in accordance with any requirements of the Orange County Fire Authority (OCFA).
27. Prior to issuance of building permits, the Applicant shall submit Construction and Demolition Waste Recycling Program paperwork, if applicable, as required by Laguna Hills Municipal Code Chapter 5-48, and to comply with mandates of CalRecycle.

Public Services Department

28. Prior to issuance of any Building Permits the Applicant shall prepare for review and approval by, and to the reasonable satisfaction of, the Community Development Director and the City Engineer a Water Quality Management Plan (WQMP) for all priority projects as defined in the NPDES permits and County

of Orange Model WQMP technical guidance document. The WQMP shall identify Low Impact Development (LID) BMPs and routine structural and non-structural measures specified in the current Orange County Drainage Area Management Plan (DAMP) and the San Diego Regional Water Quality Control Board (SDRWQB) requirements. The WQMP must also:

- a. Address site design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or “zero discharge” areas, conserving natural areas, preserving trees, and retaining existing site hydrology to the maximum extent practicable.
- b. Include a design goal to maintain or replicate the pre-development hydrologic functions through site preservation, infiltration, retention, detention, evapotranspiration, and filtration treatment systems.
- c. Incorporate applicable routine source control BMPs as defined in the DAMP and provide a detailed description of their implementation.
- d. Incorporate applicable treatment control BMPs as defined in the DAMP to the approval of the City Engineer.
- e. Implement Low Impact Development (LID) BMPs to reduce runoff to the maximum extent practicable.
- f. Include full capture trash and debris systems consistent with SDRWQCB Order No. R9-2017-0077 and per the approval of the City Engineer.
- g. Include an Operation and Maintenance (O&M) plan that identifies the mechanism(s) by which long-term O&M of all post construction BMPs will be provided and funded, to include an annual self-certification of maintenance and operational functioning of the BMPs to be issued to the City Engineer.
- h. The Project Site shall meet hydromodification criteria and the Applicant shall document compliance by providing calculations consistent with the Grading Plan and WQMP and in accordance with the SDRWQCB NPDES Order No. R9-2013-0001, Section E.3.c(2), as amended by Order Nos. R9-2015-0001 and R9-2015-0100 Permits. Hydromodification determinations shall be made using the South Orange County Hydrology Model as provided by the County of Orange.

29. Prior to issuance of certificate of use and occupancy, the Applicant shall provide an Americans with Disabilities Act (ADA) site review of existing

pathways, sidewalks and access ramps for both on-site access and adjacent to the site access along the accessible pathways. The accessible pathway shall not include a path within any drive aisle, except as necessary to cross a drive aisle at 90° to the drive aisle. The report shall be prepared by a qualified professional with expertise in the ADA field and shall include an implementation plan to correct all deficiencies noted and as reasonably approved by the City Engineer. Any sidewalk or pathway not in compliance with ADA standards shall be reconstructed to the City's standards.

30. Prior to the issuance of certificate of use and occupancy, the Applicant shall demonstrate compliance with the WQMP in a manner meeting the reasonable satisfaction of the City Engineer, including:
 - i. Demonstration that all structural BMPs described in the WQMP have been implemented, constructed, and installed in conformance with approved plans and specifications.
 - j. Demonstration that the Applicant has complied with and/or is prepared to implement all non-structural BMPs described in the WQMP.
 - k. Demonstration that an adequate number of copies of the project's approved WQMP are available for the future occupants.
 - l. Demonstration that the Applicant has agreed to and recorded CC&R's, an agreement, or another legal instrument approved by the City Attorney, as applicable, requiring the property owner, successors, tenants (if applicable), and assigns to operate and maintain, in perpetuity, the post-construction BMPs described in the WQMP.
31. Prior to the issuance of the certificate of use and occupancy, trash/recycling enclosures shall be constructed in compliance with the City's standards to include an impermeable roof.
32. During the course of the Project construction, the Applicant shall not allow any work to be performed within the public right-of-way until after a Public Property Encroachment Permit has been issued by the City Engineer including the payment of applicable fees and/or deposits as determined by City.
33. During the course of the Project construction, it shall be the Applicant's sole responsibility to protect-in-place existing public improvements. Prior to the issuance of a certificate of use and occupancy, public improvements that are damaged as a result of the project construction shall be promptly repaired or replaced by the Applicant to the reasonable satisfaction of the City Engineer.

34. During the course of the Project construction, no public streets shall be utilized for temporary storage of any construction materials and no vehicles shall be off-loaded or deliveries or filled with materials to be exported by utilizing any public street for a staging area.
35. Prior to the issuance of certificate of use and occupancy, in order to mitigate trash and debris from the Project from entering into the City's storm drain system, the Applicant shall install full capture trash systems at all existing onsite storm drain inlets consistent with SDRWQCB Order No. R9-2017-0077 and per the approval of the City Engineer

PASSED, APPROVED, AND ADOPTED this 22nd day of March, 2022.

DAVE WHEELER, CHAIR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2022-X-X adopted by the Planning Agency of the City of Laguna Hills, California,
at a Regular Meeting thereof held on the 22nd day of March, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MELISSA AU-YEUNG, CITY CLERK

RESOLUTION NO. PA2022-X

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING JOINT PARKING USE PERMIT (PUP) NO. USE-0084-2022, A REQUEST BY GB ARCHITECTURE ON BEHALF OF WARMINGTON PROPERTIES, INC. TO ESTABLISH JOINT USE PARKING FACILITIES AT HONALI PLAZA, LOCATED AT 24721 – 24781 ALICIA PARKWAY, INCLUDING AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301 OF TITLE 14, CHAPTER 3 OF THE CALIFORNIA CODE OF REGULATIONS (CLASS 1, EXISTING FACILITIES)

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, GB Architecture, on behalf of Warmington Properties, Inc. (“the Applicant”), has filed an application for Joint Parking Use Permit (PUP) No. USE-0084-2022, a request to establish Joint Use Parking Facilities to accommodate shared parking for the Honali Plaza, located at 24721 – 24781 Alicia Parkway (“Project Site” or “Center”), in the Neighborhood Mixed Use (NMU) zoning district (“Project”); and,

WHEREAS, the Project is hereby found to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1, Existing Facilities) of Title 14, Chapter 3 of the California Code of Regulations. This exemption applies to the permitting or minor alteration of existing structures; and,

WHEREAS, the Planning Agency held a duly noticed public hearing and considered public comments and written and oral information and testimony presented by City staff, community residents, and other interested parties at a duly noticed public hearing held on March 22, 2022; and,

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

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The Planning Agency hereby determines that the required findings by the City for approval of Conditional Use Permit/Parking Use

Permit (CUP/PUP) No. USE-0082-2022 have been met and made as follows:

Joint Parking Use Permit

1. The proposed Joint Parking Use Permit is consistent with the intent and purpose of the development code.

The City's parking requirements are contained in LHMC Chapter 9-44. The intent of the parking requirements in the development code is to ensure that all land uses provide safe access and on-site circulation with adequate off-street parking facilities. The development code allows for shared use of parking facilities provided that it can be shown that adequate parking for all users is maintained. The Applicant has demonstrated that based upon the existing actual demand at the Center for existing uses, and the code-required parking for vacancies and future uses, there is sufficient parking for the planned tenant mix, including uses that have higher parking ratios such as fitness, medical, and restaurant uses. A comprehensive shared parking plan allows additional flexibility in leasing to a larger variety of users and allows a more efficient use of the existing parking supply. Condition of Approval No. 12 provides the Community Development Director with the ability to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) in the shopping center to ensure the proposed Joint Parking Use Permit remains consistent with the requirements of the development code.

2. The joint parking use permit provides a reasonable and enforceable means for all uses to share parking facilities.

The shared parking approach proposed for the Center is enforceable upon all current and future tenants to ensure the parking is available for the shopping center. Any changes to the property affecting access or parking would require City approval, at which time the impact on shared parking would be evaluated. This permit is binding and enforceable against the property owner and all existing and future tenants per the project conditions of approval. Additionally, the Community Development Director is able to evaluate the available parking supply for any change in tenant mix at the Center as provided for in Condition of Approval No. 12.

3. The requirement for parking established by the joint parking use permit shall assure that the parking demands for the participating uses are continually met.

This permit is binding and enforceable against the Property Owner and all existing and future tenants per the conditions of approval. Additionally, the Community Development Director is able to evaluate the available parking

supply when any change in tenancy, or mix of uses is proposed at the Subject Site as provided for in Condition of Approval No. 12. Therefore, parking demand will continually be met at the Center. Should a parking issue occur resulting from a change in the tenancy or mix of uses, the Community Development Director, per Condition of Approval No. 12, can require the Applicant to provide a parking study to demonstrate that parking is still sufficient.

4. The proposed use is consistent with the General Plan.

The project is consistent with the goals and policies of the General Plan. In particular, with regard to parking, the General Plan under the Mobility Element (M-15) states the importance of utilizing a broad range of parking management tools to balance parking spillover effects and excessive parking requirements, to encourage efficient use of the land. Currently, the subject parking lot is often underutilized. Establishing formal shared parking will allow additional businesses that could not otherwise locate in the Center, utilizing currently underused parking, while still providing adequate parking for all users.

5. The nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

The Project Site is located in the Neighborhood Mixed Use zoning district, adjacent to the Interstate 5 freeway. The Project Site is on the northwest corner of Alicia Parkway and Hon Avenue. The surrounding area consists of existing single-family homes and the Alicia Parkway/I-5 exit to the north, existing single-family homes to the west, and existing commercial retail/office centers to the south and east across Hon Avenue and Alicia Parkway. The Project Site includes six multi-tenant buildings and a Wendy's drive-thru restaurant pad on a separate parcel, with a combined total of approximately 72,202 square feet of retail space divided between 27 tenant spaces. The uses in the Center currently consist of a mix of retail, restaurants, and services uses. The proposal to use shared parking on the Project Site is consistent with the commercial nature of the property's use. Numerous commercial properties within the City utilize shared parking as an opportunity to allow a variety of commercial uses within a shopping center. Conditions of approval ensure the use of shared parking on the site will not be materially detrimental. For example, Condition of Approval No. 12 requires the Property Owner to update the parking and circulation study for the shopping center whenever a change tenancy, or a change in the mix of uses is proposed. These requirements will ensure sufficient parking is available on the site for current and future tenants and uses.

6. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

As described in Finding No. 5 above, surrounding uses include residential, commercial, retail and service uses. The Project Site is 8-acres and improved with six commercial buildings totaling 72,000 square feet. The Project Site is also improved with required landscaping around the perimeter and in interior areas of the site. The Project Site is typical of other commercial shopping centers in Laguna Hills in terms of the nature of the improvements provided that result in a functioning commercial property.

If staff determines insufficient parking exists on a site being considered for new tenants and uses due to the application of the City's standard parking ratios, the City's shared parking regulations contained in LHMC 9-44.070 allow property owners to base parking need on actual demand with the completion of a parking study to determine if a parking surplus exists on the property. The Applicant has submitted a parking study ("Study") in order to evaluate the actual parking demand for the Project Site. When factoring in the proposed site improvements and including a 10% buffer for the Project Site, there is a total parking demand of 363 stalls, resulting in a surplus of 25 parking stalls for the Project Site. Therefore, existing and proposed improvements are sufficient to serve the Project Site. Off-site uses in the vicinity will not be impacted by the proposed shared parking approach since the Project Site will maintain all of the improvements required to function. There are no uses proposed that would need to interface with the site. The existing and proposed uses are typical to those found in other shopping centers in Laguna Hills and do not require any unique or unusual site improvements to operate. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenants or change in use at the Center in the future, to ensure the Applicant's implementation of a shared parking approach will not result in inadequate parking now or in the future.

7. All required development standards prescribed by the Development Code can be achieved.

The proposed joint parking use permit will enable the Property Owner to determine required parking on the Center's actual parking demand, and enable the Property Owner to accommodate a wider range of potential new tenants, broadening the range of services to serve the public, that may require more parking such as health clubs, medical offices, and restaurants. The Applicant, in cooperation with the Property Owner, has submitted a parking study ("Study") in order to evaluate the actual parking demand for the Project Site. When factoring in the proposed site improvements and including a 10% buffer for the Project Site, there is a total parking demand of 363 stalls, resulting in a surplus of 25 parking stalls for the Project Site.

This approach to determining parking needs on a property is authorized by LHMC 9-44.070. Therefore, the Applicant has demonstrated that it can comply with the City's parking requirements. Condition or Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenancy or mix of uses at the Center in the future to ensure the shared parking approach will comply with the requirements of LHMC 9-44.070 in the future.

8. The conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare.

The conditions of approval will ensure that the approval of the Joint Parking Use Permit will not result in the conditions described above. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenant mix at the center and ensure the adequate parking will be available for all uses at the center. The ability to evaluate the center's required parking for any change in mix of uses, and require reasonable mitigation measures based on future updates to the Center's parking study to be implemented by the Applicant will ensure that incompatible conditions with adjacent or abutting uses will not materialize as a result of the approval of a Joint Parking Use Permit, and ensure that the public peace, safety and welfare is maintained.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve Joint Parking Use Permit No. USE-0082-2022 subject to the following conditions of approval:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to, each of the following: The Project Applicant, GB Architecture, on behalf of Warmington Properties, Inc., the owner(s) and tenant(s) of the property, and each of their respective successors and assigns.
2. Unless the context dictates otherwise, whenever the term "this Permit" is used in the following Conditions of Approval, it shall collectively refer to the Conditional Use Permit/Parking Use Permit (CUP/PUP) No. USE-0082-2020 approved pursuant to this Resolution, as well as the plans, studies, and exhibits submitted to the City by the Applicant to describe and depict the improvements to be constructed as a part of the Project, and as otherwise modified by these Conditions of Approval.

3. Unless the context dictates otherwise, whenever the term "Project" is used in the following Conditions of Approval, it shall collectively refer to the plans and exhibits submitted to the City by the Applicant to depict the Project, as modified by these Conditions of Approval, including but not limited to the following: application form (submitted June 9, 2020), Letter of Justification (dated January 18, 2022), and Observed Parking Study conducted by RK Engineering Group, Inc. (dated January 21, 2022).
4. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
5. Approval of this Permit constitutes approval of the proposed Project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the Project regarding any other applicable ordinance, regulation, or requirement.
6. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.
7. The Applicant and Property Owner shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.

8. The conditions of Project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees, and/or exactions. The Applicant is hereby notified that the 90-day protest period in which the Applicant may protest the fees, dedications, reservation, or exactions imposed on this Project through the Conditions of Approval, commencing from the date of approval of the Project, has begun.
9. Pursuant to City Council Resolution No. 2017-07-11-2, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's approval.
10. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from March 22, 2022.
11. Within 48 hours from project approval, the Applicant shall submit to the City a check in the amount of \$50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Exemption.

Planning Division

12. If at any time in the future the Community Development Director determines, in his or her sole discretion, that an updated parking and circulation study is necessary to address parking and/or circulation insufficiencies, issues, complaints, or problems relative to ensuring adequate parking and circulation on the subject property in connection with this Permit, the Applicant shall, at its sole cost and expense, be responsible for the cost of a parking and circulation study prepared by a licensed consultant selected by the City. The Applicant shall, at its sole cost and expense, be responsible for implementation of any reasonable mitigation measures deemed appropriate by the Community Development Director related to such impacts based on the findings of such study.

PASSED, APPROVED, AND ADOPTED this 22nd day of March, 2022.

DAVE WHEELER, CHAIR

ATTEST:

MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2022-X-X adopted by the Planning Agency of the City of Laguna Hills, California,
at a Regular Meeting thereof held on the 22nd day of March, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MELISSA AU-YEUNG, CITY CLERK

January 18, 2022

Jay S. Wu
Senior Planner
Community Development Department
City of Laguna Hills
24035 El Toro Road, Laguna Hills, CA 92653



17985 Sky Park Circle, Suite G
Irvine, California 92614 - 4350
T 714 486 3318 . M 949 338 6420

Project Name: **Honali Plaza Transformation**
Project Address: **24721 – 24781 Alicia Parkway: Honali Plaza**
Subject: **Letter of Justification**
USE-0027-2020 (SDPM/CUP-PUP) HONALI PLAZA
COMPLETENESS REVIEW

Mr. Wu:

The proposed project is the renovation and transformation of an existing shopping center built in the 1970's. As a part of the proposed upgrades, the following items shall be a part of the project:

A Joint Parking Use Permit is proposed and an updated parking study for the entire center has been conducted based on current uses.

1. The updated parking study was conducted prior to the Covid pandemic, Nov. 14, 2019 and reflects accurate peak demands. Based on the attached table 3, mid-day peak illustrates only 88% of capacity. See parking Matrix.
2. The proposed changes shall allow for more efficient layout and driveway flows around the center together with new wayfinding signs.
3. The findings for the joint parking use permit satisfy the city of Laguna Hills required parking for a multi-tenant shopping center.

A Site Development Permit is proposed and shall be consistent with the land use elements of the city's general plan. This renovation shall enhance an existing commercial center and maintain existing compatible uses of the neighborhood mixed use designation.

1. The findings for the SDP satisfy the pedestrian access to the site with improved walkability from adjacent properties and within the shopping center by providing accessible walkways, crossing paths, ramps, and visual wayfinding signs.
2. By providing the upgrades with the architecture style, enhanced landscaping, new lighting, and new outdoor lounge, the project aligns with the Laguna Hills Alicia Gateway Opportunity Area of the general plan.
3. The addition of the courtyard encourages more eating establishments and social interaction, including pedestrian activity within the shopping center which aligns with the goals of the LU-1 Mixed Use designation of the city.

Ownership has operated and maintained the shopping center since its inception and shall continue to do so into the far future. The proposed architecture theme shall incorporate a new more contemporary color scheme with smooth stucco finishes and clean lines with updated metal cornices, stone accents, and

integral color aluminum storefront glazing systems throughout. The proposed improvements shall apply to all existing 6 buildings for consistency and creates a unifying aesthetic for the center.

The buildings shall receive new rooftop equipment screens to meet the city's ordinance. Trash enclosures shall be upgraded with new covers and meet the city's current standards. The landscape shall be remodeled and upgraded including accents in key areas. A new courtyard / lounge is proposed and is an integral part of the landscape renovation.

In addition to these improvements, the Wendy's building will also be undergoing a remodel of their building located on the Eastern side of the property along Alicia Pkwy. The Wendy's operator will perform the work, and we will work closely with them to ensure their remodel is of appropriately scaled architecture and design.

If you have any questions or concerns, please call me.

Sincerely,

Rick Guina, Architect
GB Architecture
Tel: (714) 486-3318
Email: rick@gb-archdesign.com

Copy: Dave Clark, Alicia Center Company
Michael Ramming, Alicia Center Company

ATTACHMENTS:

Exhibit: Parking Study Matrix

Table 3
Honali Plaza
Observed Hourly Parking Demand
Thursday, November 14, 2019

TIME	ZONE 1		ZONE 2		ZONE 3		ZONE 4		10% Increase ⁴	Proposed Vacant Land Use (8,488 s.f.) ¹	Proposed Jordan Market (27,320 s.f.) ²	TOTAL	Percentage Occupied ³
	Reg	♂	Reg	♂	Reg	♂	Reg	♂					
Spaces Provided ⁵	118	2	131	10	91	8	28	0				388	
7:00 AM	4	0	11	0	4	0	1	0	2	42	106	170	44%
8:00 AM	9	0	14	0	9	0	0	0	3	42	106	183	47%
9:00 AM	12	0	28	0	12	1	0	0	5	42	106	206	53%
10:00 AM	32	0	39	2	32	1	0	0	11	42	106	265	68%
11:00 AM	40	0	47	2	41	1	0	0	13	42	106	292	75%
12:00 PM	47	0	64	2	29	0	1	0	14	42	106	305	79%
1:00 PM	63	0	60	5	46	1	0	0	18	42	106	341	88%
2:00 PM	53	0	57	1	53	2	0	0	17	42	106	331	85%
3:00 PM	45	0	46	2	49	0	0	0	14	42	106	304	78%
4:00 PM	28	0	46	2	50	0	1	0	13	42	106	288	74%
5:00 PM	28	0	46	0	50	0	1	0	13	42	106	286	74%
6:00 PM	30	0	48	0	51	0	1	0	13	42	106	291	75%
7:00 PM	21	0	42	0	42	0	1	0	11	42	106	265	68%
8:00 PM	14	0	26	2	25	0	1	0	7	42	106	223	57%
9:00 PM	15	0	20	0	6	0	0	0	4	42	106	193	50%
10:00 PM	7	0	4	0	2	0	0	0	1	42	106	162	42%

¹ The proposed tenant mix includes a total of 8,488 s.f. of vacant space.

² The 27,320 s.f. of proposed Jordan Market (units 24721A and 24721B) requires 106 parking spaces, per COUO.

³ Includes 8,488 s.f. of proposed vacant space and 27,320 s.f. of proposed Jordan Market.

⁴ A ten percent (10%) increase was added to the observed parking demand in order to account for potential parking demand fluctuations.

⁵ The additional twenty-two (22) parking spaces are located alongside Buildings A and E, in Zone 3; and alongside the proposed courtyard, in Zone 2.

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 JN:0896-2019-02

Table 4
Honali Plaza
Observed Hourly Parking Demand
Friday, November 15, 2019

TIME Spaces Provided ⁵	ZONE 1		ZONE 2		ZONE 3		ZONE 4		10% Increase ⁴	Proposed Vacant Land Use (8,488 s.f.) ¹	Proposed Jordan Market (27,320 s.f.) ²	TOTAL 388	Percentage Occupied ³
	Reg	♣	Reg	♣	Reg	♣	Reg	♣					
7:00 AM	5	0	12	0	2	0	0	0	2	42	106	169	44%
8:00 AM	14	0	24	2	8	0	0	0	5	42	106	201	52%
9:00 AM	23	0	35	0	23	0	0	0	8	42	106	237	61%
10:00 AM	36	0	44	3	35	0	1	0	12	42	106	279	72%
11:00 AM	46	0	52	3	38	0	0	0	14	42	106	301	78%
12:00 PM	52	0	71	6	42	0	0	0	17	42	106	336	87%
1:00 PM	60	0	75	3	47	1	2	0	19	42	106	355	91%
2:00 PM	57	0	55	1	45	1	2	0	16	42	106	325	84%
3:00 PM	49	0	58	2	47	2	1	0	16	42	106	323	83%
4:00 PM	42	0	56	2	60	0	1	0	16	42	106	325	84%
5:00 PM	35	0	53	1	55	1	2	0	15	42	106	310	80%
6:00 PM	31	0	61	3	54	2	1	0	15	42	106	315	81%
7:00 PM	21	0	43	0	38	0	1	0	10	42	106	261	67%
8:00 PM	25	0	46	1	17	0	1	0	9	42	106	247	64%
9:00 PM	14	0	28	0	2	0	1	0	5	42	106	198	51%
10:00 PM	7	0	14	0	3	0	1	0	3	42	106	176	45%

¹ The proposed tenant mix includes a total of 8,488 s.f. of vacant space.

² The 27,320 s.f. of proposed Jordan Market (units 24721A and 24721B) requires 106 parking spaces, per COUO.

³ Includes 8,488 s.f. of proposed vacant space and 27,320 s.f. of proposed Jordan Market.

⁴ A ten percent (10%) increase was added to the observed parking demand in order to account for potential parking demand fluctuations.

⁵ The additional twenty-two (22) parking spaces are located alongside Buildings A and E, in Zone 3; and alongside the proposed courtyard, in Zone 2.

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 JN:0896-2019-02

Table 5
Honali Plaza
Observed Hourly Parking Demand
Saturday, November 16, 2019

TIME	ZONE 1		ZONE 2		ZONE 3		ZONE 4		10% Increase ⁴	Proposed Vacant Land Use (8,488 s.f.) ¹	Proposed Jordan Market (27,320 s.f.) ²	TOTAL	Percentage Occupied ³
	Reg	♣	Reg	♣	Reg	♣	Reg	♣					
Spaces Provided ⁵	118	2	131	10	91	8	28	0				388	
7:00 AM	3	0	12	0	0	0	1	0	2	42	106	166	43%
8:00 AM	10	0	18	0	1	0	1	0	3	42	106	181	47%
9:00 AM	23	0	37	0	23	0	1	0	8	42	106	240	62%
10:00 AM	33	0	48	0	30	1	0	0	11	42	106	271	70%
11:00 AM	51	0	59	2	34	2	1	0	15	42	106	312	80%
12:00 PM	68	0	58	1	42	1	1	0	17	42	106	336	87%
1:00 PM	73	2	62	1	46	0	1	0	19	42	106	352	91%
2:00 PM	58	0	66	3	65	2	1	0	20	42	106	363	94%
3:00 PM	44	0	45	0	65	1	1	0	16	42	106	320	82%
4:00 PM	38	0	42	1	61	1	1	0	14	42	106	306	79%
5:00 PM	42	0	39	0	43	2	1	0	13	42	106	288	74%
6:00 PM	26	0	33	0	27	1	1	0	9	42	106	245	63%
7:00 PM	25	0	31	0	22	0	1	0	8	42	106	235	61%
8:00 PM	24	0	20	1	15	0	1	0	6	42	106	215	55%
9:00 PM	15	0	19	1	20	0	0	0	6	42	106	209	54%
10:00 PM	18	0	7	0	22	0	0	0	5	42	106	200	52%

¹ The proposed tenant mix includes a total of 8,488 s.f. of vacant space.

² The 27,320 s.f. of proposed Jordan Market (units 24721A and 24721B) requires 106 parking spaces, per COUO.

³ Includes 8,488 s.f. of proposed vacant space and 27,320 s.f. of proposed Jordan Market.

⁴ A ten percent (10%) increase was added to the observed parking demand in order to account for potential parking demand fluctuations.

⁵ The additional twenty-two (22) parking spaces are located alongside Buildings A and E, in Zone 3; and alongside the proposed courtyard, in Zone 2.

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 JN:0896-2019-02

PROJECT INFORMATION

PROJECT ADDRESS:	24724 CALLE ALPINEWAY, LAGUNA HILLS, CA 92653
PROJECT DESCRIPTION:	-LANDSCAPE WORK -BUILDING FACADE RENOVATION (NO PAINT) -REPAIRS TO SQUARE FOOTING (NO CHANGE IN USE) -CREATE A COURTYARD (OUTDOOR PUBLIC USE) -REPAIRS TO EXISTING SIDEWALKS -LANDSCAPE LIGHTING -LANDSCAPE UPGRADES -LIGHTING UPGRADES -PAVING UPGRADES -PAVING ACCESSIBLE PATH OF TRAVEL
DATE:	02.25.20A
DRAWN BY:	RAZ, S.M
DATE:	02.25.20A
DESIGNED BY:	RAZ, S.M
OCCUPANCY:	
AREA CALCULATIONS	
DATE:	04.10.AM 9:01 FT.
EXISTING BUILDING AREA:	BUILDING A: ONE STORY: 27,000 S.F. BUILDING B: ONE STORY: 15,000 S.F. BUILDING C: ONE STORY: 12,000 S.F. BUILDING D: ONE STORY: 2,000 S.F. BUILDING E: ONE STORY: 7,200 S.F. BUILDING F: ONE STORY: 1,200 S.F.
PROPOSED NEW OUTDOOR AREA:	5,775 SQ. FT.

AREA CALCULATIONS

OT SIZE

347,469 SQ. FT.

EXISTING BUILDING AREAS

BUILDING A: ONE STORY; 7,000 S.F.
BUILDING B: ONE STORY; 16,000 S.F.
BUILDING C: ONE STORY; 120 S.F.
BUILDING D: ONE STORY; 120 S.F.
BUILDING E: ONE STORY; 120 S.F.
BUILDING F: ONE STORY; 120 S.F.

PROPOSED NEW OUTDOOR AREA 5,773 SQ. FT.

EXISTING BUILDING AREAS

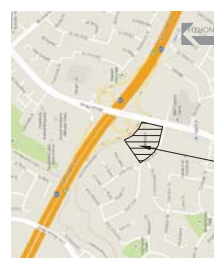
BUILDING C: ONE STORY: 7,200 S.F.
BUILDING D: ONE STORY: 7,200 S.F.
BUILDING E: ONE STORY: 7,200 S.F.
BUILDING F: ONE STORY: 7,200 S.F.

PROPOSED NEW OUTDOOR AREA 5,773 SQ. FT.

PROPOSED NEW OUTDOOR AREA 5,773 SQ. FT.

VICINITY MAP

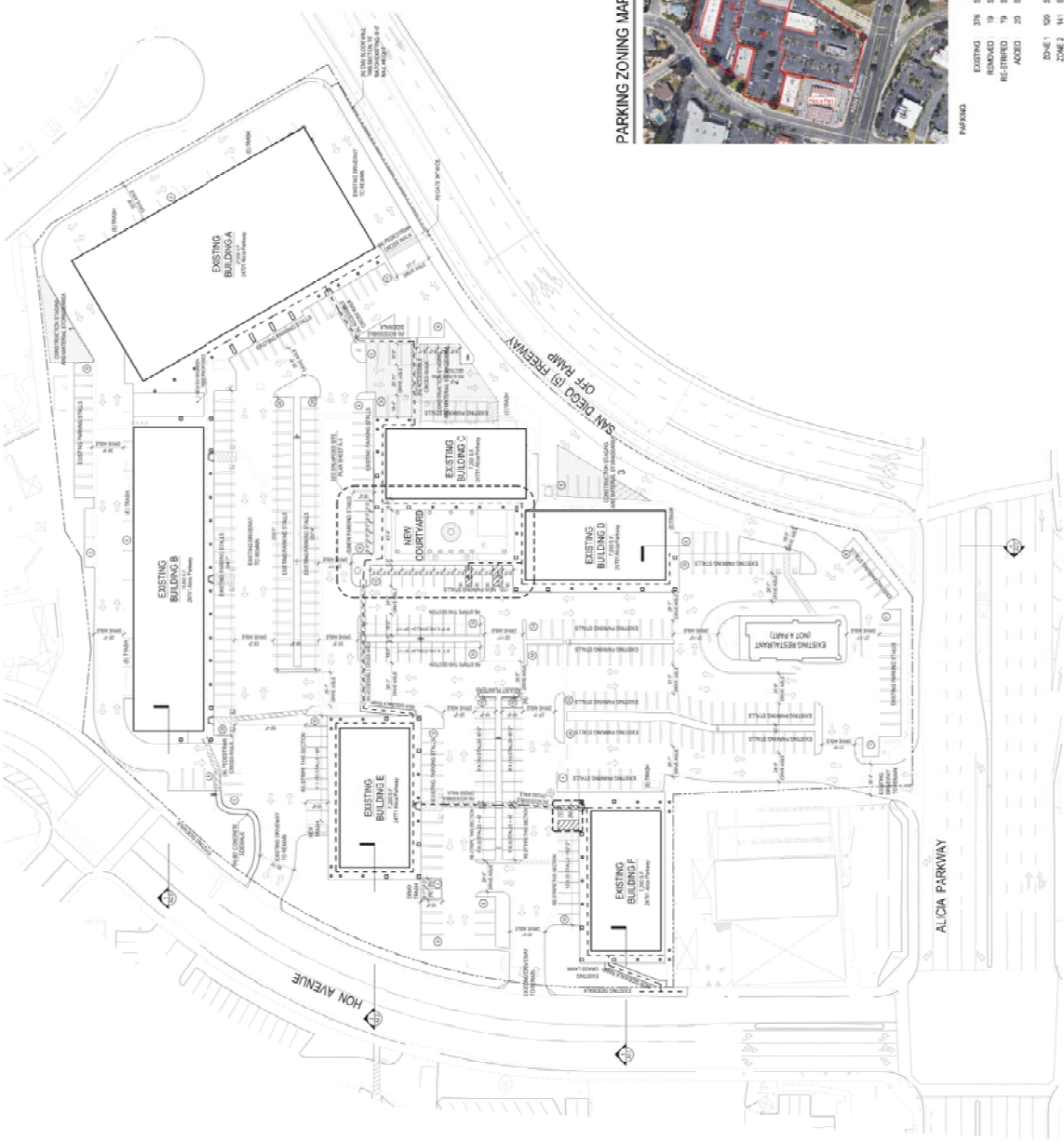
/ICINITY MAP



PROJECT SITE LOCATION
1721-24781 AURORA PARKWAY | AGLINA HILLS, CA 92653

EXISTING SITE PLAN

CASE: 47 - 47037



PROPOSED SITE PLAN
SCALE: 1" = 40'-0"



PARKING

EXISTING	376	SPACES
REMOVED	70	SPACES
RE-SPACED	70	SPACES
ADDED	20	SPACES
TOTAL: 306 SPACES		
ZONE 1	100	SPACES
ZONE 2	141	SPACES
ZONE 3	90	SPACES
ZONE 4	20	SPACES
TOTAL PROPOSED STALLS: 388 SPACES INCLUDING ADA		

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

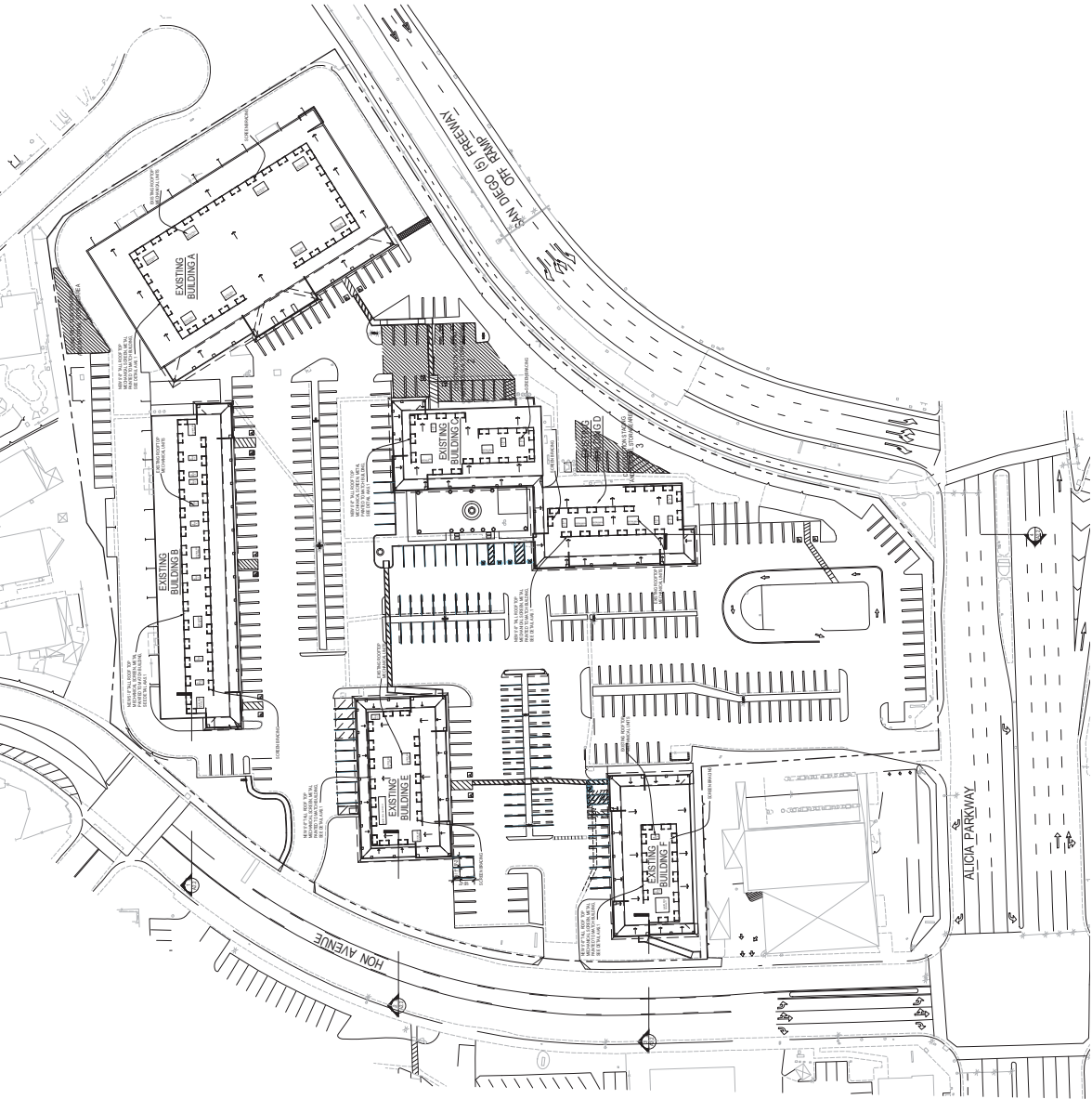
24761 ALICIA PARKWAY, LAGUNA HILLS, CALIFORNIA

A-2
PROJECT # 30021



JANUARY 12, 2022





LINE OF SIGHT SITE PLAN
SCALE 1" = 40'-0"

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA

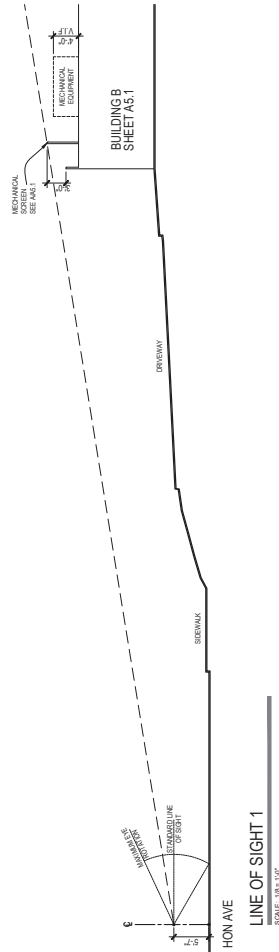
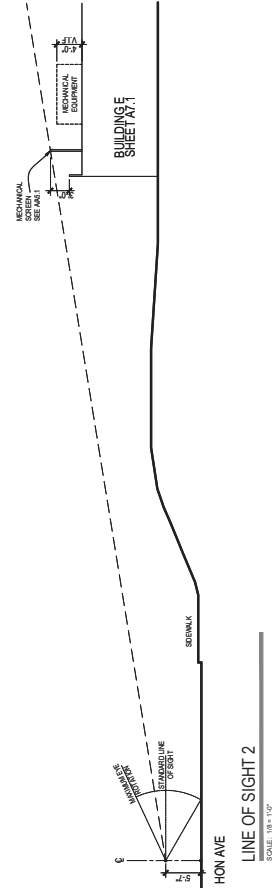
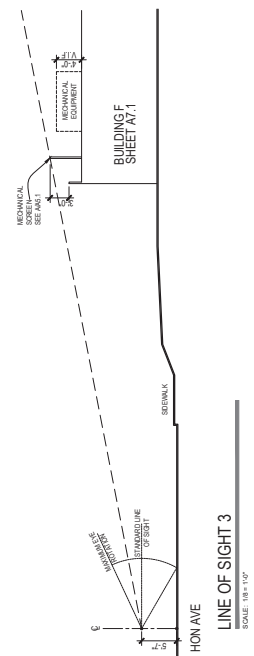
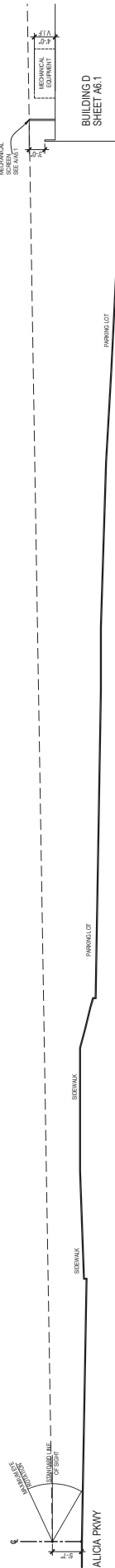


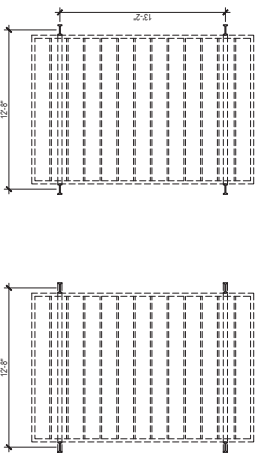
SEPTEMBER 23, 2021



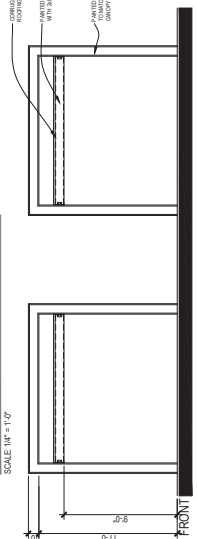
17000 Sky Park Circle, Suite 100
Irvine, California 92614-4300
714.448.2019 · M-F 9AM-5PM

A-2.1
PROJECT # 190701

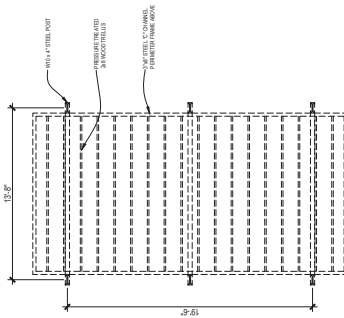




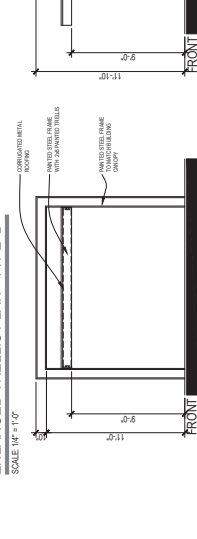
ENLARGED TRELLIS PLAN - TYPE A
SCALE 1/4" = 1'-0"



TRELLIS ELEVATIONS - TYPE A
SCALE 1/4" = 1'-0"



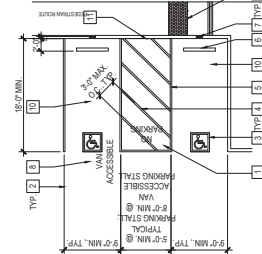
ENLARGED TRELLIS PLAN - TYPE B
SCALE 1/4" = 1'-0"



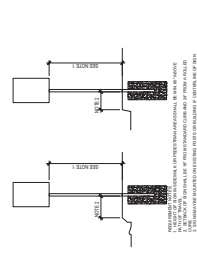
TRELLIS ELEVATIONS - TYPE B
SCALE 1/4" = 1'-0"

ACCESSIBLE PARKING KEY NOTES

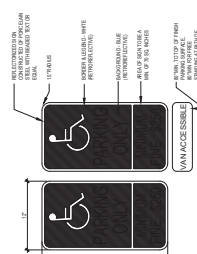
1. 17" MINIMUM SIDEWALK CLEARANCE
2. DIMENSION TO CENTERLINE OF DRIVE
3. 12" MINIMUM SIDEWALK CLEARANCE
4. 12" MINIMUM SIDEWALK CLEARANCE
5. 12" MINIMUM SIDEWALK CLEARANCE
6. 12" MINIMUM SIDEWALK CLEARANCE
7. 12" MINIMUM SIDEWALK CLEARANCE
8. 12" MINIMUM SIDEWALK CLEARANCE
9. 12" MINIMUM SIDEWALK CLEARANCE
10. 12" MINIMUM SIDEWALK CLEARANCE
11. 12" MINIMUM SIDEWALK CLEARANCE



A ACCESSIBLE PARKING
SCALE 1/4" = 1'-0"



B SIGN MOUNTING
SCALE 1/4" = 1'-0"



C ACCESSIBLE PARKING SPACE SIGNAGE
SCALE 1/4" = 1'-0"



A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY - LAGUNA HILLS - CALIFORNIA

SEPTEMBER 25, 2021

GB ARCHITECTURE
17000 Skyway Circle, Suite 100
Irvine, California 92614-4300
714.440.3374 • M-F 9:00 AM - 5:00 PM

A-3
PROJECT # 190701

BUILDING D
SEE SHEET A6.1

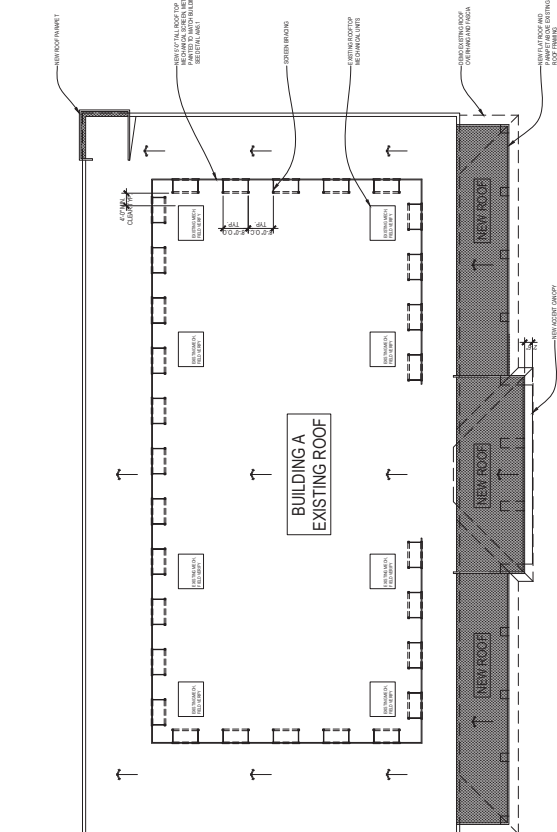
ENLARGED PLAZA PLAN
SCALE 1/8" = 1'-0"

BUILDING C
SEE SHEET A6.1

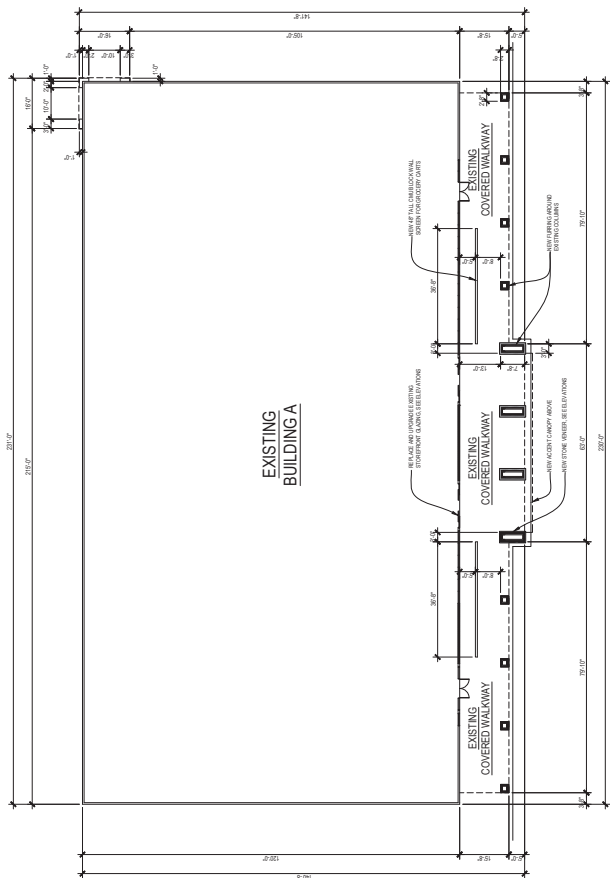
THE HONALI PLAZA

24761 ALICIA PARKWAY . LAGUNA HILLS . CALIFORNIA

SEPTEMBER 23, 2021



PROPOSED BUILDING ROOF PLAN A



PROPOSED BUILDING FLOOR PLAN A
SCALE: 1/16" = 1'-0"

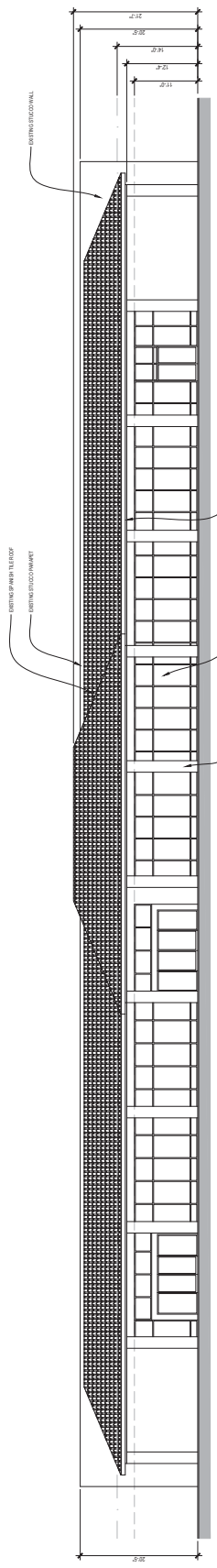


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714.448.2010 M-F 9AM-5PM

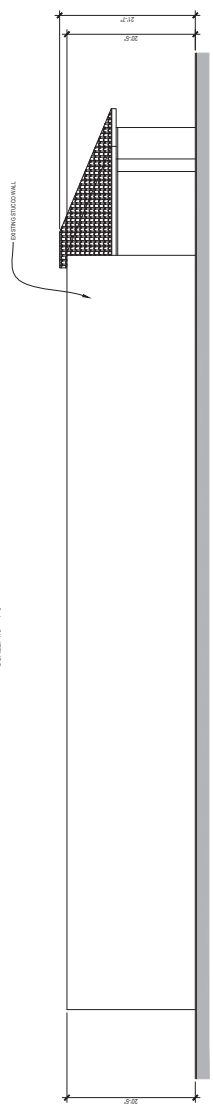
A-4.2
PROJECT # 19001

EXISTING BUILDING A ELEVATIONS
A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL
THE HONALI PLAZA
24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA

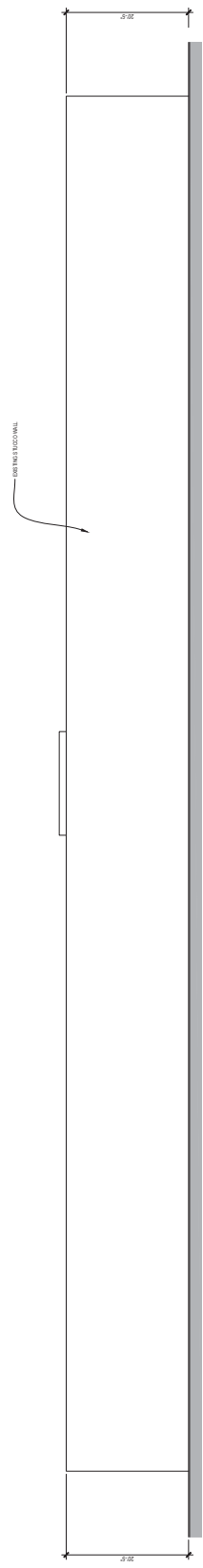
SEPTEMBER 23, 2021



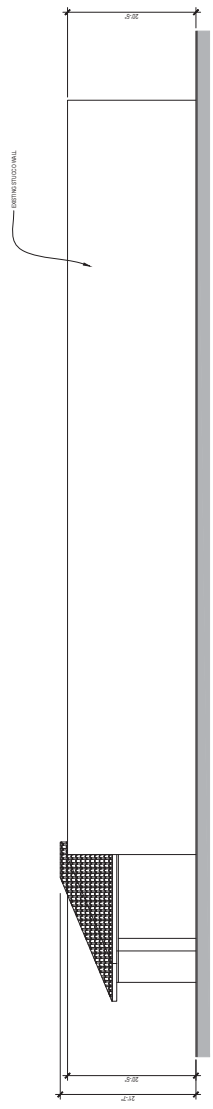
FRONT ELEVATION
SCALE: 1/8" = 1'-0"



LEFT ELEVATION
SCALE: 1/8" = 1'-0"



REAR ELEVATION
SCALE: 1/8" = 1'-0"



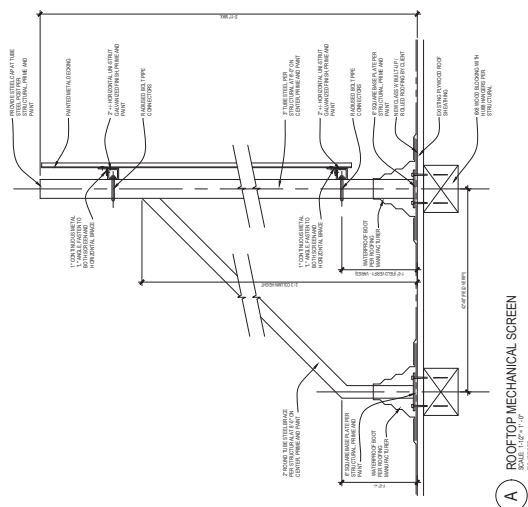
RIGHT ELEVATION
SCALE: 1/8" = 1'-0"



PROPOSED BUILDING A ELEVATIONS

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

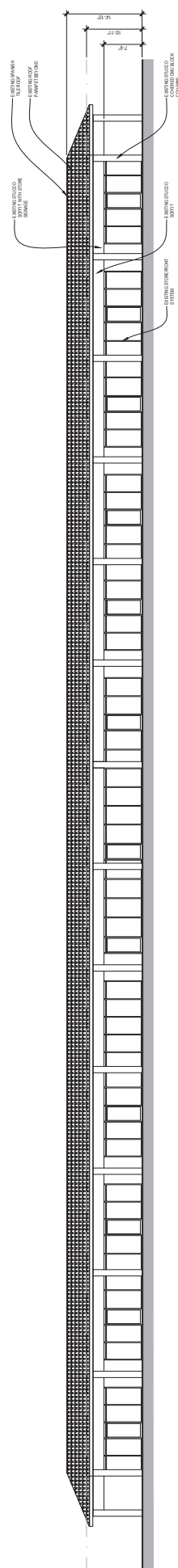
THE HONALI PLAZA



THE HONALI PLAZA

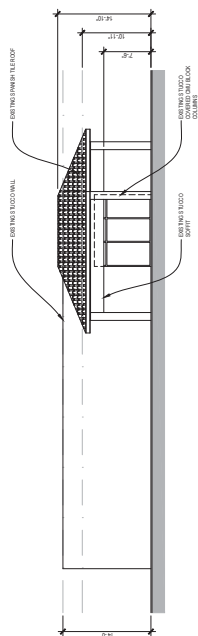
24761 ALICIA PARKWAY . LAGUNA HILLS . CALIFORNIA

SEPTEMBER 23, 2021



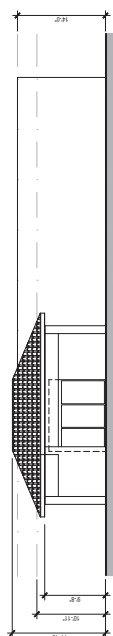
FRONT ELEVATION

SCALE 1/8" = 1'-0"



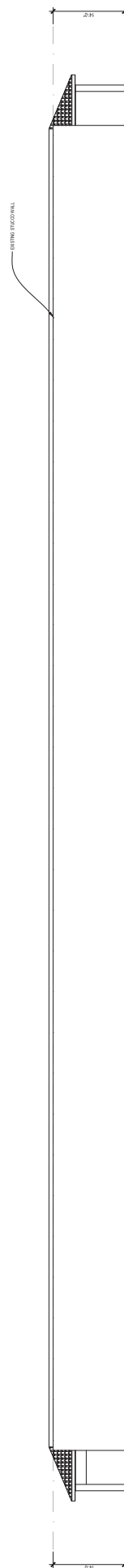
LEFT ELEVATION

SCALE: 1" = 1'-0"



RIGHT ELEVATION

SCALE: 1/8" = 1'-0"



REAR ELEVATION

CASE 182 = 1.00

EXISTING BUILDING ELEVATIONS

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JANUARY 12, 2022

Packet Pg. 699





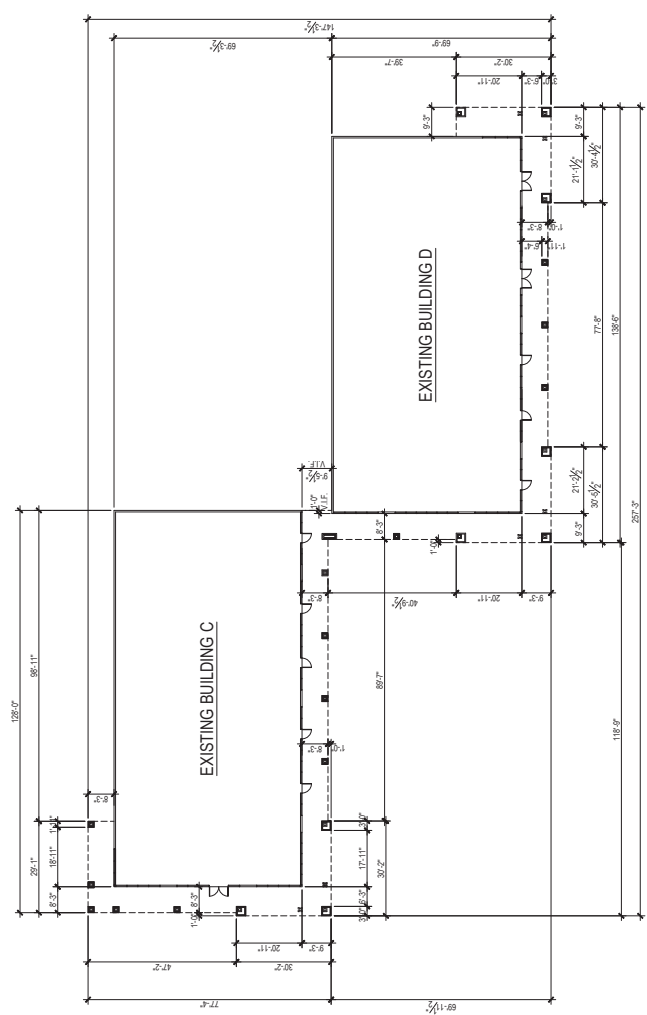
A-6.1
PROJECT # 19001

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

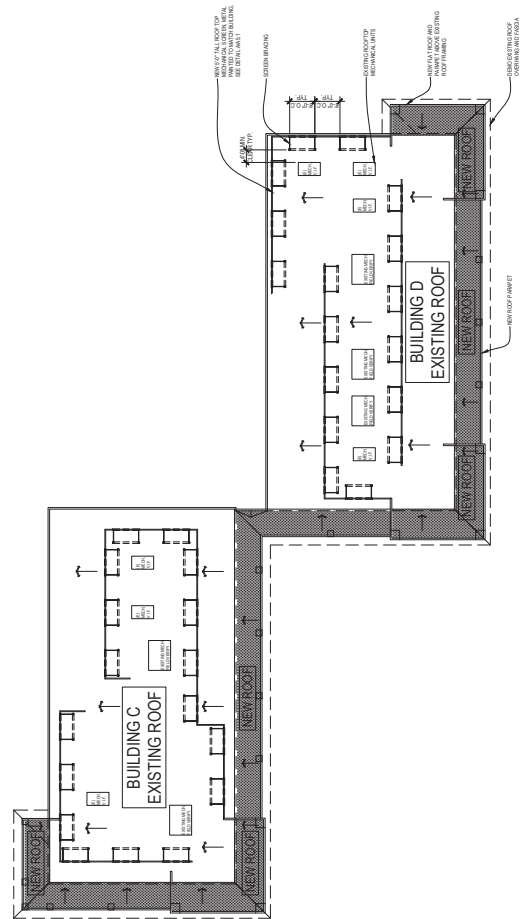
THE HONALI PLAZA

24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA

SEPTEMBER 23, 2021



PROPOSED BUILDING FLOOR PLAN C + D
SCALE: 1/8" = 1'-0"



PROPOSED BUILDING ROOF PLAN C + D
SCALE: 1/8" = 1'-0"

EXISTING C + D ELEVATIONS

A RETAIL TRANSFORMATION FOR WASHINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY . LAGUNA HILLS . CALIFORNIA

SEPTEMBER 23, 2021



EXISTING C + D ELEVATIONS

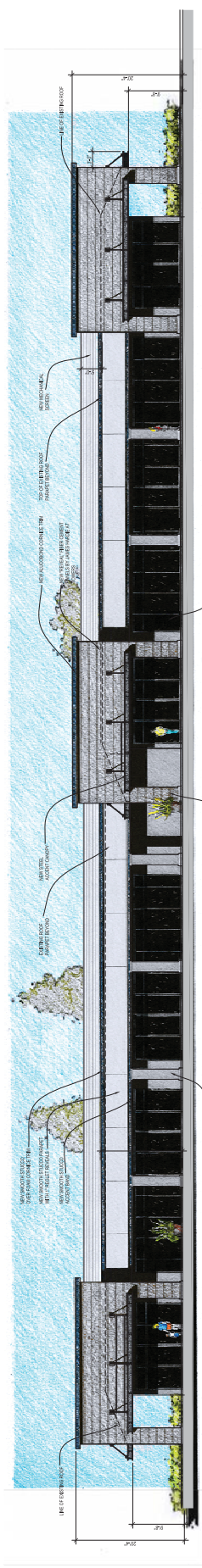
PROPOSED BUILDING C & D ELEVATIONS

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

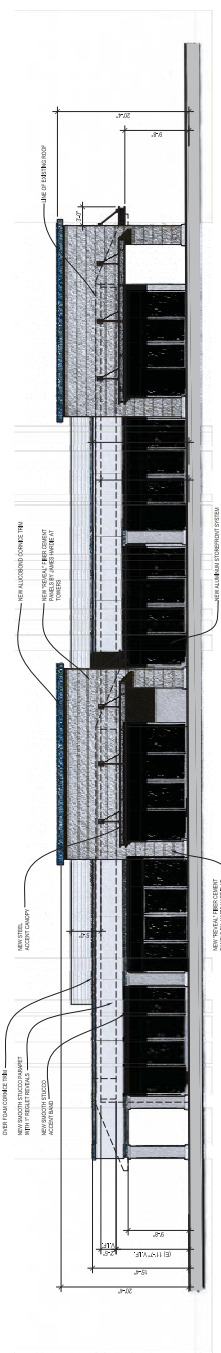
THE HONALI PLAZA

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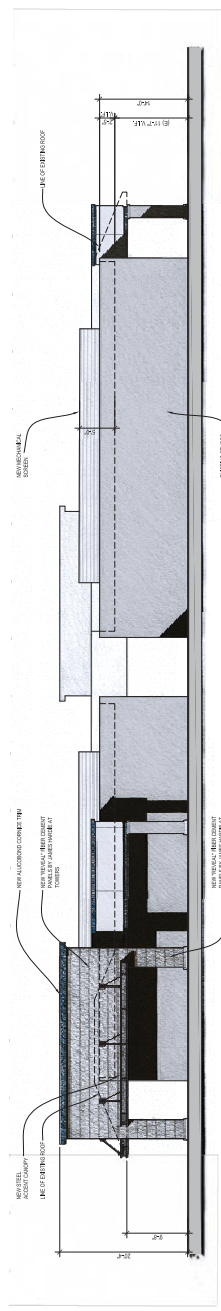
JANUARY 12, 2022



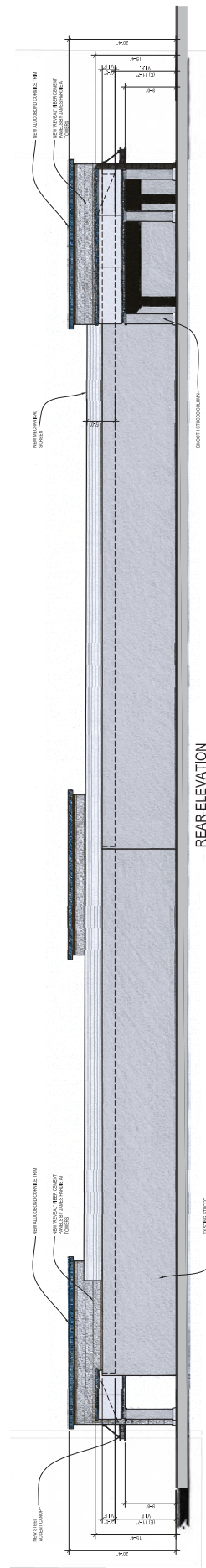
FRONT ELEVATION
SCALE: 1/8" = 1'-0"



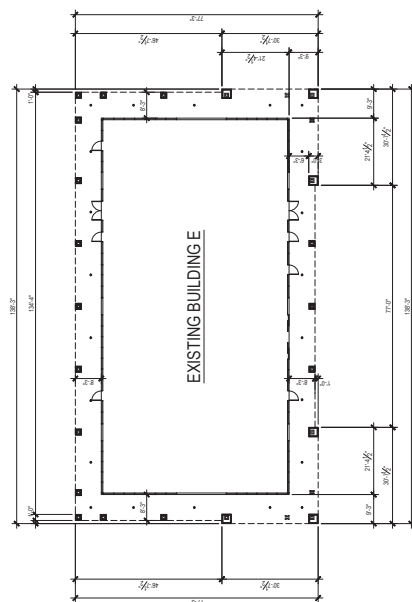
LEFT ELEVATION
SCALE: 1/8" = 1'-0"



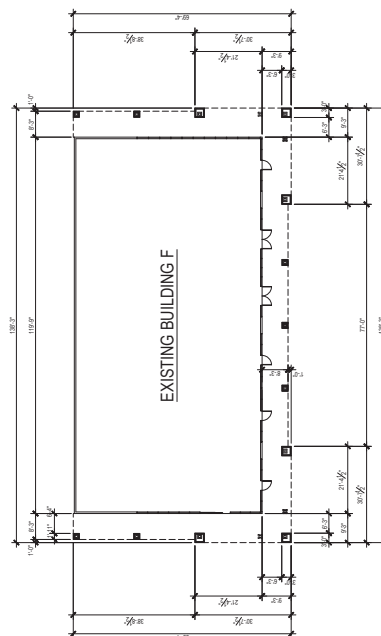
RIGHT ELEVATION
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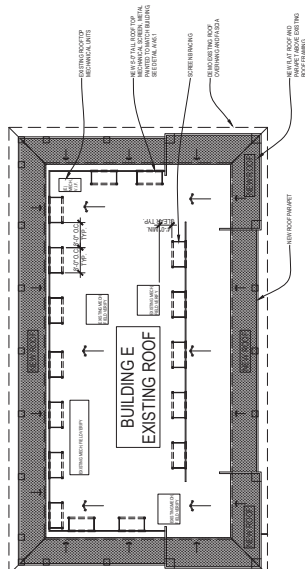
REAR ELEVATION
SCALE: 1/8" = 1'-0"



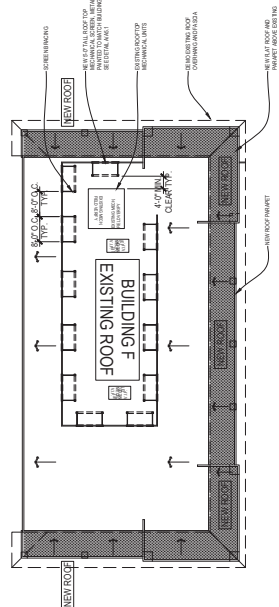
PROPOSED BUILDING FLOOR PLANE



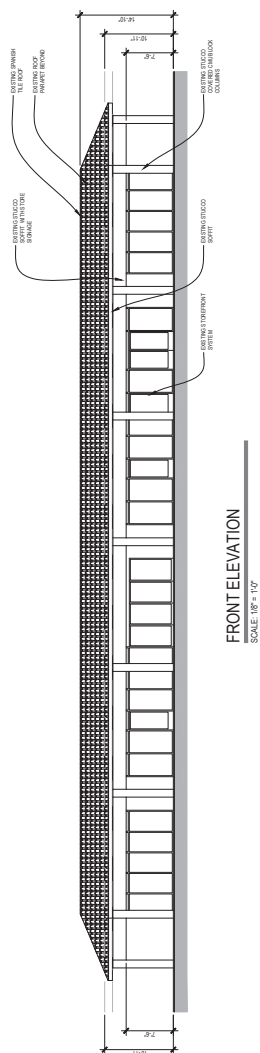
PROPOSED BUILDING FLOOR PLAN F



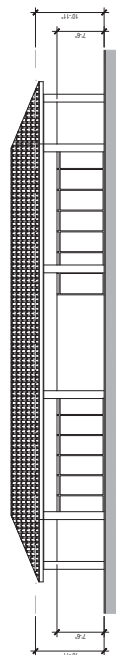
PROPOSED BUILDING ROOF PLANE
SCALE: 1/16" = 1'-0"



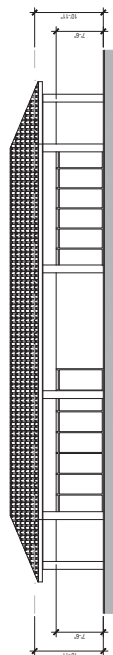
PROPOSED BUILDING ROOF PLAN F



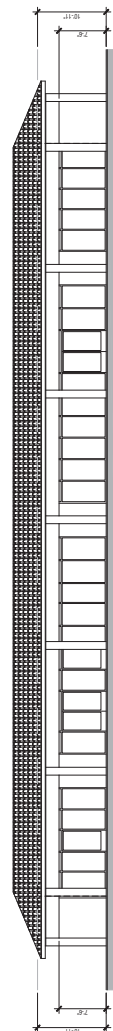
FRONT ELEVATION



LEFT ELEVATION



RIGHT ELEVATION



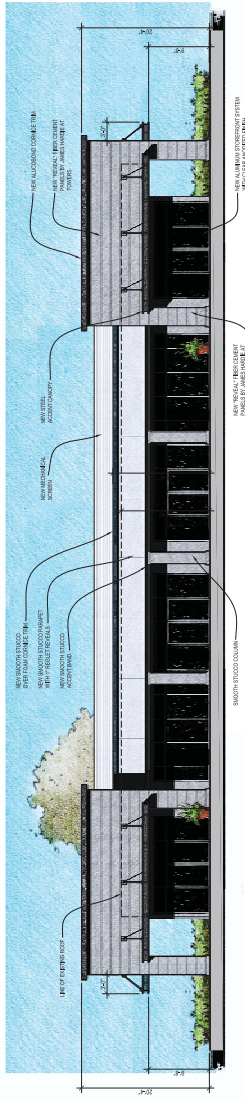
REAR ELEVATION

EXISTING ELEVATIONS

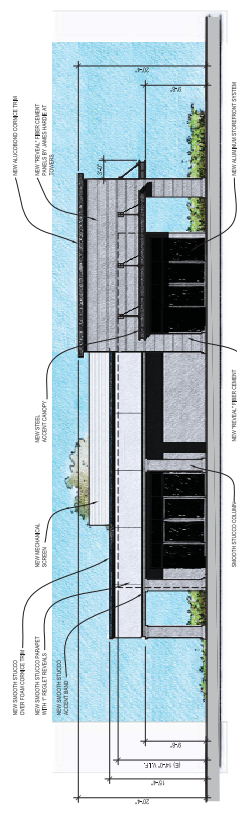
A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

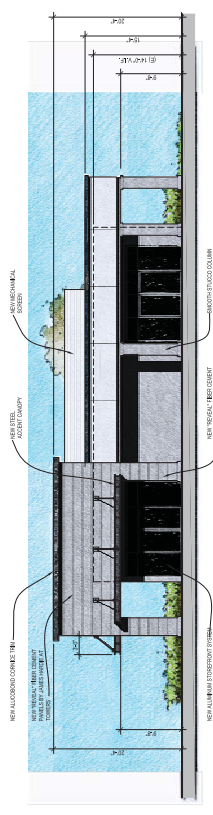
24761 ALICIA PARKWAY . LAGUNA HILLS . CALIFORNIA



FRONT ELEVATION
SCALE: 1/8" = 1'-0"



LEFT ELEVATION
SCALE: 1/8" = 1'-0"



RIGHT ELEVATION
SCALE: 1/8" = 1'-0"



REAR ELEVATION
SCALE: 1/8" = 1'-0"

PROPOSED BUILDING ELEVATIONS

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA



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Irvine, California 92614 • 949
1774-6833 FAX • 949 258-6620

A-7.3
PROJECT # 190701

JANUARY 12, 2022

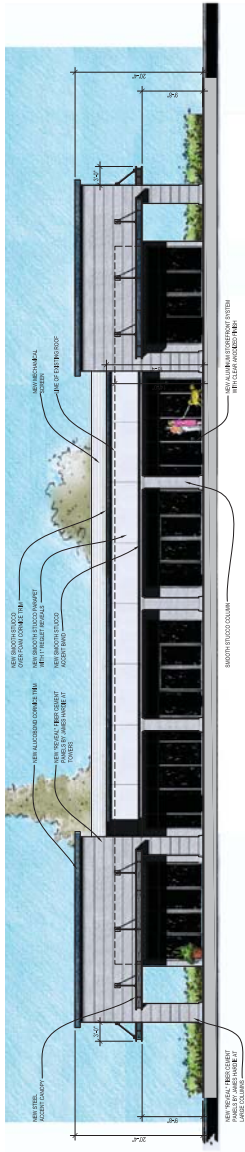
PROJECT # 190101

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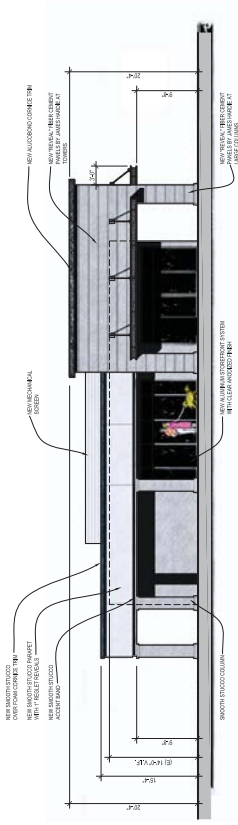
SEPTEMBER 23, 2021



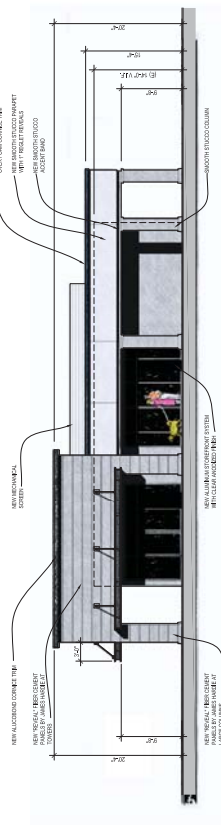
EXISTING ELEVATIONS



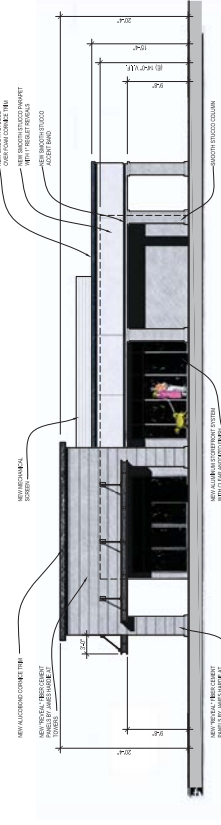
FRONT ELEVATION
SCALE: 1/8" = 1'-0"



LEFT ELEVATION
SCALE: 1/8" = 1'-0"



RIGHT ELEVATION
SCALE: 1/8" = 1'-0"



REAR ELEVATION
SCALE: 1/8" = 1'-0"

PROPOSED BUILDING ELEVATIONS

A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA

JANUARY 12, 2022



A-7.5

PROJECT # 190701

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1774-6813 • M-F 9AM-5PM

PLAN GENERAL NOTES

- 1. GENERAL CONTRACTOR TO VERIFY ALL EXISTING CONDITIONS IN THE FIELD PRIOR TO CONSTRUCTION. ALL DISCREPANCIES TO BE REPORTED TO THE ARCHITECT IMMEDIATELY.
- 2. ALL MATERIALS AND FINISHES TO MATCH EXISTING AS FURNISHED BY BUILDING CODES.

PLAN KEY NOTES

- 1. EXISTING CONCRETE WALL
- 2. NEW 1/2" CMU BLOCK WALL
- 3. EXISTING CURB
- 4. NEW 1/2" CMU
- 5. NEW CONCRETE APRON, AS NEEDED FIELD VERIFY.
- 6. NEW 1/2" REINFORCED STEEL POST FASTENED TO CMU WALL AT 2' LOCATIONS PER DETAIL.
- 7. NEW 1/2" STEEL BEAM ABOVE.
- 8. NEW 1/2" STEEL BEAM ABOVE.
- 9. EXISTING WALLS TO MATCH EXISTING.
- 10. NEW 1/2" REINFORCED STEEL POST FASTENED TO CMU WALL AT 2' LOCATIONS PER DETAIL.
- 11. NEW 1/2" GALVANIZED STEEL BEAM.

ELEVATION NOTES

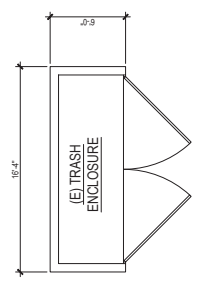
- 1. EXISTING WALLS TO MATCH EXISTING AS FURNISHED BY BUILDING CODES.
- 2. NEW 1/2" CMU BLOCK WALL.
- 3. EXISTING CURB.
- 4. NEW 1/2" CMU.
- 5. NEW CONCRETE APRON, AS NEEDED FIELD VERIFY.
- 6. NEW 1/2" REINFORCED STEEL POST FASTENED TO CMU WALL AT 2' LOCATIONS PER DETAIL.
- 7. NEW 1/2" STEEL BEAM ABOVE.
- 8. NEW 1/2" STEEL BEAM ABOVE.
- 9. EXISTING WALLS TO MATCH EXISTING.
- 10. NEW 1/2" REINFORCED STEEL POST FASTENED TO CMU WALL AT 2' LOCATIONS PER DETAIL.
- 11. NEW 1/2" GALVANIZED STEEL BEAM.

ELEVATION KEY NOTES

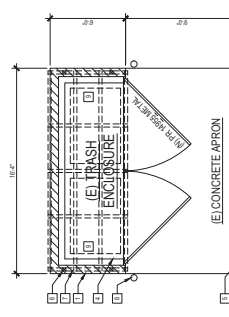
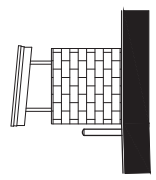
- 1. EXISTING CONCRETE WALL, PATCH AND PAINT.
- 2. NEW CMU WALL, PATCH AND PAINT.
- 3. NEW METAL POST, PAINT FINISH PER OWNER.
- 4. NEW METAL BEAM, PAINT FINISH PER OWNER.
- 5. NEW CORRUGATED METAL ROOF, PAINT FINISH PER OWNER.
- 6. CMU
- 7. NEW CORRUGATED METAL DOOR, PAINT FINISH PER OWNER.
- 8. NEW 1/2" REINFORCED STEEL POST FASTENED TO CMU WALL AT 2' LOCATIONS PER DETAIL.
- 9. EXISTING CURB TO REMAIN.

ROOF KEY NOTES

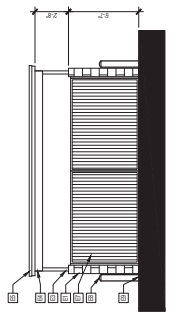
- 1. EXISTING METAL ROOF TO REMAIN AND REPAIR AS NEEDED.
- 2. NEW METAL ROOF TO MATCH EXISTING CORRUGATED METAL BY "BULLOCK ORIGINAL" UL 58 RESISTANCE RATED.
- 3. EXISTING METAL POST FASTENED TO CMU WALL.
- 4. EXISTING METAL BEAM.



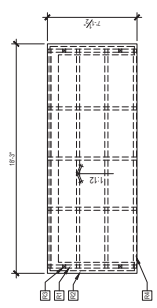
BUILDING C
EXISTING TRASH ENCLOSURE PLAN
SCALE: 1/4" = 1'-0"



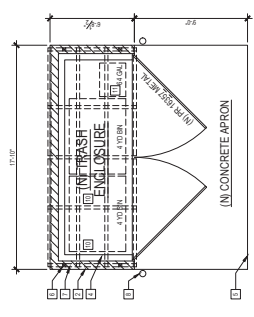
BUILDING C - CURB AND ROOF ADDITION ONLY
PROPOSED TRASH ENCLOSURE PLAN
SCALE: 1/4" = 1'-0"



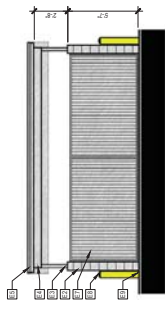
BUILDING C
PROPOSED TRASH ENCLOSURE ELEVATIONS
SCALE: 1/4" = 1'-0"



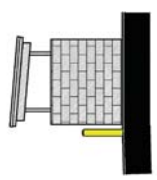
BUILDING E
PROPOSED ROOF PLAN
SCALE: 1/4" = 1'-0"

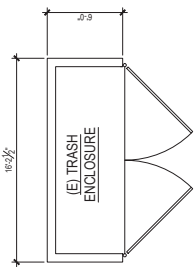


BUILDING E
PROPOSED TRASH ENCLOSURE PLAN
SCALE: 1/4" = 1'-0"

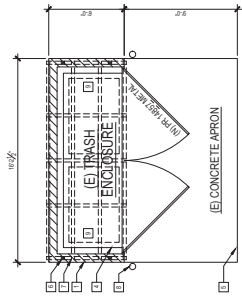


BUILDING E
PROPOSED TRASH ENCLOSURE ELEVATIONS
SCALE: 1/4" = 1'-0"

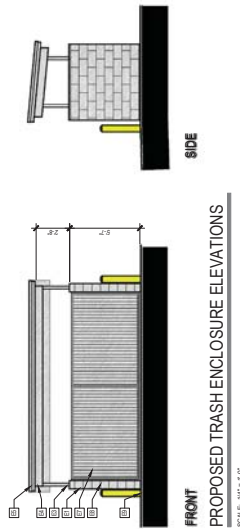




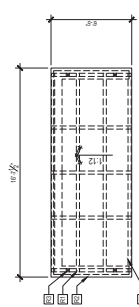
BUILDING D
EXISTING TRASH ENCLOSURE PLAN
SCALE: 1/8" = 1'-0"



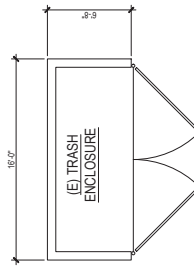
BUILDING D - CURB AND ROOF ADDITION ONLY
PROPOSED TRASH ENCLOSURE PLAN
SCALE: 1/8" = 1'-0"



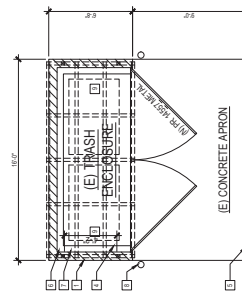
PROPOSED TRASH ENCLOSURE ELEVATIONS
SCALE: 1/8" = 1'-0"



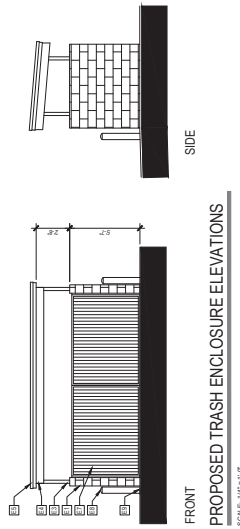
BUILDING D
PROPOSED ROOF PLAN
SCALE: 1/8" = 1'-0"



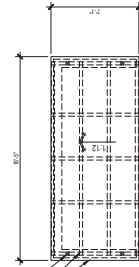
BUILDING F
EXISTING TRASH ENCLOSURE PLAN
SCALE: 1/8" = 1'-0"



BUILDING F - CURB AND ROOF ADDITION ONLY
PROPOSED TRASH ENCLOSURE PLAN
SCALE: 1/8" = 1'-0"



PROPOSED TRASH ENCLOSURE ELEVATIONS
SCALE: 1/8" = 1'-0"



BUILDING F
PROPOSED ROOF PLAN
SCALE: 1/8" = 1'-0"

PLAN GENERAL NOTES

- GENERAL CONTRACTOR TO VERIFY ALL DIMENSIONS PRIOR TO THE FIELD PRIOR TO CONSTRUCTION.
- ALL MATERIALS AND FINISHES TO MATCH EXISTING OR SPECIFIED BY BUILDING CODE.

PLAN KEY NOTES

- 1 EXISTING CONCRETE WALL
- 2 NEW CONCRETE WALL
- 3 NEW CONCRETE WALL
- 4 NEW CONCRETE WALL
- 5 NEW CONCRETE WALL
- 6 NEW CONCRETE WALL
- 7 NEW CONCRETE WALL
- 8 NEW CONCRETE WALL
- 9 NEW CONCRETE WALL
- 10 NEW CONCRETE WALL
- 11 NEW CONCRETE WALL

ELEVATION NOTES

- CONNECTION TO EXISTING METAL FINISHES AND COLORED.

ELEVATION KEY NOTES

- 1 EXISTING CONCRETE WALL
- 2 NEW CONCRETE WALL
- 3 NEW CONCRETE WALL
- 4 NEW CONCRETE WALL
- 5 NEW CONCRETE WALL
- 6 NEW CONCRETE WALL
- 7 NEW CONCRETE WALL
- 8 NEW CONCRETE WALL
- 9 NEW CONCRETE WALL
- 10 NEW CONCRETE WALL
- 11 NEW CONCRETE WALL

ROOF KEY NOTES

- 1 EXISTING CONCRETE WALL
- 2 NEW CONCRETE WALL
- 3 NEW CONCRETE WALL
- 4 NEW CONCRETE WALL
- 5 NEW CONCRETE WALL
- 6 NEW CONCRETE WALL
- 7 NEW CONCRETE WALL
- 8 NEW CONCRETE WALL
- 9 NEW CONCRETE WALL
- 10 NEW CONCRETE WALL
- 11 NEW CONCRETE WALL

PROPOSED BUILDING D AND F TRASH ENCLOSURES
A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA

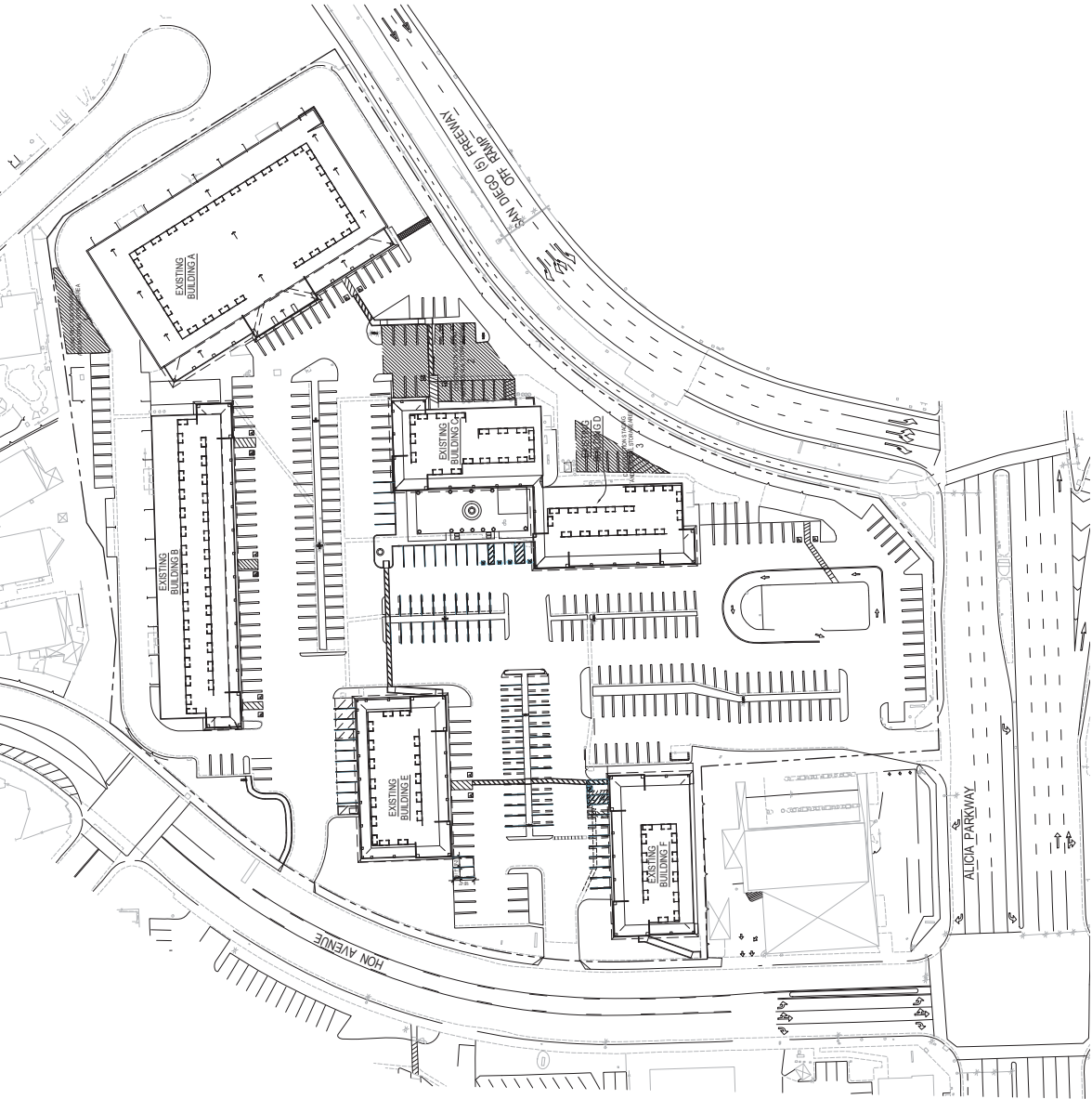


A-8.2

PROJECT # 19001

17000 Skyway Court, Suite 100
Irvine, California 92614-4300
714.444.1000 · M-F 9AM-5PM

SEPTEMBER 23, 2021



A RETAIL TRANSFORMATION FOR WARMINGTON COMMERCIAL

THE HONALI PLAZA

24761 ALICIA PARKWAY · LAGUNA HILLS · CALIFORNIA

A-9.1

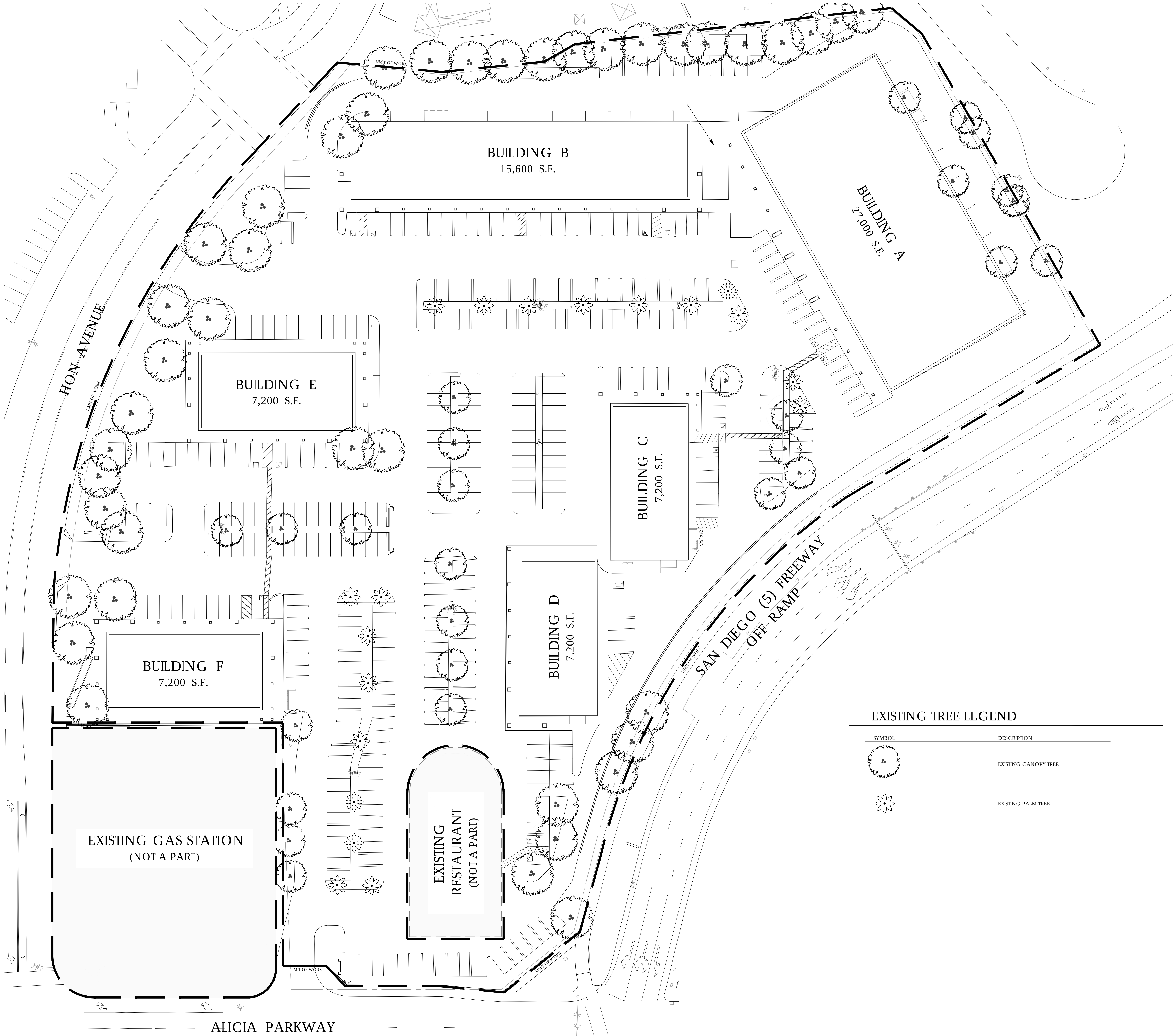
PROJECT # 190701



17000 Sky Park Circle, Suite 10
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SEPTEMBER 23, 2021





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WARMINGTON COMMERCIAL
HONALI PLAZA
24761 ALICIA PARKWAY LAGUNA HILLS, CA 92653

PROJECT NO.	190101
PLAN CHECK NO.	
DATE:	MAR. 10, 2020
SUBMITTAL LOG	
DESCRIPTION	DATE
FIRST PLANNING SUBMITTAL	APR. 15, 2020
SECOND PLANNING SUBMITTAL	AUG. 27, 2021

REVISION LOG		DATE
NO.	REVISION	

EXISTING SITE PLAN

LC-0.0



DEVELOPMENT STANDARDS CALCULATIONS

ITEM	STANDARD	PROPOSED
LOT SIZE	10,000 S.F. MIN.	347,499 S.F.
LOT COVERAGE	50% MAX.	20% (71,400 S.F.)
LANDSCAPE COVERAGE	15% MIN.	15 % (54,013 S.F.)
TOTAL PARKING STALLS		388
1 TREE PER 6 PARKING STALLS	65	89
RENOVATED LANDSCAPE		43,327 S.F.
LANDSCAPE REMOVED		787 S.F.
ADDED LANDSCAPE		5,000 S.F.

SHADE CALCULATIONS

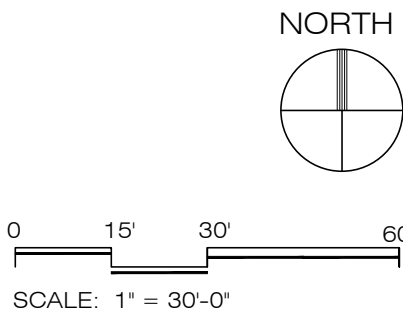
SYMBOL	ITEM	REQUIRED	PROPOSED
	PARKING SQUARE FOOTAGE	61,525 S.F.	
	5 YEAR MATURITY SHADE PERCENTAGE	40%	30%
	SHADE RADIUS OF MATURE CANOPY		

WATER EFFICIENT LANDSCAPE NOTES

- IRRIGATION PLANS FOR HONALI PLAZA SHALL ADHERE TO MWEL0 (AB1881) STANDARDS AND CONDITIONS INCLUDING THE CITY OF LAGUNA HILLS WATER CONSERVATION ORDINANCE
- ALL LANDSCAPE SHALL BE WATERED BY A PERMANENT & AUTOMATIC IRRIGATION SYSTEM
- CONTRACTOR SHALL INSTALL A WEATHER BASED SMART CONTROLLER OR USE SOIL AND/OR RAIN SENSORS
- CONTROLLER SHALL BE LOCATED OUTDOORS ONSITE UNDER APPROVAL OF OWNER IN A LOCKING VANDAL RESISTANT ENCLOSURE
- ALL SHRUBS & GROUND COVER SHALL BE IRRIGATED WITH A LOW VOLUME DRIP SYSTEM AND/OR HIGH EFFICIENCY NOZZLES.
- TREES SHALL BE WATERED BY DEEP ROOT WATERING SYSTEMS ON SEPARATE VALVES FROM SHRUBS
- EACH HYDROZONE SHALL HAVE PLANT MATERIALS WITH SIMILAR WATER USE AND WATERED SEPARATELY THAN DIFFERING WATER USES
- A SEPARATE DESIGNATED WATER METER (OR SUB METER) SHALL BE INSTALLED OR UTILIZED SPECIFICALLY FOR IRRIGATION PURPOSES

CONCEPTUAL LANDSCAPE LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME	WUCOLS	SIZE
EXISTING & NEW SITE TREES				
EXISTING CUPANOPSIS ANACARDIOIDES AND FICUS RUBIGINOSA				
-OPTIONS TO BE REPLACED WITH:				
	CERCIDIUM "DESERT MUSEUM"	DESERT MUSEUM PALO VERDE	LOW	24" - 36" BOX
	GLEDITSIA TRICANTHOS "THORNLESS"	HONEY LOCUST TREE	MED	
	QUERCUS TOMENTELLA	ISLAND OAK	LOW	
	RHUS LANCEA	AFRICAN SUMAC	LOW	
EXISTING EUCALYPTUS CAMALDUENSIS				
		RIVER RED GUM		
EXISTING PINUS				
		PINE		
EXISTING PYRUS KAWAKUMI				
		EVERGREEN PEAR		
EXISTING SYAGRUS ROMANZOFFIANA				
		QUEEN PALM		
NEW SYAGRUS ROMANZOFFIANA				
		QUEEN PALM	MED	15' BTH +/-
PARKING LOT & SCREEN TREE				
	CUPANOPSIS ANACARDIOIDES	CARROTWOOD	MED	24" - 36" BOX
	QUERCUS TOMENTELLA	ISLAND OAK	LOW	
COURTYARD ACCENT TREE				
	EUCALYPTUS PULVERULENTA	BABY BLUE EUCALYPTUS	LOW	
	FEUOA SELLOWIANA	PINEAPPLE GUAVA	LOW	
COURTYARD SPECIMEN TREE				
	OLEA EUROPAEA 'SWAN HILL'	FRUITLESS OLIVE	LOW	
COURTYARD PLANTER				
	DRAECAENA DRACO	DRAGON TREE	LOW	
	OLEA LITTLE OLLIE	LITTLE OLLIE OLIVE	LOW	
EXISTING SHRUB				
	RHAPHIOLEPS INDICA	INDIAN HAWTHORNE		
ACCENT SHRUB				
	AGAVE SPP.	AGAVE	LOW	
	DIANELLA TASMANICA VARIEGATA	FLAX LILY	MED	
	MUEHLENBERGIA CAPILLARIS	GULF MUHLY	LOW	
	PHORMIUM DUET	DWARF VARIEGATED FLAX	MED	
NEW SHRUB (TO REPLACE ALL TURF AREAS)				
MEDIUM/LARGE				
	HETEROMELES ARBUTIFOLIA	TOYON	LOW	
	OLEA EUROPAEA 'LITTLE OLIVE'	LITTLE OLIVE OLIVE	LOW	
	PITTOSPORUM VARIEGATA	VARIEGATED PITTOSPORUM	MED	
	ROSEMARINUS TUSCAN BLUE	TUSCAN BLUE ROSEMARY	LOW	
SMALL				
	CISTUS SHANBERGII	PINK ROCKROSE	LOW	
	ERIGERON KARVINSKIANUS	SANTA BARBARA DAISY	LOW	
	GREVILLEA 'LITTLE JOHN'	DWARF BOTTLEBRUSH	MED	
	LAVANDULA 'PROVENCE'	PROVENCE LAVENDER	LOW	
GROUND COVER				
	ASENUM URBICUM	SALAD BOWL	LOW	
	BOUGAINVILLEA SPP.	BOUGAINVILLEA	LOW	
	FESTUCA GLAUCA	BLUE RESCUE	LOW	
	FRAGRARIA CALIFORNICA	CALIFORNIA STRAWBERRY	LOW	
	ROSEMARINU 'HUNTINGTON CARPET'	HUNTINGTON CARPET	LOW	



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WARMINGTON COMMERCIAL
HONALI PLAZA
24761 ALICIA PARKWAY LAGUNA HILLS, CA 92653

PROJECT NO.	190101
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DESCRIPTION	DATE
FIRST PLANNING SUBMITTAL	APR. 15, 2020
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REVISION LOG		DATE
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CONCEPTUAL SITE PLAN

LC-1.0



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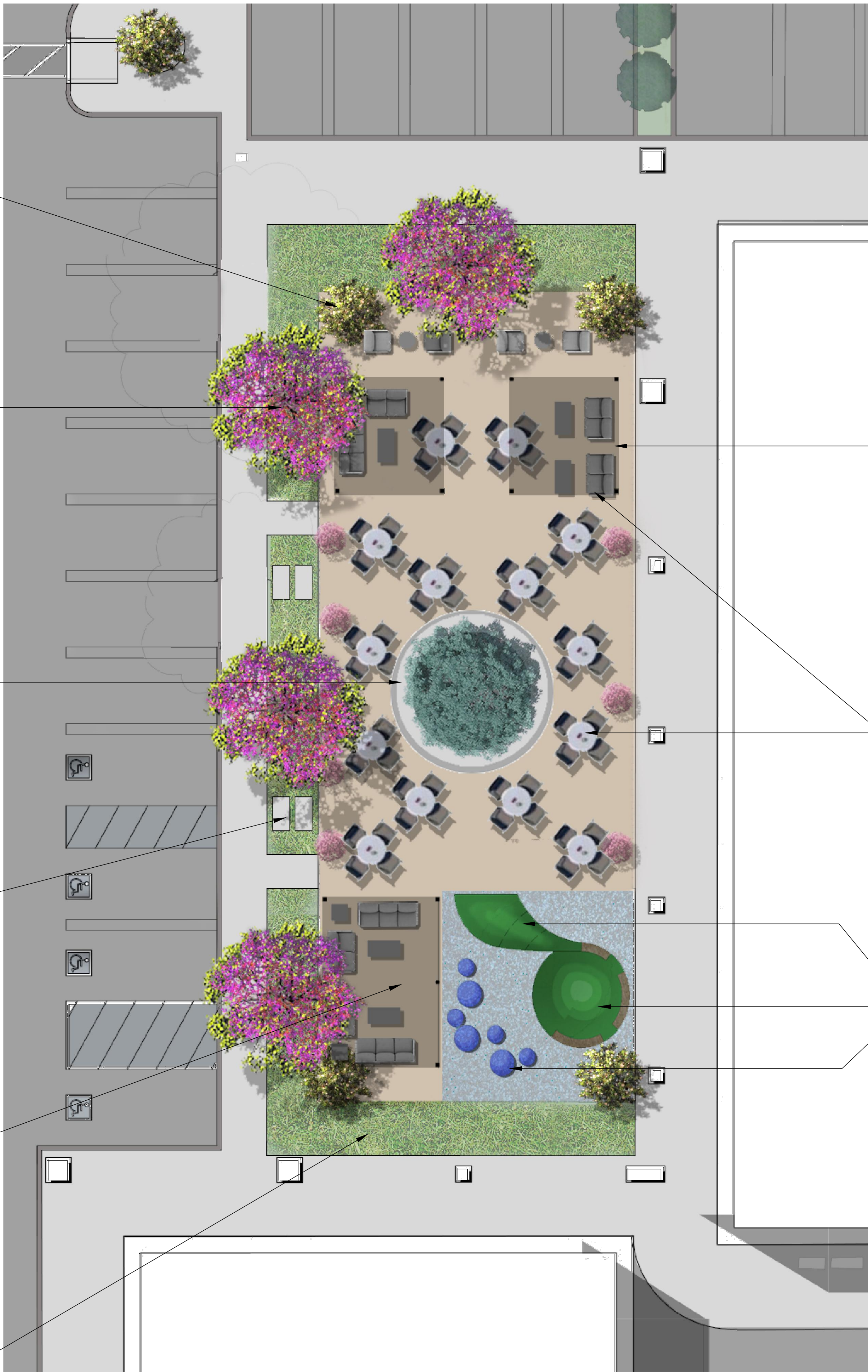
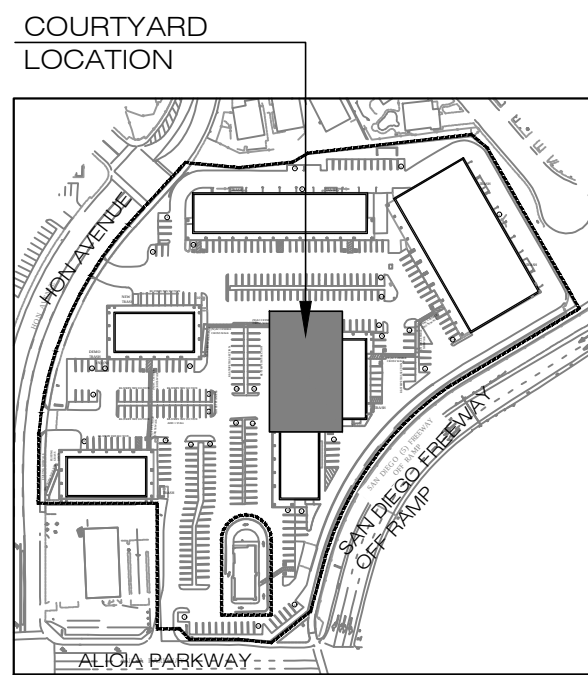
WARMINGTON COMMERCIAL
HONALI PLAZA
24761 ALICIA PARKWAY LAGUNA HILLS, CA 92653

Attachment: Attachment D – Plan Set (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))

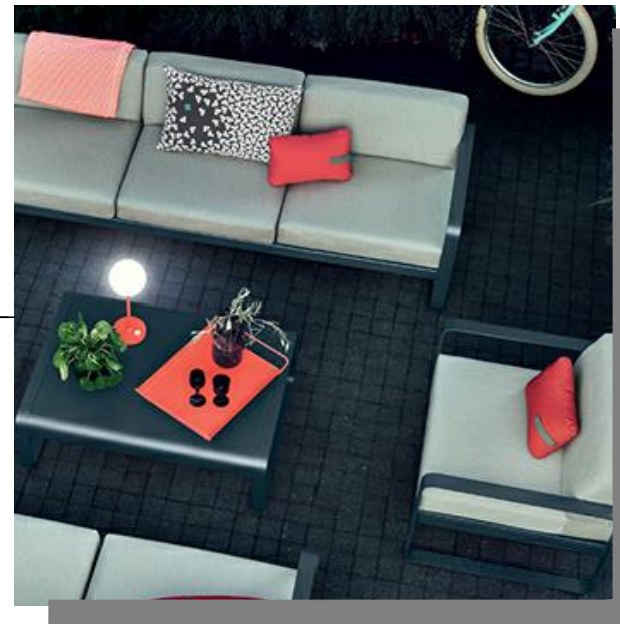
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NO.	REVISION	

CONCEPTUAL
COURTYARD PLAN
LC-2.0



LOUNGE SHADE STRUCTURE OPTIONS



LOUNGE SEATING

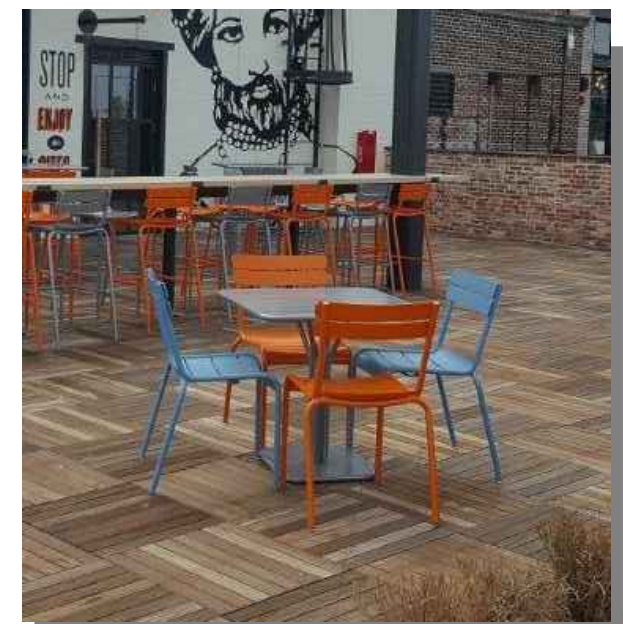
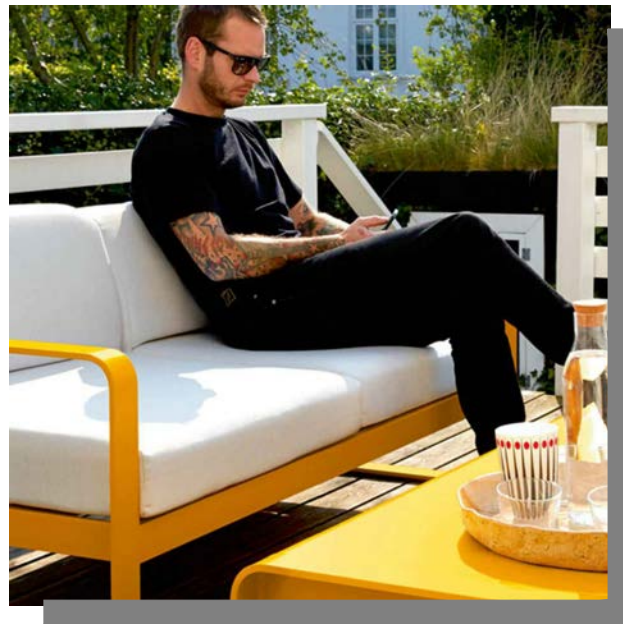


TABLE AND CHAIR SEATING



PLAYGROUND- BUBBLE MOUNDS



PLAYGROUND- TURF TUNNEL

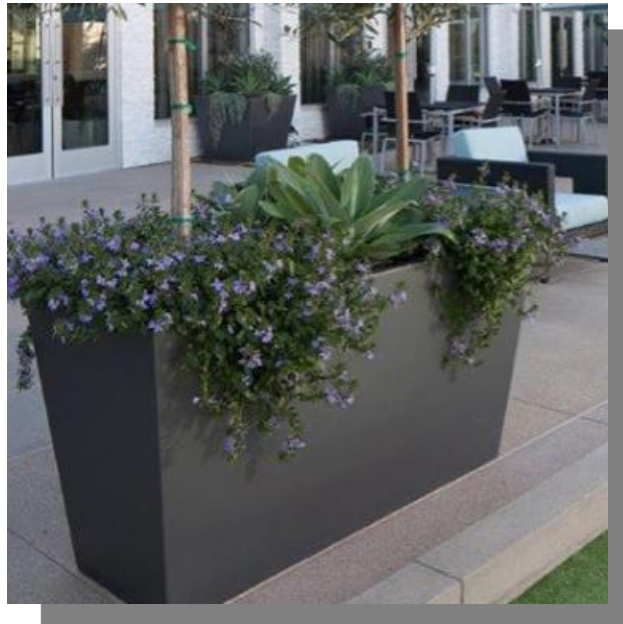


PLAYGROUND- TURF HILL

SEE LC-1.0 FOR CONCEPTUAL PLANTING LEGEND
SEE LC-3.0 FOR PLANT IMAGES



'OPAL' ROUND POTS



'CARDIF' RECTANGLE AND SQUARE POTS



RAISED PLANTER W/ SPECIMEN TREE



BOARD FORM FINISH FOR RAISED PLANTER



PAVERS IN GRASS

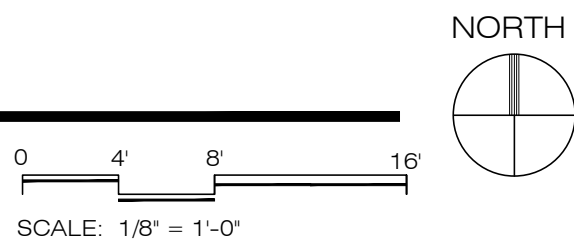


SEEDED CONCRETE JOINT ACCENTS
UNDER AWNING SEATING AREAS



NO MOW FESCUE BORDER

COURTYARD SITE AMENITIES INSPIRATIONAL IMAGERY



NEW TREE OPTIONS



CERCIDIUM



GLEDITSIA



QUERCUS



RHUS

COURTYARD
ACCENT TREE



FEIJOA



EUCALYPTUS

COURTYARD
SPECIMEN TREE



OLEA - MULTI TRUNK

COURTYARD PLANTERS



DRACAENA



OLEA - IN POT



LOMANDRA



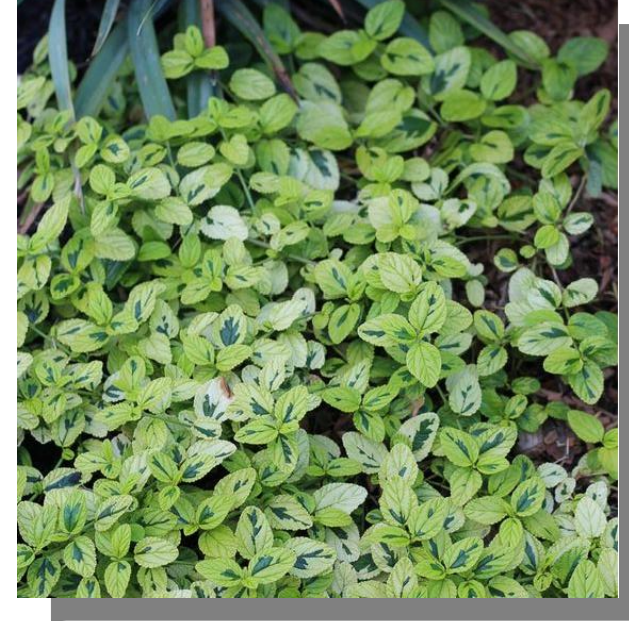
SANSEVIERIA



SENECIO FISH HOOKS



SENECIO JACOBSONII



CEANOTHUS

ACCENT SHRUB



AGAVE



DIANELLA



MUHLENBERGIA CAPILLARIS



PHORMIUM

GROUND COVER



AEONIUM URVICUM



BOUGAINVILLEA



FESTUCA GLAUCA

NEW SHRUB
MED-LARGE



HETEROMELES



OLEA LITTLE OLLIE



PITTOSPORUM



ROSEMARINUS



FRAGERIA



ROSMARINUS PROSTRATUS

NEW SHRUB
SMALL



CISTUS



ERIGERON



CASTUSTEMON



LAVANDULA



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WARMINGTON COMMERCIAL
HONALI PLAZA
24761 ALICIA PARKWAY, LAGUNA HILLS, CA 92653

Attachment: Attachment D – Plan Set (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))

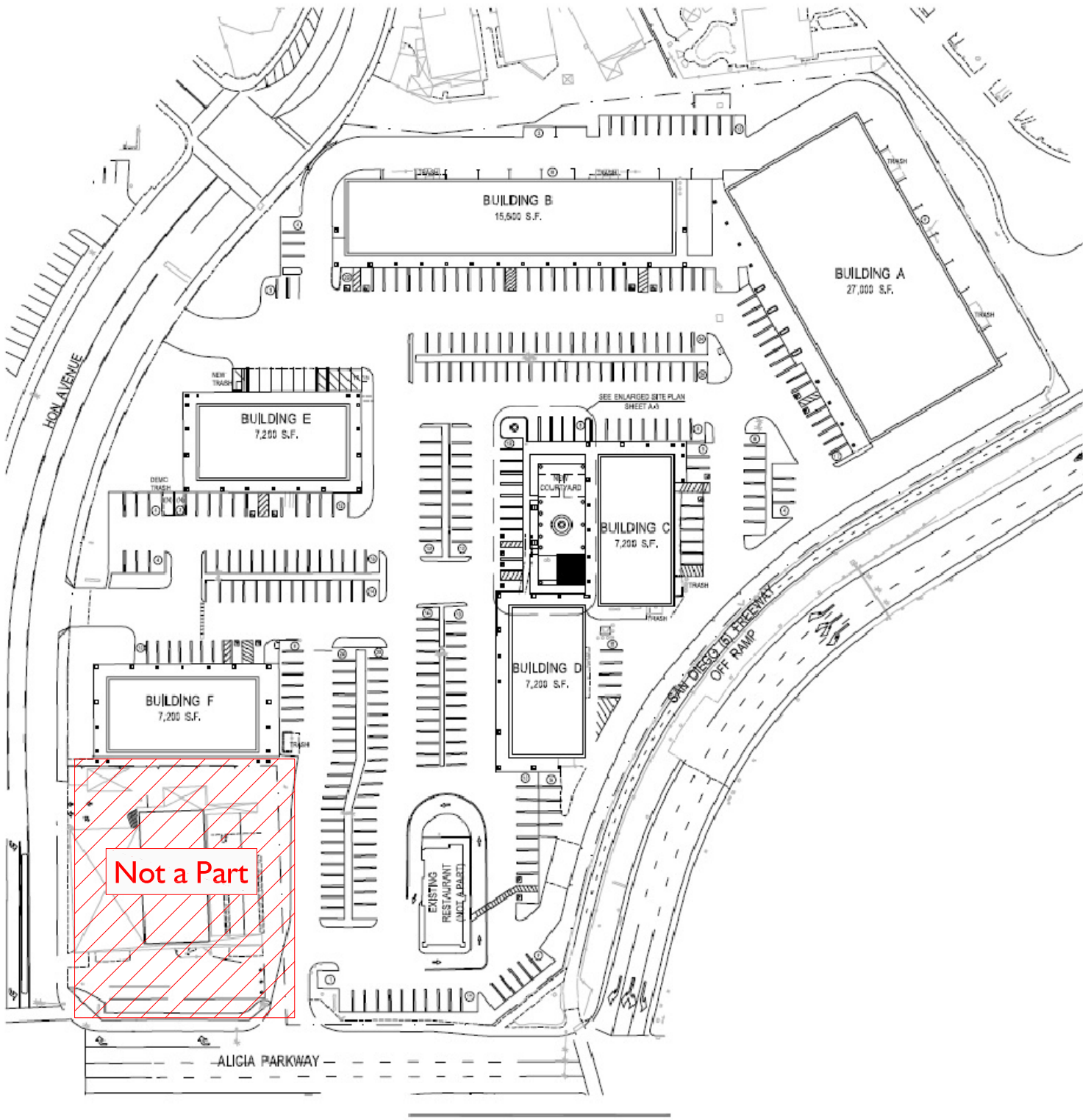
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REVISION LOG 		
NO.	REVISION	DATE

CONCEPTUAL
PLANT IMAGES

LC-3.0

THE HONALI PLAZA OBSERVED PARKING STUDY City of Laguna Hills, California

5.5.1.e



Attachment: Attachment E – Observed Parking Study (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))

January 11, 2022

Mr. Michael Ramming
WARMINGTON PROPERTIES
3090 Pullman Street
Costa Mesa, CA 92626

Subject: The Honali Plaza Observed Parking Study, City of Laguna Hills

Dear Mr. Ramming:

Introduction

RK ENGINEERING GROUP, INC. (RK) is pleased to provide this observed parking study for the Honali Plaza shopping center. The existing site is located at 24761 Alicia Parkway, in the City of Laguna Hills, California. The location map is provided in Exhibit A.

The Honali Plaza currently consists of approximately 74,202 square feet of retail, restaurant, etc. The site currently has approximately 29,520 square feet, or approximately 40% of the gross floor area, of vacant tenant space.

Based on a manual count, the shopping center provides a total of 366 available parking spaces (including 19 ADA parking spaces) in a surface lot surrounding the buildings. Parking for the project is shared globally and non-exclusively by all tenants and visitors.

Representatives of the project are proposing to construct a courtyard (outdoor eating area) located in the parking lot adjacent to Building C. As a result, the parking lot serving the shopping center will be restriped to accommodate the courtyard and to maximize the number of parking spaces on-site. Based on a review of the proposed site plan, a total of twenty-two (22) parking spaces will be added to the parking inventory. Therefore, under future conditions, the project will provide a total of 388 available parking spaces (including 20 ADA parking spaces) that will be shared globally by tenants and visitors in a surface parking lot.

The shopping center site plan is provided in Exhibit B.

Photographs of the project site with the existing tenant and parking lot configurations are included in Appendix D.

A representative of the project (Mr. Michael Ramming) is proposing to lease approximately 20,000 square feet of Veterinarian Clinic located in Suite 24721A. This use may generate a higher parking demand when compared to the existing tenant mix within the site. As a result, a parking code calculation and an observed parking study is required in order to demonstrate that adequate parking is provided for the proposed tenant mix in the shopping center.

Table 1: City of Laguna Hills Parking Code Existing Uses

Considering the existing use mix and assuming full tenant occupancy of the 29,520 square feet of vacancies, per the City of Laguna Hills Municipal Parking Code (Table 9-44.A Number of Parking Stalls Required) and the parking requirements for City approved projects; Honali Plaza requires a total of 454 parking spaces. The project provides a total of 388 parking spaces. As a result, the shopping center has a parking deficiency of 66 parking spaces, or 14.5 % deficient per the Municipal Parking Code.

Table 1 provides the City of Laguna Hills Municipal Parking Code (9-44.A Number of Parking Stalls Required) for the existing use mix. The City of Laguna Hills Municipal Parking Code is included in Appendix A.

Table 2: City of Laguna Hills Parking Code Proposed Uses

Considering the proposed use mix and assuming full tenant occupancy of the 9,250 square feet of vacancies, per the City of Laguna Hills Municipal Parking Code (9-44.A Number of Parking Stalls Required) and the parking requirements for City approved projects; Honali Plaza requires a total of 454 parking spaces. The project provides a total of 388 parking spaces. As a result, the shopping center has a parking deficiency of 66 parking spaces, or 14.5% deficient per the Municipal Parking Code.

Considering the proposed project, the parking requirements for proposed conditions are not changing when compared to existing conditions.

Table 2 provides the City of Laguna Hills Municipal Parking Code (9-44.A Number of Parking Stalls Required) for the proposed tenant mix.

Parking Demand Surveys

Due to the calculated parking code deficiency per the Municipal Code, RK has been requested to prepare an observed parking study in order to determine whether adequate parking is available to accommodate the proposed use mix within the Honali Plaza. Prior to initiating the parking study, RK reviewed the parameters of the study with the City of Laguna Hills. This study follows standard engineering practice and guidelines for determining future parking demands for a neighborhood shopping center use.

The observed parking surveys were obtained during a typical Thursday, Friday, and Saturday from 7:00 AM to 10:00 PM at one (1) hour intervals. The study days are consistent with shopping center peak parking demand data published in the ITE (Institute of Transportation Engineers) Parking Generation Manual 5th Edition. The data confirms that peak parking demands at shopping centers typically peak on a Friday and Saturday.

Please see Appendix B for shopping center peak weekday and weekend parking rates published by ITE.

Hourly Observed Peak Parking Demand

Per the direction of the City of Laguna Hills, RK obtained a detailed parking survey capturing the parking demand at Honali Plaza on the following typical days from 7:00 AM to 10:00 PM at one (1) hour intervals:

- Thursday, November 14th, 2019
- Friday, November 15th, 2019
- Saturday, November 16th, 2019

A total of forty-five (45) hours of observed parking counts were collected at the shopping center. The parking surveys were conducted by an independent third party (Counts Unlimited, Inc.). The parking surveys were obtained during typical weather conditions and were completed prior to the COVID-19 Pandemic.

Representatives of Counts Unlimited, Inc. went to the project site to conduct a manual count of the number of parking spaces that serve the tenants of the Honali Plaza shopping center. Furthermore, representatives from RK (Rogier Goedecke) confirmed that there were no parking spaces being blocked by fixed objects by storage containers, shopping cart

racks, trash enclosures, etc. As a result, under existing conditions, there are a total of 366 parking spaces available within the study area.

Four (4) parking zones were utilized within the study area to determine the hourly parking demand for each zone. During the time of the parking survey, the number of parked vehicles was counted in each of the parking zones. Exhibit C indicates the parking zones utilized in the report. The raw data of the observed parking counts are included in Appendix C.

The parking survey hours straddle the proposed operating hours for many types of tenants and land uses. As a result, the parking survey covers the peak parking demand time of day factors for a variety of existing and potential land uses.

The following adjustments were made to the collected observed parking demand counts to account for a full tenant occupancy scenario with the proposed project:

- Per the City of Laguna Hills Code, a 10% overage rate was applied to the peak observed parking counts to account for potential parking demand fluctuations.
- Based on the City Parking Code, as shown in Table 2, the 9,520 square feet of proposed vacant space would require 48 parking spaces. Hence, the analysis includes increase of the site's hourly observed parking demand by 48 parking spaces to account for full occupancy of the 9,520 square feet of proposed vacant space per the City Code.
- Lastly, the parking demand of 100 parking spaces was added for the proposed 20,00 square feet of Veterinary Clinic was added to the observed parking demand.

Table 3: Thursday, November 14th Observed Parking Results (100% Tenant Occupancy Scenario)

- As identified in Table 3, assuming full tenant occupancy, the projected peak parking demand for the site occurs at 1:00 PM with a total of 341 parking spaces occupied out of 388 parking spaces provided.
- As a result, 88% of the parking spaces are occupied during the peak parking demand times with a total of 47 surplus parking spaces available within the shopping center.

Table 4: Friday, November 15th Observed Parking Results (100% Tenant Occupancy Scenario)

- As identified in Table 4, assuming full tenant occupancy, the projected peak parking demand for the site occurs at 1:00 PM with a total of 355 parking spaces occupied out of 388 parking spaces provided.
- As a result, 91% of the parking spaces are occupied during the peak parking demand times with a total of 33 surplus parking spaces available within the shopping center.

Table 5: Saturday, November 16th Observed Parking Results (100% Tenant Occupancy Scenario)

- As identified in Table 5, assuming full tenant occupancy, the projected peak parking demand for the site occurs at 2:00 PM with a total of 363 parking spaces occupied out of 388 parking spaces provided.
- As a result, 94% of the parking spaces are occupied during the peak parking demand times with a total of 25 surplus parking spaces available within the shopping center. This was the peak observed parking demand for the project.

Table 6: Summary of Projected Observed Peak Hour Parking Demand Summary:

- As shown in Table 6, based on the results of forty-five (45) hours of observed parking demand surveys at Honali Plaza and assuming full tenant occupancy, the

projected overall peak parking demand occurs at 2:00 PM on a Saturday when a total of 94% of the parking lot is occupied.

Based on the observed parking demand surveys, assuming a 100% tenant occupancy scenario, the project site is projected to have adequate parking capacity to accommodate the proposed project. As a conservative measure, the observed parking counts include a 10% increase to account for parking demand fluctuations.

Conclusion

The Honali Plaza shopping center currently consists of approximately 74,202 square feet of retail, restaurant, etc. Under existing conditions, the project provides a total of 366 available parking spaces. Under future conditions, the project will provide a total of 388 available parking spaces that will be shared globally by tenants and visitors in a surface parking lot.

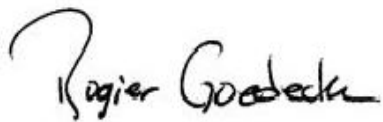
Based on a conservative calculation and assuming full tenant occupancy, the observed parking study indicates that the projected peak parking demand would occur on a typical Saturday at 2:00 PM t when a total of 94% of the parking lot is occupied. As a result, a total surplus of 25 parking spaces is available to visitors and employees during peak parking demand times.

In conclusion, the Honali Plaza shopping center is projected to have an adequate number of parking spaces to accommodate the proposed use mix of tenants during all times of the year assuming a full tenant occupancy scenario.

It is recommended that after the parking lot is restriped, another manual count of the parking spaces should be conducted to confirm the parking inventory. Additionally, it is recommended that a follow-up observed parking analysis be conducted to make sure that the Honali Plaza shopping center continues to provide an adequate number of parking spaces for all its tenants.

If you have any questions regarding this review or need further clarification, please contact us at (949) 474-0809.

Sincerely,
RK ENGINEERING GROUP, INC.



Rogier Goedecke
President



Elias Bandek, EIT
Engineer II

Attachments

RG:sl/RK15699.doc
JN:0896-2019-02

Attachment: Attachment E – Observed Parking Study (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))

Exhibits

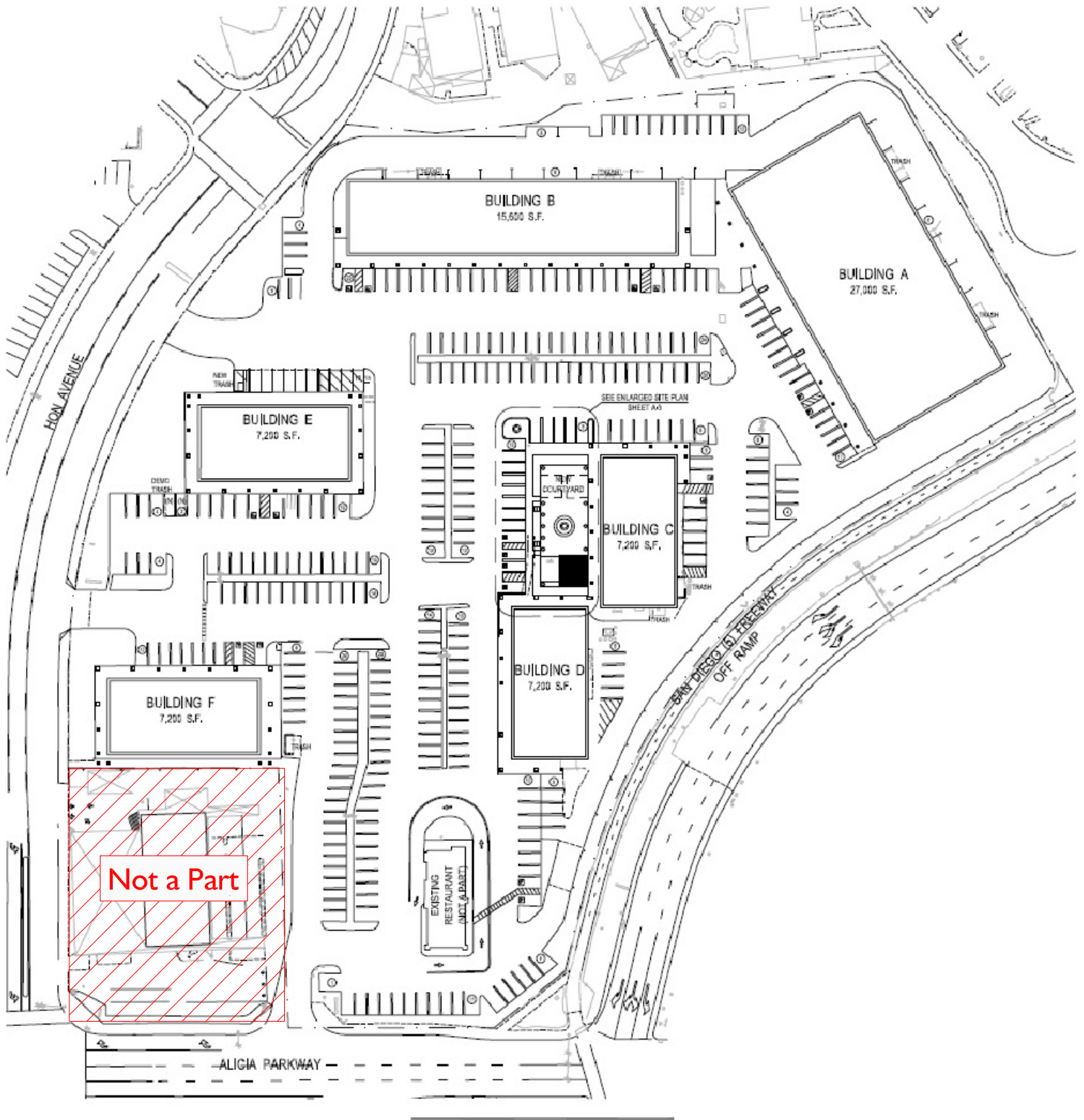
Attachment: Attachment E – Observed Parking Study (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))



Legend:

— Site Boundary





Attachment: Attachment E – Observed Parking Study (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))

Parking Zones



Attachment: Attachment E – Observed Parking Study (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))



Tables

Table 1
Honali Plaza
Parking Requirments for Existing Cndtions
City of Laguna Hills Municipal Parking Code (9-44.050 Required Parking)¹

Address	Tenant	S.F.	Land Use	Percent of Gross Floor Area	Parking Code ¹	Number of Spaces Required	Comments
24731A	Swim Venture	2,400	Retail	3.23%	1/200	12.00	
24731B	Pharmacy	1,200	Retail	1.62%	1/200	6.00	
24731D, 24731E	Terra Mia Pizzeria	3,000	Restaurant	4.04%	1/250	12.00	
24741A	Millard Roth, DDS	1,200	Dental Office	1.62%	1/150	8.00	
24741B	Salon Boucle II & Spa (8 Chairs)	1,200	Beauty/Nail Salon	1.62%	3 Stalls/Chair	24.00	
24741D	Steve Costales, DCATC	1,205	Retail	1.62%	1/200	6.03	
24741E	Smoke Shop	1,800	Retail	2.43%	1/200	9.00	
24741F	Laguna Hills Nails (8 Chairs)	1,170	Beauty/Nail Salon	1.58%	3 Stalls/Chair	24.00	
24741G	Art Steps	1,785	Retail	2.41%	1/200	8.93	
24741H	Lee's Tae Kwon Do	2,400	Martial Arts Studio	3.23%	1/100	24.00	
24741I	The Collective Hair Salon (4 Chairs)	960	Beauty/Nail Salon	1.29%	3 Stalls/Chair	12.00	
24741J	Nuclear Comics & Skateboard	1,340	Retail	1.81%	1/200	6.70	
24741K	White Lotus Studio (2 Chairs)	1,240	Tattoo Parlor	1.67%	3 Stalls/Chair	6.00	(Per COUO)
24751A, 24751B	SAS Shoes	2,340	Retail	3.15%	1/200	11.70	
24751C	Diamonds Etc.	1,356	Retail	1.83%	1/200	6.78	
24751D	Palace Bakery	1,444	Restaurant	1.95%	1/250	5.78	
24751E	Togo's	2,000	Restaurant	2.70%	1/250	8.00	
24761	Wendy's	2,334	Restaurant	3.15%	1/50	46.68	
24771A, 24771E	Jordan Market	6,288	Retail	8.47%	1/200	31.44	
24771G	Clear Choice Hearing Aid	820	Retail	1.11%	1/200	4.10	
24781A	Golden Baked Hams	2,400	Retail	3.23%	1/200	12.00	
24781B, 24781C	Jordan Market Café	2,400	Restaurant	3.23%	1/250	9.60	
24781D	E-Cig Gallery	1,200	Retail	1.62%	1/200	6.00	
24781E	Lulu Café	1,200	Restaurant	1.62%	1/250	4.80	
SUBTOTAL OCCUPIED UNITS		44,682		60.22%		305.53	
24721A	VACANT (Proposed Veterinary Clinic)	20,000	Retail	26.95%	1/200	100.00	
24721A	VACANT	7,320	Retail	9.86%	1/200	37.00	
24731C	VACANT	1,000	Retail	1.35%	1/200	5.00	
24741C	VACANT	1,200	Retail	1.62%	1/200	6.00	
SUBTOTAL VACANT UNITS		29,520		39.78%		148.00	
Grand Total Shopping Center		74,202		100.00%		454	
Total Parking Spaces Provided On-Site (The parking lot reconfiguration will increase the parking supply by 22 spaces. (366 + 22 = 388)²						388	
Number of Deficient Parking Spaces Per Municipal Code						-66	
Percent Deficient Per Code						-14.54%	

¹ Parking rates obtained from City of Laguna Hills Municipal Parking Code Section 9-44.050 - Required Parking.

Table 2
Honali Plaza
Parking Requirements for Proposed Conditions
City of Laguna Hills Municipal Parking Code (9-44.050 Required Parking)¹

Address	Tenant	S.F.	Land Use	Percent of Gross Floor Area	Parking Code ¹	Number of Spaces Required	Comments
24721A	Veterinary Clinic (Proposed) ²	20,000	Veterinary Clinic	26.95%	1/200	100.00	
24731A	Swim Venture	2,400	Retail	3.23%	1/200	12.00	
24731B	Pharmacy	1,200	Retail	1.62%	1/200	6.00	
24731D, 24731E	Terra Mia Pizzeria	3,000	Restaurant	4.04%	1/250	12.00	
24741A	Millard Roth, DDS	1,200	Dental Office	1.62%	1/150	8.00	
24741B	Salon Boucle II & Spa (8 Chairs)	1,200	Beauty/Nail Salon	1.62%	3 Stalls/Chair	24.00	
24741D	Steve Costales, DCATC	1,205	Retail	1.62%	1/200	6.03	
24741E	Smoke Shop	1,800	Retail	2.43%	1/200	9.00	
24741F	Laguna Hills Nails (8 Chairs)	1,170	Beauty/Nail Salon	1.58%	3 Stalls/Chair	24.00	
24741G	Art Steps	1,785	Retail	2.41%	1/200	8.93	
24741H	Lee's Tae Kwon Do	2,400	Martial Arts Studio	3.23%	1/100	24.00	
24741I	The Collective Hair Salon (4 Chairs)	960	Beauty/Nail Salon	1.29%	3 Stalls/Chair	12.00	
24741J	Nuclear Comics & Skateboard	1,340	Retail	1.81%	1/200	6.70	
24741K	White Lotus Studio (2 Chairs)	1,240	Tattoo Parlor	1.67%	3 Stalls/Chair	6.00	(Per COUO)
24751A, 24751B	SAS Shoes	2,340	Retail	3.15%	1/200	11.70	
24751C	Diamonds Etc.	1,356	Retail	1.83%	1/200	6.78	
24751D	Palace Bakery	1,444	Restaurant	1.95%	1/250	5.78	
24751E	Togo's	2,000	Restaurant	2.70%	1/250	8.00	
24761	Wendy's	2,334	Restaurant	3.15%	1/50	46.68	
24771A, 24771E	Jordan Market	6,288	Retail	66.05%	1/200	31.44	
24771G	Clear Choice Hearing Aid	820	Retail	1.11%	1/200	4.10	
24781A	Golden Baked Hams	2,400	Retail	3.23%	1/200	12.00	
24781B, 24781C	Jordan Market Café	2,400	Restaurant	3.23%	1/250	9.60	
24781D	E-Cig Gallery	1,200	Retail	1.62%	1/200	6.00	
24781E	Lulu Café	1,200	Restaurant	1.62%	1/250	4.80	
SUBTOTAL OCCUPIED UNITS		64,682		144.75%		405.53	
24731C	VACANT	1,000	Retail	1.35%	1/200	5.00	
24741C	VACANT	1,200	Retail	1.62%	1/200	6.00	
24721A	VACANT	7,320	Retail	9.86%	1/200	37.00	
SUBTOTAL VACANT UNITS		9,520		12.83%		48.00	
Grand Total Shopping Center		74,202		157.58%		454	
Total Parking Spaces Provided On-Site (The parking lot reconfiguration will increase the parking supply by 22 spaces. (366 + 22 = 388)³						388	
Number of Deficient Parking Spaces Per Municipal Code						-66	
Percent Deficient Per Code						-14.54%	

¹ Parking rates obtained from City of Laguna Hills Municipal Parking Code Section 9-44.050 - Required Parking.

Table 3
Honali Plaza
Observed Hourly Parking Demand w/ a 100% Tenant Occupancy Scenario
Thursday, November 14, 2019

TIME	ZONE 1		ZONE 2		ZONE 3		ZONE 4		Add 10% Increase ³	Add Proposed Vacant Retail (9,520 s.f.) ¹	Add Proposed Veterinary Clinic (20,000 s.f.) ²	TOTAL	Percentage Occupied ³
	Reg	♂	Reg	♂	Reg	♂	Reg	♂					
Spaces Provided ⁵	118	2	131	10	91	8	28	0				388	
7:00 AM	4	0	11	0	4	0	1	0	2	48	100	170	44%
8:00 AM	9	0	14	0	9	0	0	0	3	48	100	183	47%
9:00 AM	12	0	28	0	12	1	0	0	5	48	100	206	53%
10:00 AM	32	0	39	2	32	1	0	0	11	48	100	265	68%
11:00 AM	40	0	47	2	41	1	0	0	13	48	100	292	75%
12:00 PM	47	0	64	2	29	0	1	0	14	48	100	305	79%
1:00 PM	63	0	60	5	46	1	0	0	18	48	100	341	88%
2:00 PM	53	0	57	1	53	2	0	0	17	48	100	331	85%
3:00 PM	45	0	46	2	49	0	0	0	14	48	100	304	78%
4:00 PM	28	0	46	2	50	0	1	0	13	48	100	288	74%
5:00 PM	28	0	46	0	50	0	1	0	13	48	100	286	74%
6:00 PM	30	0	48	0	51	0	1	0	13	48	100	291	75%
7:00 PM	21	0	42	0	42	0	1	0	11	48	100	265	68%
8:00 PM	14	0	26	2	25	0	1	0	7	48	100	223	57%
9:00 PM	15	0	20	0	6	0	0	0	4	48	100	193	50%
10:00 PM	7	0	4	0	2	0	0	0	1	48	100	162	42%

¹ The proposed tenant mix includes a total of 9,520 square feet of vacant retail use.

² The 20,000 square feet of proposed Veterinary Clinic requires 100 parking spaces.

³ Per the City of Laguna Hills Code, a 10% overage rate was applied to the observed parking counts to account for potential parking demand fluctuations.

Table 4
Honali Plaza
Observed Hourly Parking Demand w/ a 100% Tenant Occupancy Scenario
Friday, November 15, 2019

TIME	ZONE 1		ZONE 2		ZONE 3		ZONE 4		Add 10% Increase ³	Add Proposed Vacant Retail (9,520 s.f.) ¹	Add Proposed Veterinary Clinic (20,000 s.f.) ²	TOTAL	Percentage Occupied ³
	Reg	♻	Reg	♻	Reg	♻	Reg	♻					
Spaces Provided ⁵	118	2	131	10	91	8	28	0				388	
7:00 AM	5	0	12	0	2	0	0	0	2	48	100	169	44%
8:00 AM	14	0	24	2	8	0	0	0	5	48	100	201	52%
9:00 AM	23	0	35	0	23	0	0	0	8	48	100	237	61%
10:00 AM	36	0	44	3	35	0	1	0	12	48	100	279	72%
11:00 AM	46	0	52	3	38	0	0	0	14	48	100	301	78%
12:00 PM	52	0	71	6	42	0	0	0	17	48	100	336	87%
1:00 PM	60	0	75	3	47	1	2	0	19	48	100	355	91%
2:00 PM	57	0	55	1	45	1	2	0	16	48	100	325	84%
3:00 PM	49	0	58	2	47	2	1	0	16	48	100	323	83%
4:00 PM	42	0	56	2	60	0	1	0	16	48	100	325	84%
5:00 PM	35	0	53	1	55	1	2	0	15	48	100	310	80%
6:00 PM	31	0	61	3	54	2	1	0	15	48	100	315	81%
7:00 PM	21	0	43	0	38	0	1	0	10	48	100	261	67%
8:00 PM	25	0	46	1	17	0	1	0	9	48	100	247	64%
9:00 PM	14	0	28	0	2	0	1	0	5	48	100	198	51%
10:00 PM	7	0	14	0	3	0	1	0	3	48	100	176	45%

¹ The proposed tenant mix includes a total of 9,520 square feet of vacant retail use.

² The 20,000 square feet of proposed Veterinary Clinic requires 100 parking spaces.

³ Per the City of Laguna Hills Code, a 10% overage rate was applied to the observed parking counts to account for potential parking demand fluctuations.

Table 5
Honali Plaza
Observed Hourly Parking Demand w/ a 100% Tenant Occupancy Scenario
Saturday, November 16, 2019

TIME	ZONE 1		ZONE 2		ZONE 3		ZONE 4		Add 10% Increase ³	Add Proposed Vacant Retail (9,520 s.f.) ¹	Add Proposed Veterinary Clinic (20,000 s.f.) ²	TOTAL	Percentage Occupied ³
	Reg	♿	Reg	♿	Reg	♿	Reg	♿					
Spaces Provided ⁵	118	2	131	10	91	8	28	0				388	
7:00 AM	3	0	12	0	0	0	1	0	2	48	100	166	43%
8:00 AM	10	0	18	0	1	0	1	0	3	48	100	181	47%
9:00 AM	23	0	37	0	23	0	1	0	8	48	100	240	62%
10:00 AM	33	0	48	0	30	1	0	0	11	48	100	271	70%
11:00 AM	51	0	59	2	34	2	1	0	15	48	100	312	80%
12:00 PM	68	0	58	1	42	1	1	0	17	48	100	336	87%
1:00 PM	73	2	62	1	46	0	1	0	19	48	100	352	91%
2:00 PM	58	0	66	3	65	2	1	0	20	48	100	363	94%
3:00 PM	44	0	45	0	65	1	1	0	16	48	100	320	82%
4:00 PM	38	0	42	1	61	1	1	0	14	48	100	306	79%
5:00 PM	42	0	39	0	43	2	1	0	13	48	100	288	74%
6:00 PM	26	0	33	0	27	1	1	0	9	48	100	245	63%
7:00 PM	25	0	31	0	22	0	1	0	8	48	100	235	61%
8:00 PM	24	0	20	1	15	0	1	0	6	48	100	215	55%
9:00 PM	15	0	19	1	20	0	0	0	6	48	100	209	54%
10:00 PM	18	0	7	0	22	0	0	0	5	48	100	200	52%

¹ The proposed tenant mix includes a total of 9,520 square feet of vacant retail use.

² The 20,000 square feet of proposed Veterinary Clinic requires 100 parking spaces.

³ Per the City of Laguna Hills Code, a 10% overage rate was applied to the observed parking counts to account for potential parking demand fluctuations.

Table 6
Honali Plaza
Summary Projected Observed Peak Hour Parking Demand¹

Table	Observed Date	Peak Hour Parking Demand Time	Peak Hour Parking Demand	Parking Spaces Provided ²	Percent Occupied	Parking Spaces Available
3	Thursday, November 14, 2019	1:00 PM	341	388	88%	47
4	Friday, November 15, 2019	1:00 PM	355	388	91%	33
5	Saturday, November 16, 2019	2:00 PM	363	388	94%	25

¹ The observed parking surveys were obtained during typical operating conditions at one hour intervals from 7:00 AM to 10:00 PM for a typical Thursday, Friday, and Saturday. The study days are consistent with shopping center peak parking demand data published in the ITE (Institute of Transportation Engineers) Parking Generation Manual 5th Edition and the ULI (Urban Land Institute) Third Edition Shared Parking Manual.

Appendices

Attachment: Attachment E – Observed Parking Study (2776 : SDP No. USE-0027-2020, PUP No. USE-0084-2022 (Honali Plaza))

Appendix A

City of Laguna Hills Parking Code

Ramps with a grade of ten percent or less shall have a transition zone at least eight feet in length. Ramps with a grade of greater than ten percent shall have transition zones at least twelve (12) feet in length. The grade of a transition zone shall not exceed one-half the grade of the ramp it serves.

F. Elevators. Parking structures of two stories or more shall incorporate at least one passenger elevator

meeting handicap standards. Additional elevators are required for a multi-level structure accommodating two hundred fifty (250) or more parking stalls subject to approval by the Community Development Director.

G. Mirrors for Sight Distance. Blind corners shall be provided with viewing mirrors maintained in a position and condition to provide adequate sight distance. (Ord. 98-8 § 2 (part); prior code § 9-26.110)

Table 9-44.A
NUMBER OF PARKING STALLS REQUIRED

Use	Required Number of Stalls		
Residential Uses			
Duplex	2 car garage (for each unit)		
Fraternity, sorority or rooming house	1 stall per bedroom, plus 2 covered		
Accessory dwelling unit	See Chapter 9-68		
Mobile home park	1 covered and assigned stall, plus 2 visitor stall per mobile home		
Multi-family units (including timeshares):	Stalls per unit:		
	Covered	Uncovered ⁽¹⁾	Visitor
1 bedroom or less	1.0	0.5	0.2
2 bedrooms	1.0	1.0	0.2
3 bedrooms	2.0	0.5	0.2
more than 3 bedrooms	2.0	0.5 ⁽²⁾	0.2
	⁽¹⁾ Covered stalls shall be assigned; uncovered stalls shall not be assigned.		
	⁽²⁾ Plus 0.5 uncovered stall per additional bedroom in excess of 3.		
Senior citizen housing complex	1 covered and assigned stall, plus 2 guest stall per dwelling unit, plus 1 stall for the resident manager		
Senior congregate care facilities	1 stall per unit plus 1 for each two (2) employees		
Single-family, attached	2 assigned and covered parking stalls within a garage or parking structure, plus .3 stalls unassigned per dwelling unit		
Single-family, detached:			
up to 4 bedrooms	2 in garage		
over 4 bedrooms	2 in garage + 1 covered stall for every 2 bedrooms over 4 bedrooms		
Community Uses			
Church, chapel, religious facility, cemetery, mortuary, public assembly	1 stall/3 fixed seats (or 54" of bench seating), or 1 stall/35 SF-GFA within main auditorium where no seats are provided		
College or university	1 stall/employee, plus 1 stall/3 students based on maximum student capacity		

Table 9-44.A (Continued)
NUMBER OF PARKING STALLS REQUIRED

Use	Required Number of Stalls
Convalescent hospital, rest home, or sanitarium	1 stall/3 beds, plus if employee residence facilities are provided on-site, additional parking in accordance with applicable residential requirements contained within the development code
Day care, nursery school	1 stall/2 employees, plus 1 stall/5 children, based on facility capacity
Elementary and junior high school	1.5 stalls/classroom, plus 1 stall/5 fixed seats in auditorium, gymnasium, or similar public assembly facility (35 SF=5 fixed seats)
High school	1.5 stalls/classroom, plus 1 stall/3 students based on maximum student capacity
Hospitals and medical center (providing acute care, clinical, surgical, teaching, research, and office services)	2 stalls/patient bed or 1 stall/300 SF-GFA, whichever is greater
Libraries	1 stall/200 SF-GFA
Museums, art galleries	1 stall/250 SF-GFA
Public utility facilities	1 stall/2 employees in the largest shift, plus 1 stall for each vehicle used in connection with the use
Theaters: Movie—multiple screen Movie—single screen Live performance	1 stall/4 seats, plus 10 stalls for employees 1 stall/4 seats, plus 6 stalls for employees 1 stall/4 fixed seats; without fixed seats, one space per 21 square feet of GFA
Trade school, business school, or adult education	1 stall/1.5 people based on maximum number of students and staff, or 1 stall/35 SF of GFA
Union halls, lodges, and clubs	1 stall/50 SF-GFA

Table 9-44.A (Continued)
NUMBER OF PARKING STALLS REQUIRED

Use	Required Number of Stalls
Industrial Uses	
General manufacturing and processing uses (not including buildings used exclusively for warehouse purposes)	1 stall/400 SF of industrial/manufacturing area, plus 1 stall/250 SF of office use, plus 1 stall/1,000 SF of warehouse area
Mini-storage warehouse	1 stall/2,000 SF-GFA
Recreational vehicle and boat storage	5 stalls (minimum) or, 1 stall/10,000 SF of storage area, whichever is greater
Recycling center	1 stall/250 SF-GFA of office area, plus 1 stall/1,000 SF of warehouse area, plus 1 stall/10,000 SF of yard area.
Research and development	1 stall/250 SF-GFA
Towing facilities – indoor vehicle impound and indoor towing service business – (indoor only)	5 stalls (minimum) or 1 stall/10,000 SF of storage area, whichever is greater
Warehouses (used exclusively for storage)	1 stall/1,500 SF of warehouse area, plus 1 stall/250 SF of office use
Office Uses	
Business and professional office (except medical)	1 stall/300 SF-GFA
Financial services (banks, savings and loans, credit unions)	1 stall/250 SF-GFA
Medical and dental office	1 stall/150 SF-GFA
Veterinary office	1 stall/200 SF-GFA
Commercial Uses—Retail and Service	
Art galleries	1 stall/500 SF-GFA
Automobile/truck/RV sales	1 stall/400 SF indoor GFA plus 1 stall/4,000 SF outdoor retail area
Automotive service and repair	2 stalls, plus 3 stalls/service bay (service bays do not count as stalls) or 1 stall/500 SF gross floor area when no bays are defined
Bed and breakfast	2 covered and assigned stalls, plus 1 stall/guest room
Car wash	6 stalls per tunnel (plus additional stacking and drying areas as necessary to match capacity)
Furniture stores and home furnishing showrooms (only where items are ordered primarily for home delivery or installation, such as carpet/flooring, window coverings and windows)	1 stall/500 SF-GFA
Gas station	2 stalls, plus additional parking as required for convenience store or auto service/repair uses. The gas station convenience store parking requirement shall be 1 stall/800 SF-GFA. Parking spaces abutting air and water service shall not be included in the total number of parking spaces.

Table 9-44.A (Continued)
NUMBER OF PARKING STALLS REQUIRED

Use	Required Number of Stalls
General retail	1 stall/200 SF-GFA ¹ If restaurant space occupies more than 10% of total GFA, or if an individual restaurant contains more than 1,000 SF, then additional parking stalls shall be provided for excess restaurant space beyond the 10% or 1,000 SF. The additional parking shall be calculated at the restaurant rate
Laundromat	1 stall/200 SF-GFA
Outdoor sales, including lumber yards and salvage yards	1 stall/1,000 SF gross outdoor retail area, plus additional parking as required for indoor sales area, service facilities, and other uses
Plant nurseries	1 stall/1,000 SF indoor GFA, plus 1 stall/2,000 SF gross outdoor retail areas
Resorts, hotels, and motels	1 stall/guest room plus additional parking as required for other accessory uses
Restaurants: Dine-in (< 4,000 SF-GFA): 4,000 SF-GFA +: Fast food: Take-out: Outdoor dining areas in excess of 16 seats:	1 stall/100 SF-GFA 40 stalls, plus 1 stall/50 SF-GFA above 4,000 SF-GFA 10 stalls, or 1 stall/50 SF-GFA, whichever is greater 1 stall/250 SF-GFA 1 stall for 150 SF of entire outdoor dining area (Note: Outdoor seating areas with 16 or less seats need not provide additional parking)
Self-service car wash	2.5 stalls/wash bay (wash bays do not count as stalls)
Commercial Uses—Personal Services	
Animal boarding/grooming	1 stall/400 SF-GFA
Barber shop	2 stalls/barber chair
Beauty/nail salon	3 stalls/beautician chair
Dry cleaner	1 stall/400 SF-GFA
Massage establishment	3 stalls/massage station
Shoe repair	1 stall/400 SF-GFA
Tailor	1 stall/400 SF-GFA
Commercial Recreation Uses	
Arcades, pool halls, and bingo halls	1 stall/150 SF-GFA
Bowling alley	4 stalls/lane, plus other uses calculated separately
Commercial stables	1 stall/5 horses
Dance halls	1 stall/7 SF dance floor
Driving range	1 stall/tee, plus other uses calculated separately
Golf courses—(regulation and pitch and putt)	9 stalls/hole, plus other uses calculated separately
Gyms, spas and health clubs	1 stall/100 SF-GFA
Handball and racquetball courts	3 stalls/court, plus other uses calculated separately
Miniature golf	1.5 stalls/hole, plus other uses calculated separately

Table 9-44.A (Continued)
NUMBER OF PARKING STALLS REQUIRED

Use	Required Number of Stalls
Skating rink—ice or roller	1 stall/100 SF of rink, plus other uses calculated separately
Swimming pool—commercial	10 stalls, or 1 stall/150 SF of water surface area plus 1 stall/2 employees
Tennis courts	3 stalls/court plus other uses calculated separately

(Ord. 2018-7 § 10; Ord. 2017-5 § 5; Ord. 2017-4 § 8; Ord. 2003-5 Exh. A § B; Ord. 98-8 § 2 (part))

Table 9-44.B
HANDICAP STALLS REQUIRED

Total Number of Parking Stalls in Parking Lot or Garage	Minimum Number of Required Handicapped Parking Stalls
1 — 40	1
41 — 80	2
81 — 120	3
121 — 160	4
161 — 300	5
301 — 400	6
401 — 500	7
over 500	2% of total stalls

(Ord. 98-8 § 2 (part))

Table 9-44.C
ACCESS DESIGN FOR PARKING LOCATIONS

Residential	# Spaces Served	Min. Throat Length	Min. Throat Width	Min. # Lanes Req.	Max. Throat Length	Max. Throat Width
Open and covered	0—100	20 ft.	24 ft.	2	50 ft.	36 ft.
	100—250	30 ft.	24 ft.	2	50 ft.	36 ft.
	250 +	50 ft.	24 ft.	2	50 ft.	36 ft.
Structured	0—250+	24 ft.	28 ft.	2	50 ft.	36 ft.
Commercial	# Spaces Served	Min. Throat Length	Min. Throat Width	Min. # Lanes Req.	Max. Throat Length	Max. Throat Width
Open and covered	0—100	30 ft.	24 ft.	2	130 ft.	36 ft.
	100—250	40 ft.	36 ft.	2 in/1 out	190 ft.	48 ft.
	250+	100 ft.	48 ft.	2 in/2 out	250 ft.	56 ft.

Appendix B

ITE (Institute of Transportation Engineers)
Parking Generation Manual 5th Edition (January 2019)
Shopping Center Peak Parking Demand Rates

Shopping Center - Non-December (820)

Peak Period Parking Demand vs: 1000 Sq. Ft. GLA

On a: Weekday (Monday - Thursday)

Setting/Location: General Urban/Suburban

Peak Period of Parking Demand: 12:00 - 6:00 p.m.

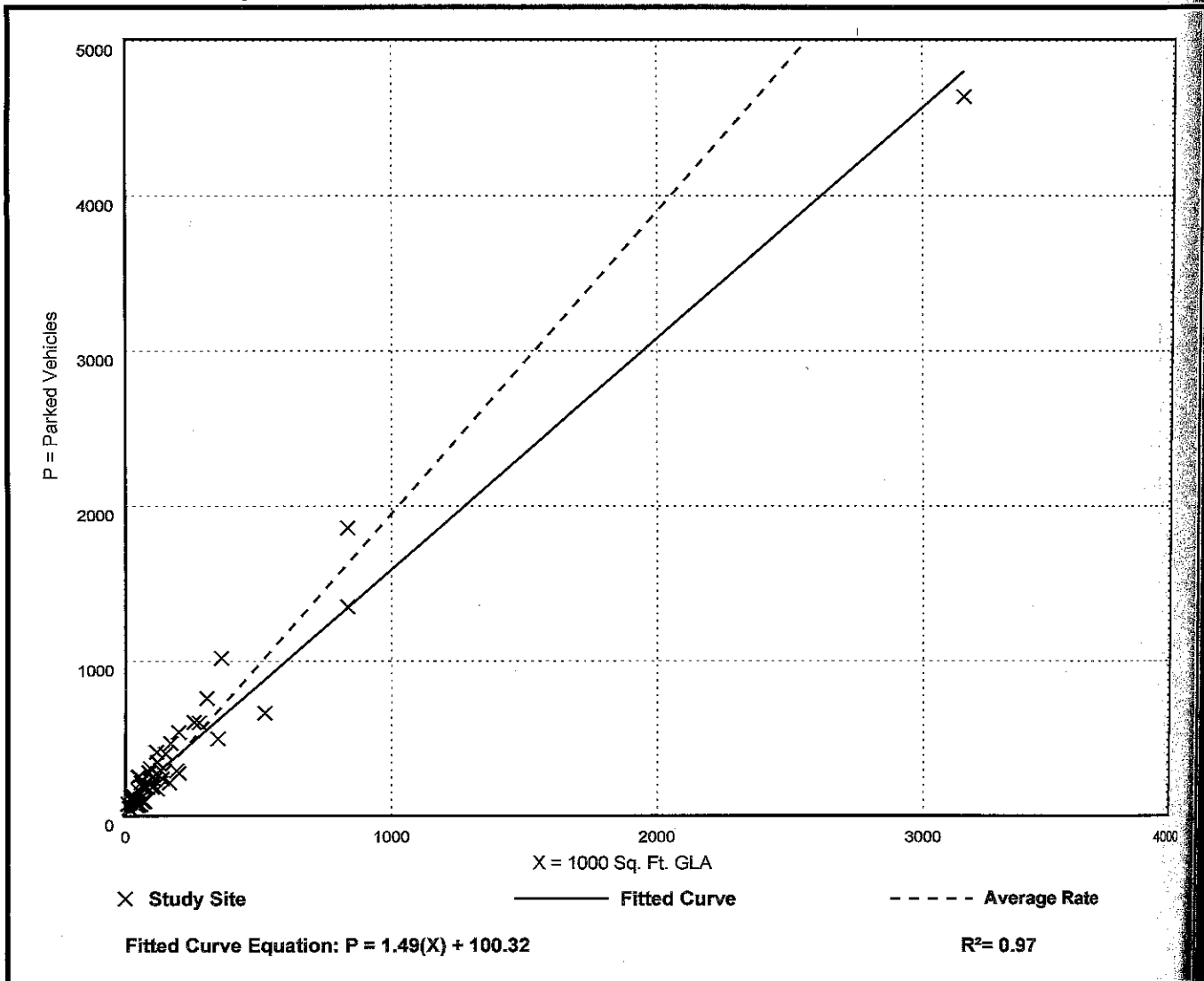
Number of Studies: 46

Avg. 1000 Sq. Ft. GLA: 218

Peak Period Parking Demand per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	33rd / 85th Percentile	95% Confidence Interval	Standard Deviation (Coeff. of Variation)
1.95	1.27 - 7.98	1.99 / 3.68	1.73 - 2.17	0.75 (38%)

Data Plot and Equation



Shopping Center - Non-December (820)

Peak Period Parking Demand vs: 1000 Sq. Ft. GLA

On a: Friday

Setting/Location: General Urban/Suburban

Peak Period of Parking Demand: 12:00 - 6:00 p.m.

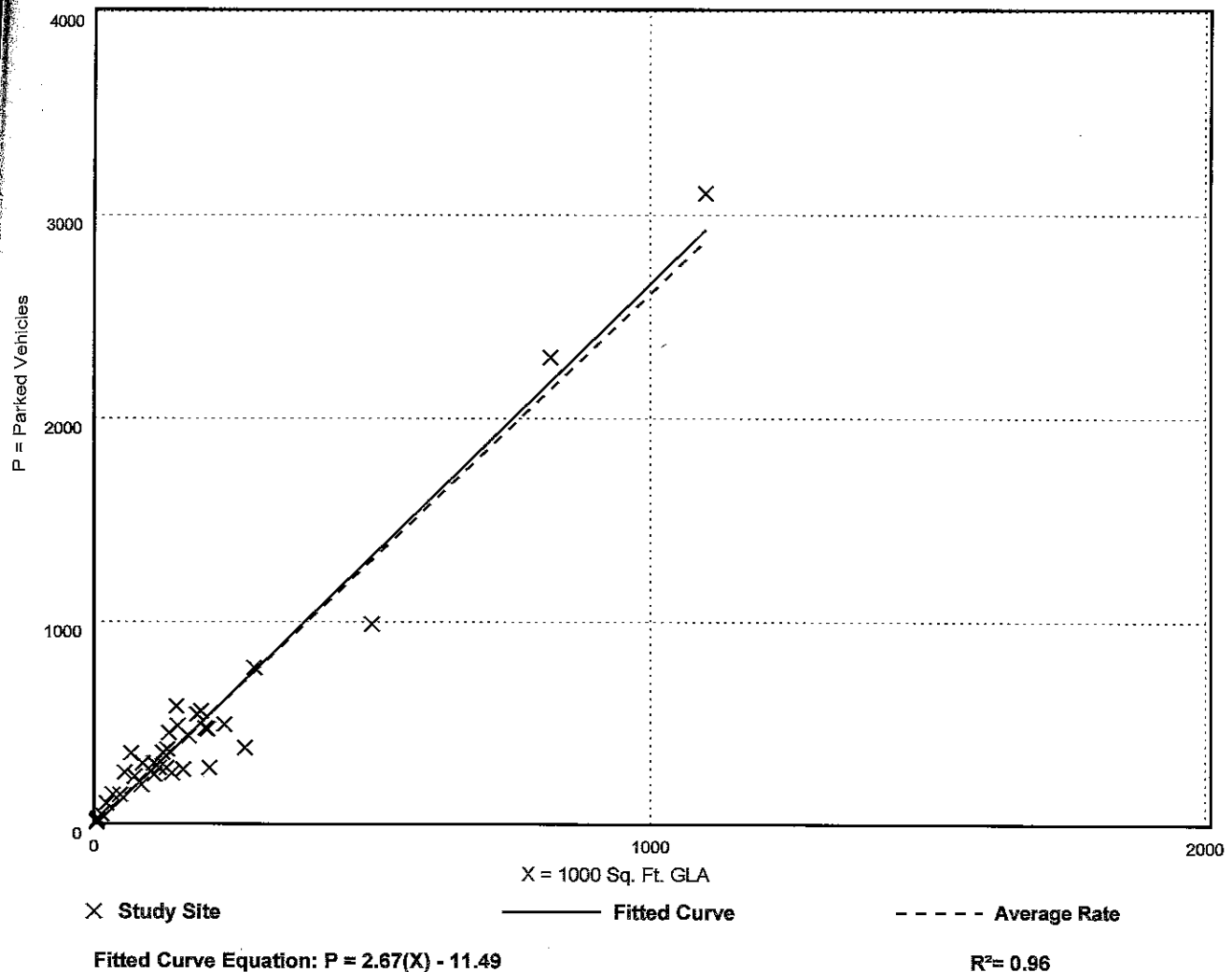
Number of Studies: 37

Avg. 1000 Sq. Ft. GLA: 174

Peak Period Parking Demand per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	33rd / 85th Percentile	95% Confidence Interval	Standard Deviation (Coeff. of Variation)
2.61	1.34 - 5.25	2.37 / 3.78	2.39 - 2.83	0.67 (26%)

Data Plot and Equation



Shopping Center - Non-December (820)

Peak Period Parking Demand vs: 1000 Sq. Ft. GLA

On a: Saturday

Setting/Location: General Urban/Suburban

Peak Period of Parking Demand: 11:00 a.m. - 5:00 p.m.

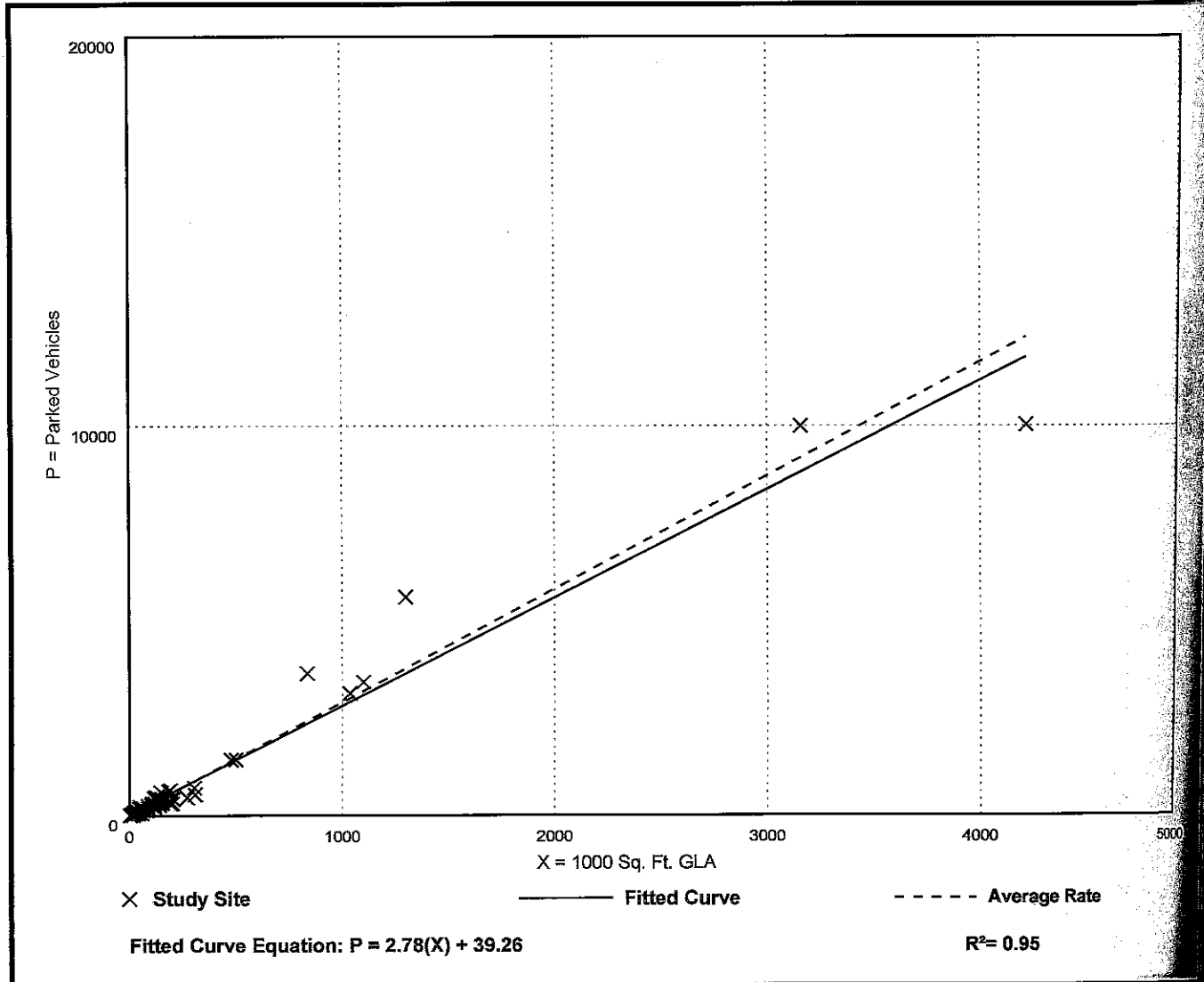
Number of Studies: 58

Avg. 1000 Sq. Ft. GLA: 313

Peak Period Parking Demand per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	33rd / 85th Percentile	95% Confidence Interval	Standard Deviation (Coeff. of Variation)
2.91	1.15 - 4.72	2.27 / 3.74	2.72 - 3.10	0.74 (25%)

Data Plot and Equation



Shopping Center - Non-December (820)

Peak Period Parking Demand vs: 1000 Sq. Ft. GLA

On a: Sunday

Setting/Location: General Urban/Suburban

Peak Period of Parking Demand: 12:00 - 3:00 p.m.

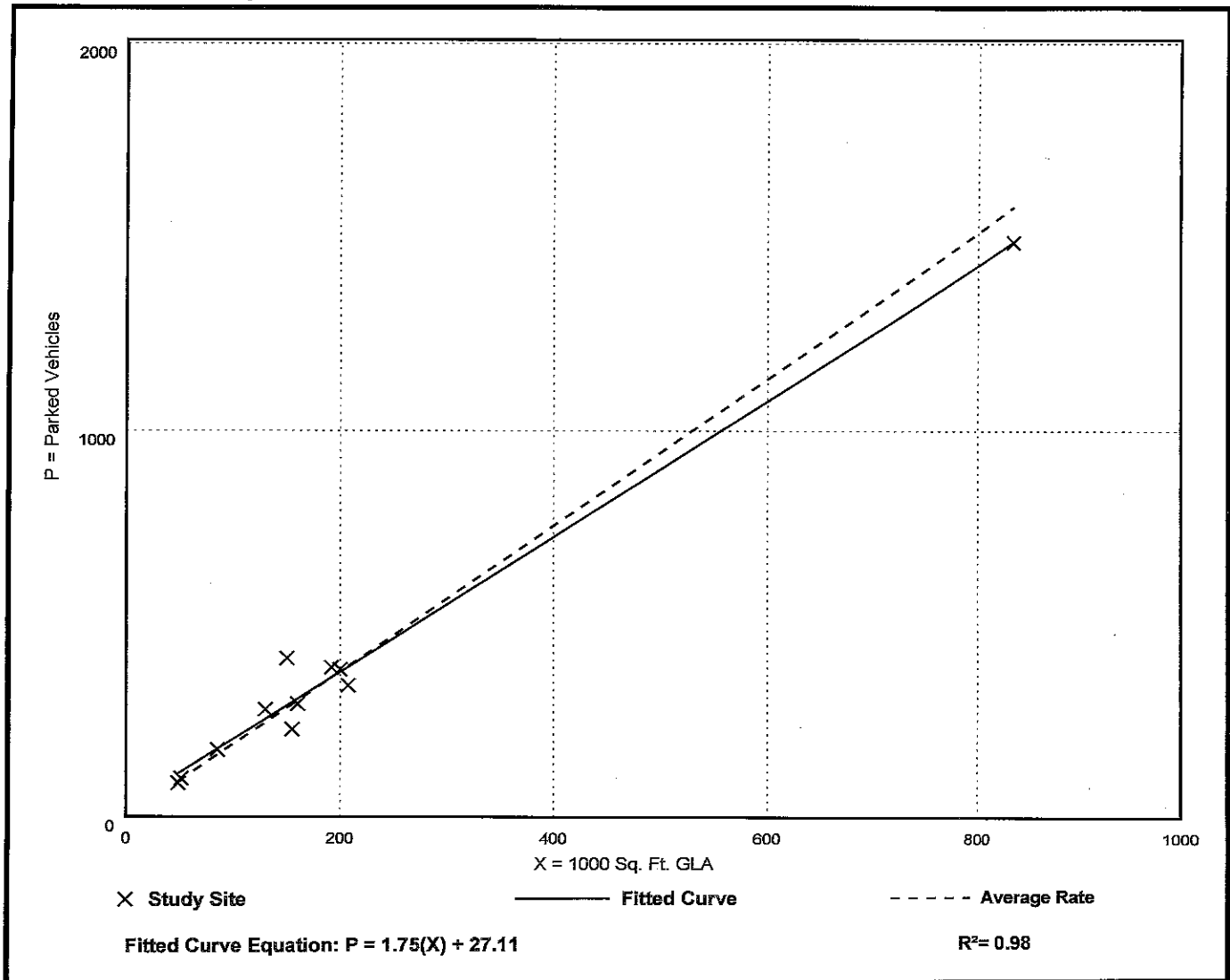
Number of Studies: 11

Avg. 1000 Sq. Ft. GLA: 201

Peak Period Parking Demand per 1000 Sq. Ft. GLA

Average Rate	Range of Rates	33rd / 85th Percentile	95% Confidence Interval	Standard Deviation (Coeff. of Variation)
1.89	1.47 - 2.75	1.81 / 2.27	***	0.30 (16%)

Data Plot and Equation



Appendix C

Honali Plaza
Observed Parking Counts

Honali Plaza
Laguna Hills, CA
Thursday, November 14th, 2019

Time	Parking Zone																	
	Zone 1		Total	Percent Occupied	Zone 2		Total	Percent Occupied	Zone 3			Total	Percent Occupied	Zone 4	Total	Percent Occupied	Grand Total	Percent Occupied
	Regular Spaces	Handicap			Regular Spaces	Handicap			Regular Spaces	Handicap	Loading			Regular Spaces				
Parking Spaces	118	2	120		121	9	130		80	8	-	88		28	28		366	
7:00 AM	4	0	4	3%	11	0	11	8%	4	0	1	5	6%	1	1	4%	21	6%
8:00 AM	9	0	9	8%	14	0	14	11%	9	0	3	12	14%	0	0	0%	35	10%
9:00 AM	12	0	12	10%	28	0	28	22%	12	1	3	16	18%	0	0	0%	56	15%
10:00 AM	32	0	32	27%	39	2	41	32%	32	1	3	36	41%	0	0	0%	109	30%
11:00 AM	40	0	40	33%	47	2	49	38%	41	1	2	44	50%	0	0	0%	133	36%
12:00 PM	47	0	47	39%	64	2	66	51%	29	0	2	31	35%	1	1	4%	145	40%
1:00 PM	63	0	63	53%	60	5	65	50%	46	1	2	49	56%	0	0	0%	177	48%
2:00 PM	53	0	53	44%	57	1	58	45%	53	2	2	57	65%	0	0	0%	168	46%
3:00 PM	45	0	45	38%	46	2	48	37%	49	0	2	51	58%	0	0	0%	144	39%
4:00 PM	28	0	28	23%	46	2	48	37%	50	0	2	52	59%	1	1	4%	129	35%
5:00 PM	28	0	28	23%	46	0	46	35%	50	0	2	52	59%	1	1	4%	127	35%
6:00 PM	30	0	30	25%	48	0	48	37%	51	0	2	53	60%	1	1	4%	132	36%
7:00 PM	21	0	21	18%	42	0	42	32%	42	0	2	44	50%	1	1	4%	108	30%
8:00 PM	14	0	14	12%	26	2	28	22%	25	0	2	27	31%	1	1	4%	70	19%
9:00 PM	15	0	15	13%	20	0	20	15%	6	0	2	8	9%	0	0	0%	43	12%
10:00 PM	7	0	7	6%	4	0	4	3%	2	0	2	4	5%	0	0	0%	15	4%

Honali Plaza
Laguna Hills, CA
Friday, November 15th, 2019

Time	Parking Zone																	
	Zone 1		Total	Percent Occupied	Zone 2		Total	Percent Occupied	Zone 3			Total	Percent Occupied	Zone 4	Total	Percent Occupied	Grand Total	Percent Occupied
	Regular Spaces	Handicap			Regular Spaces	Handicap			Regular Spaces	Handicap	Loading			Regular Spaces				
Parking Spaces	118	2	120		121	9	130		80	8	-	88		28	28		366	
7:00 AM	5	0	5	4%	12	0	12	9%	2	0	1	3	3%	0	0	0%	20	5%
8:00 AM	14	0	14	12%	24	2	26	20%	8	0	1	9	10%	0	0	0%	49	13%
9:00 AM	23	0	23	19%	35	0	35	27%	23	0	1	24	27%	0	0	0%	82	22%
10:00 AM	36	0	36	30%	44	3	47	36%	35	0	2	37	42%	1	1	4%	121	33%
11:00 AM	46	0	46	38%	52	3	55	42%	38	0	3	41	47%	0	0	0%	142	39%
12:00 PM	52	0	52	43%	71	6	77	59%	42	0	1	43	49%	0	0	0%	172	47%
1:00 PM	60	0	60	50%	75	3	78	60%	47	1	2	50	57%	2	2	7%	190	52%
2:00 PM	57	0	57	48%	55	1	56	43%	45	1	4	50	57%	2	2	7%	165	45%
3:00 PM	49	0	49	41%	58	2	60	46%	47	2	2	51	58%	1	1	4%	161	44%
4:00 PM	42	0	42	35%	56	2	58	45%	60	0	2	62	70%	1	1	4%	163	45%
5:00 PM	35	0	35	29%	53	1	54	42%	55	1	2	58	66%	2	2	7%	149	41%
6:00 PM	31	0	31	26%	61	3	64	49%	54	2	2	58	66%	1	1	4%	154	42%
7:00 PM	21	0	21	18%	43	0	43	33%	38	0	2	40	45%	1	1	4%	105	29%
8:00 PM	25	0	25	21%	46	1	47	36%	17	0	2	19	22%	1	1	4%	92	25%
9:00 PM	14	0	14	12%	28	0	28	22%	2	0	2	4	5%	1	1	4%	47	13%
10:00 PM	7	0	7	6%	14	0	14	11%	3	0	2	5	6%	1	1	4%	27	7%

Honali Plaza
Laguna Hills, CA
Saturday, November 16th, 2019

Time	Parking Zone																	
	Zone 1		Total	Percent Occupied	Zone 2		Total	Percent Occupied	Zone 3			Total	Percent Occupied	Zone 4	Total	Percent Occupied	Grand Total	Percent Occupied
	Regular Spaces	Handicap			Regular Spaces	Handicap			Regular Spaces	Handicap	Loading			Regular Spaces				
Parking Spaces	118	2	120		121	9	130		80	8	-	88		28	28		366	
7:00 AM	3	0	3	3%	12	0	12	9%	0	0	2	2	2%	1	1	4%	18	5%
8:00 AM	10	0	10	8%	18	0	18	14%	1	0	2	3	3%	1	1	4%	32	9%
9:00 AM	23	0	23	19%	37	0	37	28%	23	0	2	25	28%	1	1	4%	86	23%
10:00 AM	33	0	33	28%	48	0	48	37%	30	1	2	33	38%	0	0	0%	114	31%
11:00 AM	51	0	51	43%	59	2	61	47%	34	2	3	39	44%	1	1	4%	152	42%
12:00 PM	68	0	68	57%	58	1	59	45%	42	1	2	45	51%	1	1	4%	173	47%
1:00 PM	73	2	75	63%	62	1	63	48%	46	0	2	48	55%	1	1	4%	187	51%
2:00 PM	58	0	58	48%	66	3	69	53%	65	2	1	68	77%	1	1	4%	196	54%
3:00 PM	44	0	44	37%	45	0	45	35%	65	1	2	68	77%	1	1	4%	158	43%
4:00 PM	38	0	38	32%	42	1	43	33%	61	1	2	64	73%	1	1	4%	146	40%
5:00 PM	42	0	42	35%	39	0	39	30%	43	2	2	47	53%	1	1	4%	129	35%
6:00 PM	26	0	26	22%	33	0	33	25%	27	1	2	30	34%	1	1	4%	90	25%
7:00 PM	25	0	25	21%	31	0	31	24%	22	0	2	24	27%	1	1	4%	81	22%
8:00 PM	24	0	24	20%	20	1	21	16%	15	0	2	17	19%	1	1	4%	63	17%
9:00 PM	15	0	15	13%	19	1	20	15%	20	0	2	22	25%	0	0	0%	57	16%
10:00 PM	18	0	18	15%	7	0	7	5%	22	0	2	24	27%	0	0	0%	49	13%

Appendix D

Photos







City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Notice of Retirement of Kenneth H. Rosenfield, Interim City Manager, and Acceptance of Letter of Resignation

RECOMMENDATION: That the City Council:

- (1) Acknowledge Receipt of Notice of Retirement and Letter of Resignation Submitted by Interim City Manager/Public Services Director/City Engineer Kenneth H. Rosenfield, P.E., dated March 10, 2022;**
 - (2) Accept Notice of Retirement and Letter of Resignation Submitted by Interim City Manager/Public Services Director/City Engineer Kenneth H. Rosenfield, P.E., dated March 10, 2022 after 30 Years of Dedicated Service to the City of Laguna Hills; and Last Day of Service to the City will be April 1, 2022;**
-

SUMMARY:

After 30 years of dedicated service to the City of Laguna Hills as the Public Services Director/City Engineer, including serving the last 14-months as the Interim City Manager, Mr. Kenneth H. Rosenfield, P.E., has announced his retirement and submitted his letter of resignation dated March 10, 2022. Mr. Rosenfield's last day of employment with the City of the Laguna Hills will be April 1, 2022, as stated in his attached letter of resignation.

It is in order for the City Council to acknowledge receipt of Mr. Rosenfield's notice of retirement and his Rosenfield's letter of resignation.

Notice of Retirement and Resignation of Kenneth H. Rosenfield, Interim City Manager

March 22, 2022

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ATTACHMENTS:

- KRosenfield Retirement Letter



March 10, 2022

CITY OF LAGUNA HILLS

Mayor Dave Wheeler,

Mayor Pro-Tempore Janine Heft, Council members Don Sedgwick, Don Caskey and Erica Pezold,

Today is a significant day for me. It was 30 years ago this day, at the March 10, 1992, City Council meeting, that I was introduced to the community as a consultant team member initiating the Public Services Department for this new city and becoming an integral part of the City Management Team. During my tenure, including just over three years as a consultant and almost 27 years as a City employee, I have had the pleasure to fulfill my professional purpose. Civil Engineers, fundamentally, build and support communities while protecting the public health, safety and welfare through improvements to the built environment and the protection of the natural environment. This is what I accomplished for the City of Laguna Hills with the support of the inaugural City Council, every subsequent City Council, the community and the previous City Managers. I led the City's successful efforts to maintain its contract model approach to public services; enhanced City revenues through grant acquisitions; managed all capital improvement program projects, including the widening of every major intersection, refurbishment of every street, reconstruction of every local park, development of the City's first sports park - Rapid Falls Park, subsequently renamed to Cabot Park, and development of the 19-acre Laguna Hills Community Center and Sports Complex, including the 43,000 sf multiuse community center building; participated as a key team member for the development of the City's 60,000 sf multi-tenant Civic Center; and managed multiple traffic signal, landscaping, median island improvements and other infrastructure enhancement projects for the community.

During the past 14 months as your acting and interim City Manager, as well as being your Public Services Director/City Engineer, many City Council initiatives were accomplished, a balanced two-year budget was adopted, the City entered into a new Orange County Sheriff's Department Agreement and a new Laguna Hills Employee Association Agreement, the annual Audit was passed with no exceptions, the Phillips site development was approved, the Village at Laguna Hills development was approved, the El Toro Bus Shelter was refurbished, the Citywide Pavement Refurbishment project was completed, the LH on the Hill project was approved for construction and nearly 400 reports were presented to the City Council. These accomplishments were the result of my leadership and the hard work of the City Team. We have an excellent Staff and I thank them for their commitment during these challenging times! The Staff is to be congratulated for their efforts along with our many supporting consultants. I also thank those members of the City Council that maintained a professional, supportive and friendly relationship with me. These relationships are cherished and appreciated.

I am confident the City is positioned to have a great future. My time, however, to retire from the City of Laguna Hills is at hand and I give notice to the City Council of this decision. Even though the Agreement between the Interim City Manager and the City Council only requires two weeks' notice of separation from the City, I am providing you with three weeks' notice in order to better facilitate a smooth transition to new management. Therefore, my last working day will be April 1, 2022. Thank you.

Sincerely,

Kenneth H. Rosenfield, P.E.

Interim City Manager

cc: City Clerk, City Attorney



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: Gregory E. Simonian
City Attorney

ISSUE: Temporary Appointment of Interim City Manager Pending Recruitment
for Permanent City Manager Position

RECOMMENDATION: That the City Council:

- (1) Certify that with the retirement of Kenneth H. Rosenfield on April 1, 2022, the position of City Manager will be vacant while the City Council continues its recruitment for a new City Manager;
 - (2) Certify that while vacant, the position of City Manager will be a position to be filled for a limited duration by a retired annuitant on an interim basis;
 - (3) Certify that the appointment is necessary to fill a critically needed position sooner than 180 days after Mr. Rosenfield's effective retirement date of April 1, 2022;
 - (4) Temporarily appoint Mr. Rosenfield to the limited duration, retired annuitant position of Interim City Manager while the City Council completes its recruitment to fill the City Manager position on a permanent basis; and
 - (5) Approve and authorize the Mayor/Mayor Pro Tempore to execute a retired annuitant employment agreement with Kenneth H. Rosenfield, P.E., for the position of Interim City Manager, which satisfies the CalPERS requirements for the temporary employment of a retired annuitant.
-

SUMMARY:

Temporary Appointment of Interim City Manager

March 22, 2022

Page 2

On March 10, 2022, Interim City Manager Kenneth H. Rosenfield, P.E., submitted a letter of resignation indicating his intent to retire from the City, effective April 1, 2022, after nearly 27-years of dedicated public service. During his tenure with the City, he has served as the City's first Public Services Director/City Engineer; most notably serving as the Interim City Manager for the past 14-months. Mr. Rosenfield's letter of resignation was placed on the March 22, 2022 agenda for City Council review and acceptance. Pending the selection of a new city manager, a process already initiated, but not completed, by the City Council, it is recommended that the City Council, pursuant to Government Code §§7522.56 and 21221(h), appoint Mr. Rosenfield to the soon-to-be vacant interim position of City Manager for a limited duration consistent with the requirements set forth in CalPERS regulations applicable to the employment of retired annuitants, which requirements are described below

BACKGROUND:

This item is related to the pending formal competitive selection process for filling the city manager position and has been placed on the agenda at the recommendation of the City Attorney. In preparation for selecting a new city manager, a process already initiated by the City Council, it is recommended that the City Council, pursuant to Government Code §§7522.56 and 21221(h), appoint Mr. Rosenfield to the interim position of City Manager for a limited duration consistent with the requirements set forth in CalPERS regulations applicable to the employment of retired annuitants, which requirements are described below.

In order for the City Council to appoint Mr. Rosenfield to this interim position after his retirement, the following conditions must be met:

- The City must have an active recruitment for a permanent replacement for the vacant position. As set forth above, the City currently has such an active recruitment in place.
- The City can only appoint a retired annuitant to an interim position during the period of recruitment and not in a permanent capacity. The City satisfies this requirement as well and only intends to employ Mr. Rosenfield until a new city manager is selected, and, potentially, for a short period thereafter for purposes of a limited transition only.
- Mr. Rosenfield would not be permitted to work more than 960 hours in a fiscal year. The City must enroll and report Mr. Rosenfield's hours to CalPERS pursuant

Temporary Appointment of Interim City Manager

March 22, 2022

Page 3

to Government Code section 21220.

- The City cannot compensate Mr. Rosenfield more than the maximum pay rate for the vacant position as listed on the employer's publicly available pay schedule. Mr. Rosenfield's current salary set forth in the publicly available pay schedule is \$269,000. It is therefore proposed that the City pay Mr. Rosenfield \$129.33 per hour for appointment to this vacant limited duration position (which is the hourly equivalent of the salary currently associated with the position).
- Mr. Rosenfield may not receive any additional benefits or compensation, other than reimbursement of business expenses.
- The City must certify that the position to which Mr. Rosenfield will be appointed is of a limited duration for a retired annuitant during its temporary vacancy.
- The City must further certify that the appointment is necessary to fill a critically needed position sooner than 180 days after Mr. Rosenfield's effective retirement date of April 1, 2022.

CONCLUSION:

After April 1, 2022, the position of City Manager will be vacant. While the City Council is actively engaged in a recruitment for a new City Manager, temporary assistance to perform the duties of this interim position is required. CalPERS regulations permit a retired annuitant to be employed by a CalPERS employer, such as the City, so long as the conditions set forth above are met. The attached retired annuitant employment agreement meets all of these conditions. It is therefore recommended that the agreement be executed by the City Council in order to temporarily appoint Mr. Rosenfield to this interim position.

FISCAL IMPACT:

Since Mr. Rosenfield will only be receiving an hourly rate of pay equivalent to his current salary and no additional benefits or compensation, there is a cost savings to the City by appointing him to this position on an interim basis as the budget for the current fiscal year included Mr. Rosenfield's current pay and benefits.

ATTACHMENTS:

- Proposed Agreement

**RETIRED ANNUITANT EMPLOYMENT AGREEMENT APPOINTING
KENNETH H. ROSENFELD AS INTERIM CITY MANAGER FOR
THE CITY OF LAGUNA HILLS**

THIS AGREEMENT (“Agreement”) is entered into by and between the City of Laguna Hills and Kenneth H. Rosenfield, P.E., (hereinafter referred to as “Interim City Manager” or “Rosenfield”), to be effective the 2nd day of April 2022, and is made in reference to the following facts.

A. On March 10, 2022, Interim City Manager Kenneth H. Rosenfield, P.E., submitted a letter of resignation indicating his intent to retire from the City, effective April 1, 2022, after nearly 27-years of dedicated public service.

B. After April 1, 2022, the position of City Manager will be vacant while the City Council continues its ongoing recruitment for a new City Manager.

C. During its temporary vacancy, the position of City Manager is designated by the City Council as an interim position of a limited duration that must be filled due to critical business need and desires to do so by appointing a retired annuitant familiar with the ongoing projects and operations of the City.

D. After April 1, 2022, Mr. Rosenfield will be considered a retired annuitant for purposes of CalPERS regulations.

E. The City Council desires to appoint Mr. Rosenfield to the interim vacant position of City Manager for a limited duration while the recruitment for the new City Manager is completed and potentially for a brief transition period thereafter.

THEREFORE, IT IS AGREED AS FOLLOWS:

1.0 Appointment

1.1 The City Council hereby appoints Kenneth H. Rosenfield, P.E., as Interim City Manager of the City to perform the functions and duties specified in the job description for the position of City Manager; and other legally permissible and proper duties and functions as the City Council may, from time to time, assign. The position of Interim City Manager is at-will and serves at the pleasure of the City Council.

1.2 Rosenfield hereby agrees to perform fully and faithfully the functions and duties of Interim City Manager specified in the job description for the position of City Manager; and other legally permissible and proper duties and functions as the City Council may, from time to time, assign.

2.0 Term of Agreement

The term of this Agreement shall commence on April 2, 2022 and shall continue in full force and effect until no later than June 30, 2022, unless terminated with or without cause by either party by providing written notice thereof. The intent of the parties is that this Agreement will be terminated after the appointment of a new City Manager following completion of the formal competitive recruitment process and, potentially, a brief transition period following the appointment.

3.0 Pay Rate

3.1 The Interim City Manager shall receive compensation at the rate of One Hundred Twenty Nine Dollars and Thirty-Three Cents (\$129.33) per hour, payable on a bi-weekly basis.

3.2 The Interim City Manager shall not be entitled to receive any benefits of employment provided to City's regular employees, including, but not limited to, group health or medical benefits, life insurance, and vacation and other leave accruals.

4.0 Hours of Work

The hours of the Interim City Manager shall not exceed 960 in a fiscal year.

5.0 General Expenses

The City agrees to reimburse the Interim City Manager for non-personal expenses reasonably and necessarily incurred in the course and scope of performing his duties. The Finance Director is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

6.0 Other Terms and Conditions of Employment

The City Council, in consultation with the Interim City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Interim City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or any applicable law.

7.0 Compliance with Law

Interim City Manager shall comply with all applicable laws, ordinances, codes, and regulations of federal, state, and local government in the performance of the duties, which are the subject of this Agreement.

8.0 General Provisions

8.1 The text herein shall constitute the entire Agreement between the parties.

8.2 If any provision, or any portion thereof, contained in this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severed, shall not be affected and shall remain in full force and effect.

CITY OF LAGUNA HILLS

INTERIM CITY MANAGER

Dave Wheeler,
Mayor

Kenneth H. Rosenfield, P.E.

Date: _____

Date: _____

APPROVED AS TO FORM

Gregory E. Simonian,
City Attorney

Date: _____

ATTEST:

Melissa Au-Yeung
City Clerk

Attachment: Proposed Agreement (2797 : Temporary Appointment of Interim City Manager)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022

TO: Mayor and Council Members

FROM: David Reynolds
Deputy City Manager/Community Services Director

ISSUE: Permanent Monument Memorializing the 3/5 Dark Horse Marine Battalion

RECOMMENDATION: That the City Council: 1) Receive a presentation from Mike Bland on the installation of an existing Memorial Stone at the Community Center and Sports Complex, and 2) Defer the establishment of a Permanent Monument Memorializing the 3/5 Dark Horse Marine Battalion, pending further evaluation of the needs and opportunities for a monument through a Request for Proposal process for professional services as described herein.

SUMMARY:

At the City Council meeting of February 22, 2022, members of the public¹ presented a request to install an existing monument granite slab that honors Marines of the 1st Division, 5th Regiment who gave their lives in the Vietnam conflict (“Memorial Stone”) within the plaza area of the Community Center. Their request was to also place the subject of the installation of the Memorial Stone on a future City Council meeting agenda for further discussion. A history of the Memorial Stone is attached for reference (see Attachment 1). The City Council, at this meeting, directed Staff to bring back a report to the City Council to allow further discussion on the potential installation of the Memorial Stone and on what work efforts have already occurred regarding the

¹ Mike Bland, founder and former president of the Laguna Hills Team Dark Horse; Evan Gost, current board member of the Laguna Hills Team Dark Horse; Barry Graham, individual in possession of the Memorial Stone and writer of the attached “History of the Memorial Stone.”

3/5 Battalion Monument

March 22, 2022

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establishment of a permanent monument memorializing the 3/5 Darkhouse Marine Battalion.

BACKGROUND:

At the February 22, 2022, City Council meeting, Mr. Mike Bland, and others, addressed the City Council with a request to place this subject matter on a future City Council meeting. The City Council concurred with this request. Prior to that City Council meeting, at its February 2, 2022, meeting, the Parks and Recreation Commission was presented with a request from Mike Bland to install an existing Memorial Stone within the plaza area of the Community Center. His preferred installation locations were near the fountain in the plaza area or the grass area in the plaza area. Below are the Commissioners' comments related to his request.

- Expand the monument to include all branches of the Military to include a more substantial monument to the armed forces.
- Engrave a phrase or slogan to reference other branches, either on the monument or on a donation bench.
- Installation locations:
 - In front of the soccer field, in the flower bed behind the retaining wall.
 - In front of the Skatepark, along the sidewalk of Paseo De Valencia, near the fencing. There is more visibility from the street and more foot traffic.
 - At another park in Laguna hills.

City Council and Staff past Work Efforts

In July 2019, the City Council directed Staff to research and propose a process for the design, fabrication, and installation of a permanent memorial for the 3/5 Darkhorse Marine Battalion at the Civic Center. Subsequent to that meeting, Staff met with the City's Public Art Consultant, Karen Robbins, Chair of Team Darkhorse, and Marine Major Joseph Patterson who was attached to the 3/5 during their historic deployment to Afghanistan. Based on these initial consultations, Staff returned to the City Council on October 8, 2019, with a recommended two-phase approach for completing the memorial project. The City Council, at this meeting, directed Staff to initiate Staff's recommended two-phased approach completing the installation of a permanent memorial for the City's adopted 3/5 Darkhorse Marine Battalion at the Civic Center. This

3/5 Battalion Monument

March 22, 2022

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direction included the development of a Request for Proposals (RFP) for a Public Art Facilitator to initiate the first phase of the design, fabrication, and installation of a permanent memorial for the 3/5 Darkhorse Marine Battalion.

Staff presented the draft RFP to the City Council on January 28, 2020 (see Attachment 2 for the January 28, 2020 Staff report). At this meeting, the City Council directed Staff to issue the RFP and also formed a City Council Ad Hoc Committee comprised of then City Council Member Janine Heft and the late Council Member Dore Gilbert. The RFP was issued and by the proposal deadline of February 28, 2020, two proposals were received. Unfortunately, shortly thereafter, the Corona Virus Pandemic was upon us and this project was put on hold.

Staff's recommendation

Staff is in support of a public discussion and outreach process as outlined in the attached January 28, 2020, staff report for the establishment of a permanent monument memorializing the 3/5 Dark Horse Marine Battalion. Further, Staff recommends deferring any decision on the installation of the existing Memorial Stone until Phase 1 of the process (as described in Attachment 2) is complete.

There are some serious and sensitive considerations that must be addressed in the installation of permanent memorial including, but not limited to:

- 1) Should the memorial recognize all branches of the armed forces, honoring residents who died in the service of our country since the City's incorporation and those 3/5 marines and sailors from Camp Pendleton?
- 2) What will be the current and long-term funding for the monument construction and maintenance?
- 3) How can an installation location minimize the occurrence of vandalism?
- 4) What location for the monument should be selected to be respectful in the appropriate placement of a permanent monument, understanding that its placement may change the character or feel of the area in which it is installed?

It is recommended the City Council:

3/5 Battalion Monument

March 22, 2022

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- 1) Appoint a new City Council Ad Hoc Committee to address the memorial monument needs, location, scope and costs.
- 2) Re-initiate the RFP process to elicit proposals from qualified professionals and/or firms in the art community to provide focus group meeting facilitation services and to develop a monument theme and narrative description for a permanent public art monument memorializing the 3/5 Darkhorse Marine Battalion and, perhaps, other branches of the military represented with the community.

FISCAL IMPACT:

There will be some staff costs in administering the RFP process and facilitating Phase 1 of the design process. Consultant services costs are not yet known. The current balance in the City's public art fund is \$72,692.22.

ATTACHMENTS:

- Attachment 1 - History of the Stone
- Attachment 2 - January 28, 2020 Staff Report

USMC 5th Regiment Vietnam Memorial at Camp Pendleton - Panel # 14

On Memorial Day of 2018, a magnificent Memorial to the United States Marines was dedicated at Camp San Mateo on Marine Corps Base Camp Pendleton. The Memorial honors Marines of the 1st Division, 5th Regiment who gave their lives in the Vietnam conflict. The 5th Regiment Vietnam Memorial occupies a space of over 2000 sq. ft. in the Camp San Mateo Memorial Garden is comprised of six massive slabs of polished granite (over 5000 lbs. per panel). Each slab is engraved with the names of several hundred Marines for a total of 2,706 Marines. The idea to create a 5th Regiment Vietnam Memorial was conceived by Vietnam Veteran Steve Colwell (1st Batt. 5th Marines) several years ago and the process of bringing the memorial to fruition was a long and expensive process. Design, fabrication and installation of the memorial was contracted to Rock of Ages Corp. (RoA) of Vermont.



At some point during the installation of the Memorial, Rock of Ages and their subcontractor(s) determined that one of the six panels (2nd from the right above) was not cut to the correct dimensions. The out-of-spec piece, known as Panel #14, was cut too short in the horizontal dimension and therefore did not physically fit into the framework defined by the adjacent panels. A decision was made by RoA to remove the non-spec Panel #14 and replace it with a new panel

of the correct size. A replacement Panel #14 was fabricated by RoA and subsequently installed to complete the Memorial site.

The Panel 14 story really begins with the replacement step because apparently no provisions were made for disposition of the original Panel 14. The original Panel #14, although removed from the display, remained intact and still carried the engraved names of 432 KIA Marines. To date, none of the parties involved in the Panel #14 replacement step can explain what transpired with the original piece after it was removed from the Memorial site. Apparently, neither the manufacturer, their contractor(s) nor the military had a plan or instructions for disposition of the original Panel #14

What we do know is that a granite memorial stone, later determined to be the original Panel # 14, was found over two years later in Ramona, California, some 70 miles away from the Camp Pendleton memorial. The Ramona Memorial stone was discovered lying flat on a trailer, apparently abandoned, in an outdoor equipment storage. Further, the Memorial had suffered serious physical damage/defacement, probably from a grinder.

September 2020 – Discovery of Panel 14

The first time I saw Panel 14 it was resting on a trailer that was parked in an equipment storage yard in Ramona, California. It appeared to be just a gray slab lying flat at eye level. It was obviously a big block with square corners, maybe a foot thick by about six feet long, lying flat on the trailer with another smaller black block lying on top of it. From the side you could not really determine what it was. Only the matte edges of the gray block were visible but on the black piece some brightly colored insignias stood out. The blocks on the trailer had obviously been there for a while as evidenced by a layer of dirt and debris while some boxes and lumber piled on top of the blocks added to the disguise. The insignia caught my eye but I could not identify it. Perhaps military, perhaps a clue to something? Curiosity got the best of me so I climbed up onto the trailer, (someone else's property) to get a better look at these mysterious pieces. What I saw was a shock. Hard to explain but I somehow felt strangely embarrassed to have stumbled into someone's funeral or private gravesite. I felt that I had invaded someone's privacy, it was not was not proper to see this – nor should anyone else stumble into this. What I saw was a huge block of polished granite engraved with hundreds of names. The block was a 6' x 6' square slab of polished granite and it

was clearly a Memorial Stone. The engraved names were arranged in three columns. Before each name was a military rank consistent with what I recognized as US Marine Corps rank structure. Beside each name was a calendar date with names and dates were arranged chronologically from 2-7-1968 at the upper left of the panel to 3-6-1969 at the bottom right. I was hit by the realization that this was a Memorial to Vietnam KIAs. And here I am inspecting it with the soles of my shoes! Get your feet off of it. Now! A better look at the colorful insignia confirmed it was from the Second Battalion 4th Marines, The Magnificent Bastards. Punch in the gut! I am looking at and standing on KIA Memorial Stone made to honor US Marines who made the ultimate sacrifice in Vietnam! Adding Injury to Insult. Several areas on the Panel showed the marks from where a grinding tool had been applied to it. The grinder damage was severe to the extent that the names of some twenty Marines had been completely obliterated.

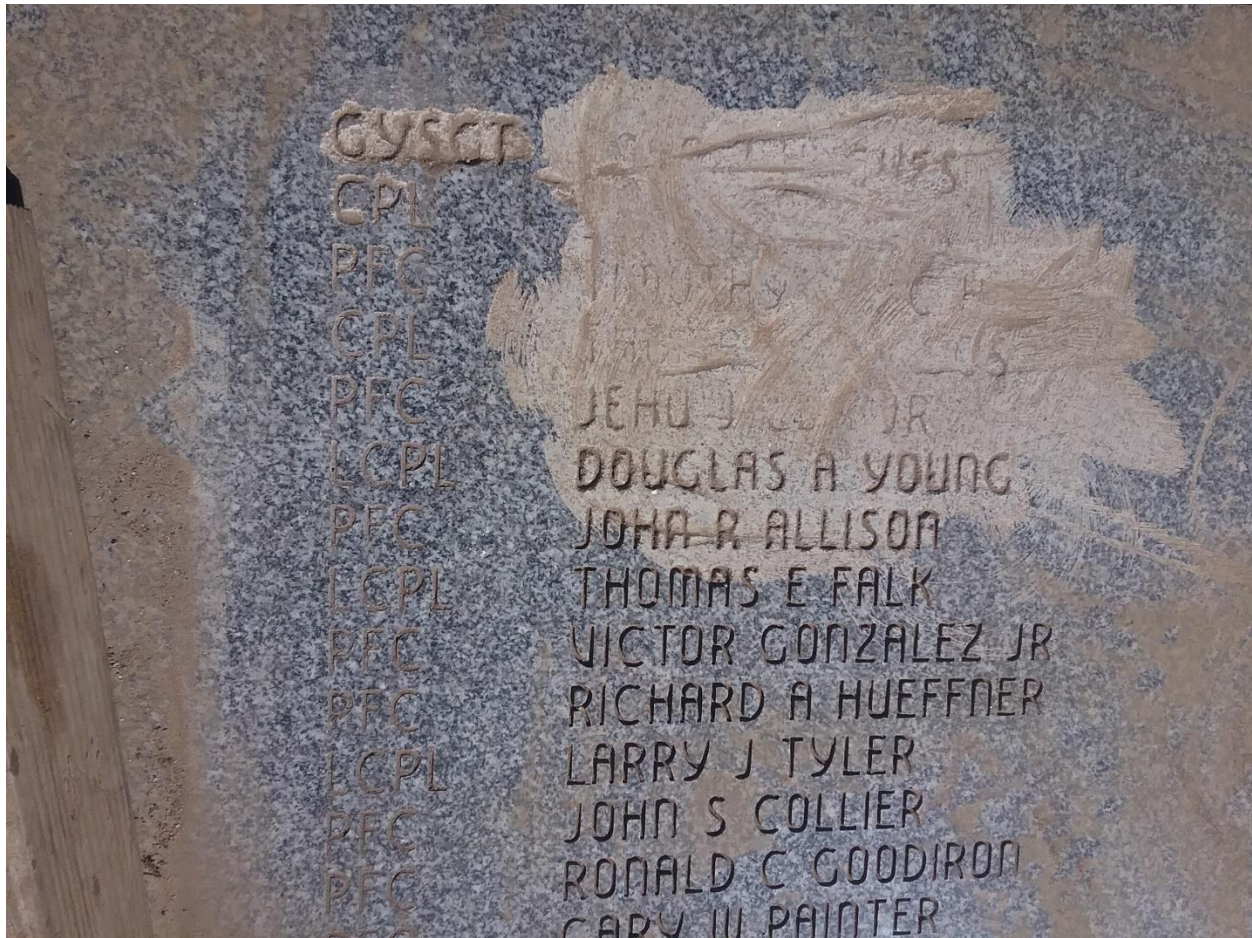
I knew this situation was wrong. Anyone having a reasonable level of awareness would know that this was wrong. What is this Memorial doing on a trailer in Ramona? Why is this Memorial here in such a state of disrespect? What? Who? Why? Many questions so I started to ask around. Regulars in the equipment yard estimated that the trailer had been parked in the same spot for a year or two and the block had been on top of it from the start. A local search led me to the trailer's owner, a Ramona businessman. He explained that the granite slab was incidental cargo that happened to be strapped to the flatbed trailer that he had purchased from a party in Oceanside in 2019. The new owner expressed to me that he recognized the significance of the Memorial Stone and was surprised and concerned at its current state of affairs. He readily agreed when I volunteered to Investigate the Stone.



(as I found it in 2020)



Damage from grinder?



Recovery of Panel 14?

After determining that something ought to be done about Panel 14, I began looking for help with the notion that some mistake had occurred and that some governmental/military authority would step in to take responsibility. A thorough description of the many and varied approaches to recovery of Panel 14 will only frustrate the reader I will just say that many attempts to generate interest and support for restoring Panel 14 to a place of respect went nowhere. Finally, I decided that if no one else was interested, then it would be my mission to see panel 14 gets back to place of dignity and respect.

Repairs

All credit to the Honor Life team in Vista California for repairing Panel 14. Their skill and perseverance and Patriotism were key to the restoration.



Attachment: Attachment 1 - History of the Stone (2796 : 3/5 Battalion Monument)





Attachment: Attachment 1 - History of the Stone (2796 : 3/5 Battalion Monument)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: January 28, 2020

TO: Mayor and Council Members

FROM: Donald J. White
City Manager

ISSUE: Request for Proposals for Public Art Facilitator to Develop a Monument Theme and Narrative Description for a Permanent Monument Memorializing the 3/5 Darkhorse Marine Battalion and Selection of a City Council Ad Hoc Committee

RECOMMENDATION: That the City Council direct staff to issue the Request for Proposals and select and appoint two City Council members to serve on an ad hoc committee.

SUMMARY:

At the direction of the City Council, staff developed a Request for Proposals (RFP) for Public Art Facilitator to initiate the first phase of the design, fabrication, and installation of a permanent memorial for the 3/5 Darkhorse Marine Battalion at the Civic Center. The scope of work in the RFP requires the selected proposer to: engage with numerous stakeholders identified by the City; lead and facilitate up to ten (10) community focus group meetings; review findings and action items with an ad hoc committee; and deliver a final report and make a presentation to the City Council by September 8, 2020, with a recommended monument theme and narrative description of the vision for the memorial. Staff is recommending that the City Council direct staff to issue the RFP and select and appoint two City Council members to serve on an ad hoc committee.

BACKGROUND:

In July 2019, the City Council directed staff to research and propose a process for the design, fabrication, and installation of a permanent memorial for the 3/5 Darkhorse Marine Battalion at the Civic Center. Subsequent to that meeting, staff met with the City's Public Art Consultant, Karen Robbins, Chair of Team Darkhorse, and Marine Major Joseph Patterson who was attached to the 3/5 during their historic deployment to Afghanistan. Based on these initial consultations, staff returned to the City Council in October 2019 with a recommended two-phase approach for completing the memorial project.

Phase 1 – Development of Monument Theme and Narrative Description

The purpose of the first phase of the project is to initiate an inclusive community outreach program and design process for the development of a monument theme and narrative description. To implement Phase 1 in a manner that is highly sensitive to the perceptions, feelings, and expectations of community members that are connected to this memorial, staff developed a Request for Proposals (RFP) for Public Art Facilitator (**attached**). The primary objective of the memorial facilitator is to lead a series of visionary focus group meetings with the various stakeholders, distill input and feedback in a meaningful way, and present a written statement of the monument theme and a narrative description that properly captures the community's input and interests.

The RFP requires the selected memorial facilitator to engage with numerous stakeholders that the City has identified which include the following at a minimum: Goldstar families, current Team Darkhorse members, former Team Darkhorse members, veterans of the 3/5, leaders of the 3/5 Marine Battalion, City leaders, and interested Laguna Hills residents.

Other requirements detailed in the scope of work include the following:

- *Kick Off Meeting*: A kickoff meeting led by the memorial facilitator outlining the purpose, roles, expectations for participation, meeting format, and recommended schedule for focus group meetings and other meetings.
- *Stakeholder Outreach*: The memorial facilitator will assist the City with stakeholder engagement and outreach, relationship building, and establishing effective communications channels.

3/5 Memorial Monument RFP for Public Art Facilitator

January 28, 2020

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- *Focus Group Meetings*: Led by the memorial facilitator, the City will hold up to ten (10) focus group meetings that will take place in-person, by telephone conference, or by webinar.
- *Review Meeting with a City Council Ad Hoc Committee*: After completion of all focus group meetings, the facilitator will meet with an ad hoc committee to discuss their findings and action items.
- *Final Report and City Council Presentation*: Following the conclusion of the focus group meetings, the facilitator will prepare a report and make a presentation to the City Council detailing the findings of each meeting and possible monument themes based on stakeholder feedback. In addition, the facilitator will include a recommended monument theme and narrative description of the concept and vision for the memorial, which will be integral to the second phase of the project.
- *Tentative Schedule*:

RFP Issued	February 6, 2020
RFP Questions Due	February 14, 2020 at 5 p.m.
Proposals Due	February 21, 2020 at 5 p.m.
Tentative Interviews	Week of March 2, 2020
City Council Award of Agreement	April 14, 2020
Start Date	March 25, 2020
Final Report and City Council Presentation	On or before September 8, 2020

Phase 2 – Artist Selection Process and Commissioning

Following the completion of Phase 1, staff will prepare and issue a second RFP to initiate a nationwide artist selection process. In addition to the City Council approved monument theme, visionary concept and narrative description from Phase 1, the RFP would include:

- Scope of Work
- Specifications
- Proposed Timeline
- Submission Guidelines

- Second Phase Process
- Site/Size Parameters
- Budget
- Artist Application Form

This phase will be distributed throughout the United States and open to all artists who wish to participate in the selection process.

Ad Hoc Committee

Staff recommends that the City Council establish an Ad Hoc Advisory Committee solely comprised of two City Council members to: (1) Assist staff in interviewing selected candidates that submitted an RFP for Public Art Facilitator; (2) Thereafter, recommend a finalist candidate to the entire City Council; and (3) Review findings and action items from the selected public art facilitator. Consistent with state law requirements, it should be noted that staff is recommending that the proposed Ad Hoc Advisory Committee remain active for a limited duration of no more than one year, so as to not constitute a Standing Committee. Should the City Council move forward with establishing the Ad Hoc Advisory Committee, the City Council would also need to select two City Council members to serve on the Committee.

ATTACHMENTS:

- RFP for Public Art Facilitator

**REQUEST FOR PROPOSALS (RFP)
FOR
PUBLIC ART FACILITATOR**



**CITY OF LAGUNA HILLS
24035 El Toro Road
Laguna Hills, CA 92653
(949) 707-2650**

RFP Dates

RFP Issued	February 6, 2020
RFP Questions Due	February 14, 2020 at 5 p.m.
Proposals Due	February 21, 2020 at 5 p.m.
Tentative Interviews	Week of March 2, 2020
City Council Award of Agreement	April 14, 2020
Start Date	March 25, 2020
Final Report and City Council Presentation	On or before September 8, 2020

1 INTRODUCTION

The City is seeking proposals from qualified professionals and/or firms in the art community (“Proposer”) to provide focus group meeting facilitation services and to develop a monument theme and narrative description for a permanent public art monument memorializing the 3/5 Darkhorse Marine Battalion at the Laguna Hills Civic Center (hereafter referred to as “Services”). The City is highly interested in Proposers whose background includes working with design projects that represent a selected historical story.

At this point in time, a permanent memorial to the 3/5 is simply an idea. Critical questions need to be asked and answered. What is the theme? What story, or stories, are we trying to tell? What memories do we want to invoke? What do we want people to take away from the memorial? The process to be undertaken needs to be as inclusive as possible and highly sensitive to the perceptions, feelings and expectations of all who have a stake in this memorial. Toward this end, the City is undertaking a process with two distinct phases.

- Phase 1: Development of Monument Theme and Narrative Description
- Phase 2: Artist Selection Process and Commissioning

The suggested scope of work for Services is listed in Section 2 of this RFP document. It is the intent of the City to execute an agreement with the selected Proposer for Services.

1.1 Purpose

Initiate a community outreach program and design process for a permanent memorial for the City’s adopted 3/5 Darkhorse Marine Battalion and report back to the City Council with findings on focus group meeting outcomes and design directions.

1.2 Historical Perspective of the Project

The Laguna Hills City Council formally adopted the 3rd Battalion, 5th Marines, 1st Division (“3/5”) based out of Camp Pendleton in August 2007, and later helped establish a volunteer committee known as Team Darkhorse to support the 3/5. Since that time, the 3/5 Darkhorse Marine Battalion has become an integral part of the Laguna Hills community and its identity.

On an annual basis, the City hosts the “Laguna Hills Memorial Day Half Marathon, 10K, and 5K, Honoring the United States Marine Corps Dark Horse Battalion” – a major racing event that draws international and regional attendance – to honor the soldiers who lost their lives in Afghanistan during “Operation Enduring Freedom”.

From October 2010 to April 2011, the 3/5 was on deployment to the Sangin District, Helmand Province, Afghanistan. During this deployment, which was part of “Operation Enduring

Freedom,” the 3/5 had 25 marines killed in action and over 200 were wounded. This was the greatest number of casualties suffered by a Marine battalion since the Vietnam War.

1.3 Stakeholders

The City has identified the following stakeholders (hereafter referred to as “Stakeholders”) of which the Proposer will be required to engage:

- Goldstar Families
- Current Team Darkhorse Members
- Former Team Darkhorse Members
- Veterans of the 3/5
- Leaders of the 3/5 Marine Battalion
- City Leaders
- Interested Laguna Hills Residents

2 SCOPE OF WORK

The following represents the general scope of work for Services. The City expects that the selected Proposer (hereafter, “Facilitator”) will present a final report and make a presentation to the City Council by the September 8, 2020, City Council meeting.

2.1 Kick Off Meeting

The Facilitator will prepare for and facilitate the first meeting with City staff outlining the purpose, roles, expectations for participation, meeting format, and recommended schedule for future meetings. This may include distribution of an information packet prepared by City staff with background materials to inform the Facilitator’s work. Facilitator services include preparation of meeting agenda, information for any public notices, meeting facilitation, and meeting summary with action items and next steps as appropriate.

2.2 Stakeholder Outreach

The Facilitator will assist the City in identifying Stakeholder engagement opportunities and with building relationships and communications channels. In addition, the Facilitator will provide timely information to Stakeholders to effectively inform and engage them throughout

the entirety of the project. The Facilitator will assist in interviewing and surveying stakeholders to hear perspectives on key issues, interests, and concerns.

2.3 Focus Group Meetings

The Facilitator will prepare for and facilitate up to ten (10) in-person, telephone conference, or webinar focus group meetings to identify Stakeholder issues, interests, and concerns to inform the Facilitator's design considerations for the memorial monument. During the course of these meetings, City staff will provide information and materials as appropriate. The Facilitator will prepare meeting agendas, information for any public notices, meeting facilitation, and meeting summary with action items and next steps as appropriate. Following these visionary focus group meetings, the Facilitator will draft for City review, the conclusions of each meeting and possible monument themes and narrative concepts that represent what was conveyed throughout the Phase 1 process.

2.4 Review Meeting with the Ad Hoc Committee

The Facilitator will prepare for and facilitate a meeting with the City Council Ad Hoc Committee after focus group meetings have been completed to review the Facilitator's findings and action items, as needed.

2.5 Final Report and City Council Presentation

The primary objective of the Facilitator is to lead a series of visionary focus groups among the various stakeholders, distill the input and feedback, and ultimately present a written statement of the monument theme and a narrative description of the concept and vision that captures as inclusively as possible, the perceptions, feelings and expectations of stakeholder groups. Following the conclusion of the up to ten (10) focus group meetings, the Facilitator will prepare a report and make a presentation to the City Council detailing the findings of each meeting and possible monument themes based on Stakeholder feedback. In addition, the Facilitator will include a recommended monument theme and narrative description of the concept and vision for the memorial, which will be integral to the Phase 2 Artist Selection Process and Commissioning.

3 SCHEDULE

The tentative schedule for this procurement process is as follows:

RFP Issued	February 6, 2020
RFP Questions Due	February 14, 2020 at 5 p.m.

Proposals Due	February 21, 2020 at 5 p.m.
Tentative Interviews	Week of March 2, 2020
City Council Award of Agreement	April 14, 2020
Start Date	March 25, 2020
Final Report and City Council Presentation	On or before September 8, 2020

4 PROPOSAL REQUIREMENTS

The Facilitator is responsible for preparing an effective, clear, well-organized and concise formal written proposal. In order to be considered for selection, consultant firms must submit a complete response to this RFP that includes the following mandatory information and/or requirements in the following format. Failure to provide any of the information requested below may be cause for the proposal to be rejected.

4.1 Transmittal Letter

A transmittal letter introducing the firm and the individual who will be the primary contact person.

4.2 Executive Summary

An executive summary.

4.3 Firm Background Information

Background information including specific qualifications and experience in conducting related work. The information below must be included:

- a. Describe the firm's organizational structure and explain how the firm is qualified to be responsive to the specific requirements of this RFP.
- b. Describe the firm's qualifications and experience providing similar services as required in this RFP.
- c. Provide a project staffing organizational chart listing proposed personnel assigned to this project. Include assigned duties, and comprehensive resumes for each individual listed. Resumes must list education, training, professional work experience, and a listing of work performed comparable to that described within this RFP.

- d. References: Provide a list of at least three (3) clients for whom you have conducted and completed a comparable project within the last five (5) years. Indicate client organization name, contact person, and phone number.
- e. Summary of RFP Requirements: Provide on no more than one (1) printed page of the firms' understanding of the requirements stated in this RFP.
- f. Approach to Scope of Work: Provide a detailed description of the steps that will be taken to complete all tasks identified in Section 2 of this RFP.
- g. Schedule of Performance: Provide a proposed Schedule of Performance, including a time line for project completion:
 - i. Provide a project schedule identifying start and end dates for each phase of the project – include milestones, submittal of deliverables, and each task required for the successful and timely completion of each phase of the project.
 - ii. Indicate the earliest date the firm would be able to commence work on this project.
- h. Use of Sub-Contractors or Sub-Consultants: Indicate in the firm's proposal any portion of work that would be performed by a sub-contractor. Provide information on all sub-contractors.
- i. Schedule of Compensation/Fees: Provide a separate sealed proposed Schedule of Compensation/Fees to perform all work identified in Section 2 within this RFP. Include all proposed incidental or professional hourly fees/rates.
- j. Financial Interests: A certificate, signed under penalty of perjury, regarding disclosure of financial interests of City/District officials or employees with the firm (See, **Exhibit II**).
- k. Authorized Signatory: The name, title and signature of a corporate officer that is authorized to contractually bind the firm. Please include a corporate resolution evidencing authorized signatory. The proposal must be a firm offer valid for a 60-day period.
- l. Proposal Copies: Submit one (1) original copy and three (3) copies of the proposal. Also include one copy in PDF format via USB drive or email.

5 SELECTION PROCESS

Each proposal received will be evaluated and reviewed to determine if it meets the stated requirements set forth in this RFP. The top finalists will be required to make an oral presentation to an evaluation team, which will be comprised of the City Council Ad Hoc Committee, the City's public art consultant, and City staff.

Proposals timely submitted will be evaluated using the criteria listed below:

- Demonstrated understanding of the professional services requested.
- Prior experience in performing similar projects.
- Qualifications of the firm and assigned project consultants.
- Overall project design and methodology.
- Time line for project completion / proposed schedule.
- Professional Fees/HourlyRates/Cost.
- Reference Checks.

Selection by the City for professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost. Selection will be made to ensure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the City. The City shall consider price after the City is satisfied that the would-be person, company, corporation, contractor, consultant, or firm has demonstrated the competence and professional qualifications necessary for the satisfactory performance of the services required.

All questions concerning this RFP are to be made via email, or phone, and directed to:

Don White
 City Manager
 City of Laguna Hills
 24035 El Toro Road
 Laguna Hills, CA 92653
 949-707-2620
dwhite@lagunahillscsca.gov

Proposals must be received by the City of Laguna Hills City Clerk by 5:00 p.m., Friday, February 21, 2020. The Proposer must submit one (1) original, three (3) printed copies, and one (1) copy in PDF format via USB drive or email.

6 GENERAL INFORMATION

The City of Laguna Hills reserves the right to reject any or all proposals and will not be liable for any costs incurred by responding firms relating to the preparation of proposals or making of presentations.

- Costs for developing responses to this RFP or for attending bidder's meetings prior to the award of the contract are entirely the responsibility of the Proposer and shall not be chargeable to the City.
- Proposals must be valid for a minimum of 60 days.
- The City reserves the right to expand or diminish the Scope of Work subject to negotiation with the successful Proposer.
- The City is not required to select the proposal that may indicate the lowest price or costs. The City may reject all proposals when, in its sole discretion and opinion, none of them meet the requirements or specifications of this RFP, the benefits derived will be less than anticipated or desired, or the rejection is in the best interest of the City. If all proposals are rejected, the City may or may not request additional proposals.
- A copy of the City's Sample Draft Consulting Services Agreement has been included as an attachment to this RFP (**Exhibit III**). The successful firm shall be required to adhere to the provisions of the City's standard form Consulting Services Agreement, including providing the required proof of insurance coverages described therein. The attached sample draft Consulting Services Agreement is subject to revision and modification upon final.
- In the event it becomes necessary to revise any part of this RFP, addenda will be provided in writing to all Proposers.

Thank you very much for taking your valuable time to respond to this RFP.

Exhibits

- | | |
|-------------|---|
| Exhibit I | - Proposed Site. |
| Exhibit II | - Certificate of Employment Relationships and Financial Interest. |
| Exhibit III | - City's Sample Draft Consulting Services Agreement. |



Laguna Hills Civic Center
24035 El Toro Road

Plaza Sculpture Site Location
Photographs



Plaza Sculpture Site
12' x 17'

Laguna Hills Civic Center
24035 El Toro Road

Plaza Sculpture Site Location
Site Dimensions

Sculpture Base Dimension
12' x 17'

Sculpture Base Alternate
Dimension
12' x 8'8"

Exhibit II

CITY OF LAGUNA HILLS
 CERTIFICATE OF
 EMPLOYMENT RELATIONSHIPS
 AND FINANCIAL INTERESTS

NAME OF ENTITY: _____

EMPLOYMENT RELATIONSHIPS WITH CITY OFFICIALS OR CITY EMPLOYEES:

FINANCIAL INTERESTS OF CITY OFFICIALS OR CITY EMPLOYEES IN THE ENTITY:
 (If known and applicable, please state the percentage of ownership interest)

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Signed this _____ day of _____, 2020, at
 _____, California.

Name: _____

Signature: _____

Title: _____

CONSULTING SERVICES AGREEMENT

(Company Name)

(XXX Services)

THIS AGREEMENT FOR XXXXXX SERVICES (hereinafter "Agreement") is made and entered into, to be effective this 1st day of July 2019, by and between the CITY OF LAGUNA HILLS, a municipal corporation organized and existing under the laws of the State of California (hereinafter referred to as "City"), and XXXXXXXX, a California corporation (hereinafter referred to as "Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

A. City has determined that there is a need to continue to retain the professional services of a qualified consultant equipped and specially trained in appropriate procedures to provide emotional aid and practical support services to victims of traumatic events and their families in the first few hours following tragedy in the City of Laguna Hills on an as-needed, on-call basis for FY 2019-2020 (the "Project").

B. Consultant has submitted to City a written proposal, dated May 1, 2019 to provide continued trauma victim intervention support services to City for the Project at the same cost pursuant to the terms and conditions of this Agreement.

C. Consultant represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, and expertise to provide these services to City for the Project and has agreed to provide such continued services as provided herein. City does not have the personnel, training, or specialized expertise able to perform the work and services contracted for herein.

D. City desires to continue to retain Consultant to provide such professional services for the Project.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services and Standard of Performance. In compliance with all terms and conditions of this Agreement, Consultant agrees to continue to provide and perform on an as-needed, on-call basis trauma victim intervention support services to City for the Project as described and as set forth in Consultant's Proposal/Scope of Work, dated May 1, 2019, as well as a one-page Scope of Services/Work Summary Sheet, which are attached hereto collectively

as Exhibit “A” and are incorporated herein by reference (hereinafter referred to as the “Scope of Services,” the “Services” or “Work”). As a material inducement to the City entering into this Agreement, Consultant acknowledges and understands that the Services and Work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant’s Services and Work shall be performed in a skillful and competent manner and shall be held to a standard of quality and workmanship prevalent in the industry for such Services and Work and with the standards recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and warrants that it is skilled in the professional discipline necessary to perform the Services and Work and that it holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. Consultant represents and warrants that it and all of its employees, subconsultants and subcontractors providing any Work or Services under this Agreement shall have sufficient skill and experience to perform the Work or Services assigned to them. All Services and Work shall be completed to the reasonable satisfaction of the City.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; and, (2) the Consultant’s signed, original May 1, 2019 proposal submitted to the City (“Consultant’s Proposal”), as well as a one-page Scope of Services/Work Summary Sheet, which shall all be referred to collectively hereinafter as the “Contract Documents.” The Consultant’s Proposal, as well as the one-page Scope of Services/Work summary sheet, are each attached hereto as Exhibit “A” and are hereby incorporated by reference and made a part of this Agreement. All provisions of the Contract Documents shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms of this Agreement; and, (2nd) the provisions of the Consultant’s Proposal.

1.3 Compliance with Law. Consultant shall comply at all times during the term of this Agreement with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder, including without limitation all applicable fair labor standards and Cal/OSHA requirements. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Work and Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If Consultant performs any Work or Services in violation of such laws, rules, and regulations, Consultant shall be solely responsible for all penalties and costs arising therefrom. Consultant shall defend, indemnify, and hold City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

1.4 Licenses, Permits, Fees, and Assessments. Prior to performing any Services or Work hereunder Consultant shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement

and any extension, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement, and shall defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to obtain such license, permits, and approvals of whatever nature that are legally required to perform the Work or Services.

1.5 Familiarity with Work. By executing this Agreement, Consultant represents and warrants that it (a) has thoroughly investigated and considered the Scope of Work or Services to be performed, (b) has carefully considered how the Services should be performed and has carefully examined the location or locations at or with respect to where such Services or Work is to be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services (Exhibit "A") or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. It is expressly understood by Consultant that the provisions of this section shall not apply to the Work and Services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any Work or Service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

1.9 Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other contractors, consultants, or vendors for services similar to the services that are the subject of this Agreement. Consultant further acknowledges that City may have its own employees perform services similar to the services that are the subject of this Agreement.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services and Work rendered pursuant to this Agreement, Consultant shall be compensated by City for the services performed in accordance with the rates and charges set forth in the Schedule of Compensation/Fees, which is attached hereto as Exhibit "A" and is incorporated herein by reference, but not exceeding the total maximum contract amount of Three Thousand Six Hundred Forty Dollars (\$3,640.00) (hereinafter referred to as the "Maximum Contract Amount"). The method of compensation shall be as set forth in Exhibit "A". The maximum amount of City's payment obligation under this Agreement is the amount specified in this section.

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation/Fees (Exhibit "A"), in any month in which Consultant wishes to receive payment, no later than the tenth (10th) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

2.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance.

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as

Exhibit "A" and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer; however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall continue in full force and effect for a period of twelve (12) months, commencing on July 1, 2019 and ending on June 30, 2020, unless extended by mutual written agreement of the Parties.

[-OR- ... shall continue in full force and effect until the Project is completed.]

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: Wayne Fortin, Founder & CEO. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Work or Services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out

the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Consultant shall not contract with any other entity to perform the Services required without prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees or agents, shall not maintain a permanent office or fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's officers, employees, representatives or agents or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with the performance of Services under this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents, in connection with the performance of any Work or Services under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of any Work or Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing any

Work or Services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, representatives, agents, or subconsultants or subcontractors, Consultant shall defend, indemnify, and hold harmless City from and against all such financial obligations.

4.5 PERS Eligibility Indemnification.

A. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing any Work or Services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employee Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

B. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing any Work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

5. INSURANCE

5.1 Compliance with Insurance Requirements. Consultant shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to City, all insurance required under this section. Consultant shall not commence any Work or Services under this Agreement unless and until it has provided evidence satisfactory to City that it has secured all insurance required under this section. If Consultant's existing insurance policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

5.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, Consultant shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

A. **Commercial General Liability Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance written on an occurrence basis with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or

provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

B. Automobile Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

C. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, employees, agents and volunteers, and to require each of its subconsultants and subcontractors, if any, to do likewise under their workers' compensation insurance policies. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

5.3 Acceptability of Insurers. Insurance required by this section shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Lines Insurers (LASLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund. In the event the City determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

5.4 Insurance Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

A. The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to provide the following:

1. Additional Insured: The City, its officials, officers, employees, agents and volunteers, shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement; and

2. Additional Insured Endorsements: Additional insured endorsements shall not (1) be restricted to “ongoing operations”, (2) exclude “contractual liability”, (3) restrict coverage to “sole” liability of Consultant, or (4) contain any other exclusions contrary to the Agreement; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

3. Notice: The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to the City. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Consultant’s failure to pay the insurance premium, the notice provided to City shall be by ten (10) days prior written notice.

B. For all policies of Commercial General Liability Insurance, Consultant shall provide endorsements for ongoing operations and completed operations to effectuate this requirement.

5.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City in advance and shall protect the City, its officials, officers, employees, agents and volunteers, in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

5.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

5.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the City, its officials, officers, employees, agents and volunteers, or shall specifically allow Consultant or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Consultant hereby agrees to waive its own right of recovery against the City, its officials, officers, employees, agents and volunteers, and Consultant hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

5.8 Evidence of Coverage. Concurrently with the execution of the Agreement, Consultant shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted

to the City for written approval. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. Consultant shall promptly furnish, at City's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents City requires to verify coverage.

5.9 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

5.10 Enforcement of Agreement (Non-Estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the City nor does it waive any rights hereunder.

5.11 Insurance for Subconsultants. Consultant shall either: (1) include all subconsultants or subcontractors engaged in any Work or Services for Consultant relating to this Agreement as additional named insureds under the Consultant's insurance policies; or (2) Consultant shall be responsible for causing its subconsultants or subcontractors to procure and maintain the appropriate insurance in compliance with the terms of the insurance requirements set forth in this section, including adding the City, its officials, officers, employees, agents and volunteers, as additional insureds to their respective policies. All policies of Commercial General Liability Insurance provided by Consultant's subconsultants or subcontractors performing any Work or Services related to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers, as additional insureds. Consultant shall not allow any subconsultant or subcontractor to commence any Work or Services relating to this Agreement unless and until it has provided evidence satisfactory to City that the subconsultant or subcontractor has secured all insurance required under this section.

5.12 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

A. Consultant shall provide immediate written notice to City if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

B. All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.

C. None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City and approved in writing.

D. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

E. Consultant agrees to ensure that subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.

F. Consultant agrees to provide immediate written notice to City of any claim, demand or loss against Consultant arising out of the Work or Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, its officials, officers, employees, agents and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to Consultant's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such County, and Consultant covenants and agrees

to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting Party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Termination. City may terminate this Agreement for any reason, with or without cause, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, Consultant reserves the right to terminate this Agreement at any time upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 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. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.5 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

8.6 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.7 Attorneys' Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorneys' fees,

expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of any state statute or regulation. Consultant represents and warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Notices or other communications shall be addressed as follows:

<u>To City:</u>	City of Laguna Hills Attention: City Manager 24035 El Toro Road Laguna Hills, California 92653
-----------------	---

Telephone: (949) 707-2600
 Facsimile: (949) 707-2633

To Consultant:

Trauma Intervention Programs, Inc.
 Attention: Wayne Fortin, Founder & CEO
 24301 Airporter Way
 Laguna Niguel, California 92677
 Telephone: (714) 314-0744

10.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

10.3 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.4 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.5 Third Party Beneficiary. Nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

10.6 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.7 Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he/she is signing is bound.

[SIGNATURES ON NEXT PAGE]

Attachment: Attachment 2 - January 28, 2020 Staff Report (2796 : 3/5 Battalion Monument)

SIGNATURE REQUIREMENTS --

For Consultants that are a corporation, two (2) Corporate Officers must sign and staff may request that a copy of their corporate resolution confirming the names and titles of their authorized signatories be provided to the City in advance for review and approval, and the signature requirements are as follows:

1) One signature by the Chairman of the Board, the President, or the Vice President,

-And-

2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For Consultants that are not a corporation, signature requirements are as follows: the person who has authority to bind the business entity must sign.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

“CITY”
City of Laguna Hills,
 a California municipal corporation

 [Per Procurement Authority]
 [City Manager / or Mayor]

ATTEST:

 (SEAL)

MELISSA AU-YEUNG,
 Deputy City Manager/City Clerk

APPROVED AS TO FORM:

 GREGORY E. SIMONIAN,
 City Attorney

“CONSULTANT”
Trauma Intervention Programs, Inc.
 a California corporation

By: _____
 WAYNE FORTIN, Founder & CEO

By: _____
 ANNE EBERWEIN,
 Admin Secretary/Assistant Treasurer

Attachment: Attachment 2 - January 28, 2020 Staff Report (2796 : 3/5 Battalion Monument)

EXHIBIT “A”

**CONSULTANT’S PROPOSAL,
DESCRIPTION OF SCOPE OF SERVICES/WORK,
AND**

MAY 1, 2019 REQUEST FOR CONTRACT RENEWAL AND FY 2019/20 FEES

**SCOPE OF SERVICES/WORK SUMMARY SHEET FOR PROJECT
INCLUDING,
SCHEDULE OF PERFORMANCE
AND
SCHEDULE OF COMPENSATION/ FEES**

Attachment: Attachment 2 - January 28, 2020 Staff Report (2796 : 3/5 Battalion Monument)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: March 22, 2022
TO: Mayor and Council Members
FROM: Captain Matthew Stiverson
Chief of Police Services
ISSUE: 2021 Laguna Hills Police Services Annual Report

RECOMMENDATION: That the City Council receive and file the 2021 Laguna Hills Police Services Annual Report.

SUMMARY:

Throughout calendar year 2021, the City of Laguna Hills was faced with the continuing COVID-19 Pandemic and a few concerning crime incidents to which the Orange County Sheriff's Department appropriately responded. These issues created complex situations, which presented challenges within our community and surrounding jurisdictions, requiring new approaches and creative solutions to address public safety issues. Positive steps were taken and public safety improvements were accomplished. The 2021 Police Services Annual Report is submitted and provides the details of the past year's operations.

BACKGROUND:

2021 Laguna Hills Polices Services Annual Report

For the last thirty years, the City of Laguna Hills has contracted with the Orange County Sheriff's Department for its law enforcement needs. Laguna Hills Police Services is responsible for public safety and general law enforcement within the City, including patrol services, traffic enforcement, and criminal investigations. Presented for City Council information is the attached Police Services Annual Report for 2021.

2021 Laguna Hills Police Services Annual Report

March 22, 2022

Page 2

Laguna Hills Police Services consists of a dedicated staff of one captain, five sergeants, two investigators, seventeen deputies, two Community Services Officers and one Crime Prevention Specialist. The deputy roles and responsibilities include General Law Enforcement (Patrol), Traffic Enforcement (Motorcycle Deputy), School Resource Officer, Behavioral Health Liaison Officer, Special Enforcement Team, and Directed Enforcement Team.

The greater Orange County Sheriff's Department works hard to mitigate crime and ensure public safety in our City, as well. Many divisions and specialty details work closely with Laguna Hills patrol deputies to prevent, deter, and effectively respond to criminal activity. They provide a wide array of law enforcement resources that help protect our residents and ensure safety within our community. An undeniable benefit of the current contracting model for Police Services is the vast amount of resources that can be made available to the City on an emergency or scheduled basis.

Under normal circumstances, all communities experience some level of criminal activity, which is the primary focus of law enforcement. Over the last year, there have been shifts in crime trends throughout southern California. Noticeably, increases in automobile thefts, catalytic converter thefts, mail theft, identity theft, family violence, assaults, driving under the influence (DUI) violations, narcotics violations, and gang related activity. Our City has also experienced these fluctuations in crime trends throughout our community.

A few highlights from the past year statistics are as follows as are further detailed in the attached Annual Report. Deputies responded to a total of **14,431** calls for service, a slight increase from the same time frame in 2020, when deputies responded to **13,680** calls for service. Other notable statistics include the total number of arrests made this calendar year. These include: **201** Street Arrests; **195** Citation Arrests; and **68** Warrant Arrests, for a total of **464** arrests to date. We have experienced a significant increase in Citation Arrests from the previous year and expect this trend to continue into the next calendar year. The majority of Citation Arrests are related to narcotics violations occurring throughout the community and increased proactive measures by Police Services to address those emerging trends.

Over the last year, we saw an increase in gang activity primarily related to vandalism, graffiti, narcotics violations, and assaults, such as fighting between rival gang members. In response to this activities, Laguna Hills Police Services, in collaboration with Sheriff's Investigations and a variety of specialty enforcement units, increased patrol checks,

2021 Laguna Hills Police Services Annual Report

March 22, 2022

Page 3

enforcement activities, and surveillance in the region. This included both uniformed deputies in marked patrol vehicles and undercover deputies in unmarked vehicles. The Gang Enforcement Team (GET) was fully engaged in our operations and conducted saturation patrols in and around the Community Center and Sports Complex and adjacent residential communities, specifically targeting gang related criminal activity. These increased proactive enforcement operations resulted in many arrests over the last several months. Of particular note, during 2021, GET made **38** arrests in the City. In contrast, GET arrests in Laguna Hills for all of 2020 totaled **19**. This increase is directly related to the targeted enforcement operations conducted in response to incidents and community concerns.

Over the last year, there was a significant increase in the total number of Homeless Assisted with Resources, from 176 in 2020 to 217 in 2021. On a positive note, the City experienced a significant decrease in enforcement actions related to homeless activity. Total arrests and citations related to homeless activity decreased from 67 in 2020 to 16 in 2021. This is directly attributable to the proactive measures taken by Police Services to address these concerns through a combination of outreach and enforcement efforts, including the City's contracted services with Mercy House.

Volunteers (Reserves, Professional Services Responders, and Explorers) are a key resource for assistance and cost reduction. Unfortunately, volunteer operations were severely impacted by the pandemic due to the various restrictions put in place. Even with those limitations, the use of Reserves throughout the year resulted in a cost savings of \$128,835.75 for the City. The use of Professional Services Responders (PSRs) also played a significant role to our operations, which resulted in a cost savings of \$14,168.00 for the City. Reserves and PSRs filled a critical need during a time when resources were stretched to the maximum and funding sources were scarce. The Explorer program was also significantly impacted by COVID-19 restrictions. The Explorers still played a valuable role in our operations, which resulted in a cost savings of \$3,262.50. Laguna Hills has enjoyed a very active Explorer Program over the years and we look forward to revitalizing the program when it is appropriate to do so.

Automated License Plate Reader (ALPR) Program

An additional investigative resource and deterrent to criminal activity that was added to the City in 2021 is the ALPR program.

Flock Safety Inc. is an ALPR vendor who provides ALPR system services to many agencies, municipalities, and private entities throughout the nation. Currently, Flock

2021 Laguna Hills Police Services Annual Report

March 22, 2022

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Safety provides ALPR services for the Sheriff's Contract Cities of Stanton, Lake Forest, and Laguna Hills. Flock Safety is currently in negotiations with several other cities throughout Orange County.

The City of Laguna Hills entered into a contract agreement with Flock Safety Inc. in July 2021 to provide a fixed ALPR System as part of the City's overall public safety efforts. The initial contract included the installation of ten ALPRs at strategic locations throughout the city.

The ten ALPRs were installed, and initial training provided to Police Services staff during July and August 2021. The system officially went active in the City on September 1, 2021. An additional ten (10) ALPRs were added to the system during the month of December and went active January 1, 2022.

Also, in December 2021, Flock Safety Inc. contracted with the Nellie Gail Homeowners Association (Laguna Hills) to provide twenty-five (25) Private ALPRs in the Nellie Gail community as part of their HOA Security Plan. Nellie Gail HOA shared access to their ALPR system with the City of Laguna Hills, allowing the two systems to work together simultaneously. This increased the overall effectiveness of the Laguna Hills system and essentially expanded the total number of fixed ALPRs deployed in Laguna Hills to forty-five (45).

The ALPR system is currently being used by a variety of units within the Sheriff's Department. Some of these units include, but not limited to: Laguna Hills Police Services, Lake Forest Police Services, Directed Enforcement Team, Gang Enforcement Team, Investigations, and the Auto Theft Detail.

Prior to this system being added to our City, Police Services had very little to no success in locating stolen vehicles. However, in the last five months, our staff has used this system to successfully locate eight (8) occupied stolen vehicles, which resulted in twelve (12) arrests. Some of the stolen vehicles were occupied by multiple subjects, who were in possession of evidence linking them to multiple crimes in multiple jurisdictions. This system has been an excellent addition to our community. Continued good results in the future are anticipated as use of the system continues to expand.

Public Safety Reminder

"If you see something, say something." Always report suspicious activity in the community to law enforcement. In the event of an emergency, always dial 911. For non-emergencies, contact Sheriff's Dispatch at (949) 770-6011. To contact Laguna Hills

2021 Laguna Hills Police Services Annual Report

March 22, 2022

Page 5

Police Services reference NON-emergency items, call (949) 707-2640. Anonymous tips can be submitted by phone or text to 1-855-TIP-OCCS or online at occrimestoppers.org.

FISCAL IMPACT:

This public safety update is for informational purposes only. There are no fiscal impacts related to this report.

ATTACHMENTS:

- 2021 Laguna Hills Police Services Annual Report



Laguna Hills Police Services



Provided by the Orange County Sheriff's Department

In partnership with the City of Laguna Hills

2021 Annual Report

Mission Statement & Core Values

THE MEN AND WOMEN OF THE
ORANGE COUNTY SHERIFF'S DEPARTMENT
ARE DEDICATED TO THE PROTECTION OF ALL WE SERVE.
WE PROVIDE EXCEPTIONAL LAW ENFORCEMENT SERVICES
FREE FROM PREJUDICE OR FAVOR, WITH LEADERSHIP,
INTEGRITY, AND RESPECT.

★

OUR CORE VALUES:

INTEGRITY WITHOUT COMPROMISE
SERVICE ABOVE SELF
PROFESSIONALISM IN THE PERFORMANCE OF DUTY
VIGILANCE IN SAFEGUARDING OUR COMMUNITY



City of Laguna Hills Police Services

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Disclaimer: This document was produced using raw crime reporting data. This report is intended to provide a general overview of yearly statistical data. Statistical values represented are likely not consistent with the Uniform Crime Reporting (UCR) Program of the Federal Bureau of Investigation (FBI) under the Summary Reporting System (SRS) requirements.

As of June 2021, the Orange County Sheriff's Department (OCSD) is in the process of transitioning from the UCR SRS reporting protocols to the new UCR National Incident-Based Reporting System (NIBRS) requirements. Official statistical data will not be available until OCSD is NIBRS certified by the Department of Justice (DOJ).

The data reflected in this report is preliminary and is not representative of UCR NIBRS requirements. Crime statistics are based on the date the crime or arrest occurred. All information and data listed in this report is considered preliminary and subject to further update/revision.



City of Laguna Hills Police Services

Historical and General Overview

The City of Laguna Hills incorporated on December 20, 1991. Since that time, the City has continued to grow, adding residential communities, industrial capacity, and open space for parks and recreation. This trend continued with the annexation of North Laguna Hills on July 1, 1996, and the addition of the Westside region on September 18, 2000.

Since its inception, the City of Laguna Hills has contracted with the Orange County Sheriff's Department for its law enforcement needs. Laguna Hills Police Services is responsible for public safety and general law enforcement within the city, including patrol services, traffic enforcement, and criminal investigation. Police Services also provides a variety of Community Policing Programs for the public including Crime Prevention, Neighborhood Watch, Homeless Outreach, and other community awareness programs.

Captain Matthew Stiverson was assigned as the Chief of Police Services on Friday, March 30th 2018. He commands and directs the overall operation of Police Services in the city and is assigned to City Hall.

Police Services consists of a dedicated staff of one Captain, five Sergeants, two Investigators, seventeen Deputies (Patrol, Motor, School Resource Officer, Special Enforcement Team and Directed Enforcement Team), and two Community Service Officers.



2021 City Council

Mayor

Erica Pezold

Mayor Pro Tempore

Don Sedgwick

Council Member

Janine Heft

Council Member

Dave Wheeler

Council Member

Don Caskey



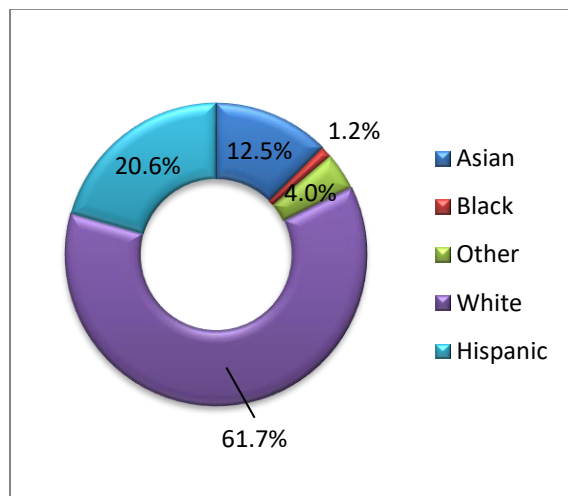
City of Laguna Hills Police Services

City Demographics*

Demographic Composition

Population: 31,207
Median Age: 41.7

Distribution by Ethnicity & Race



Development

Residential: 2,798 acres
Commercial: 414 acres
Office / Mix Use: 350 acres
Public / Institutional: 158 acres
Open Space & Parks: 539 acres



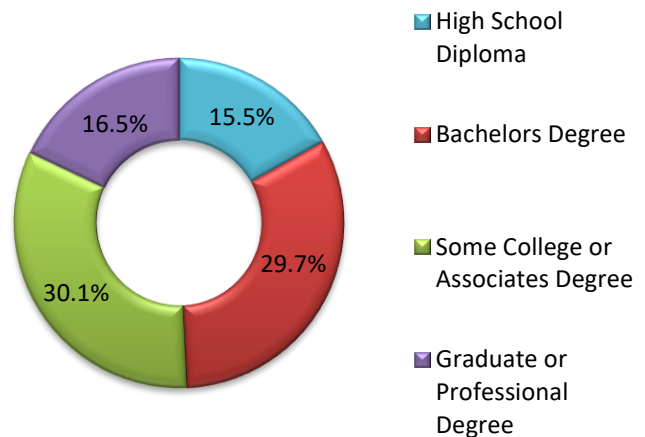
Laguna Hills Parks & Amenities

13 Neighborhood/Community Parks
Community Center and Sports Park
Civic Center Art Exhibit
Community Center Fossil Exhibit
Miles of mixed use trails / bike paths

Education Profile

Total Public Schools: 4
Total Private Schools: 3

Educational Attainment



Corridors

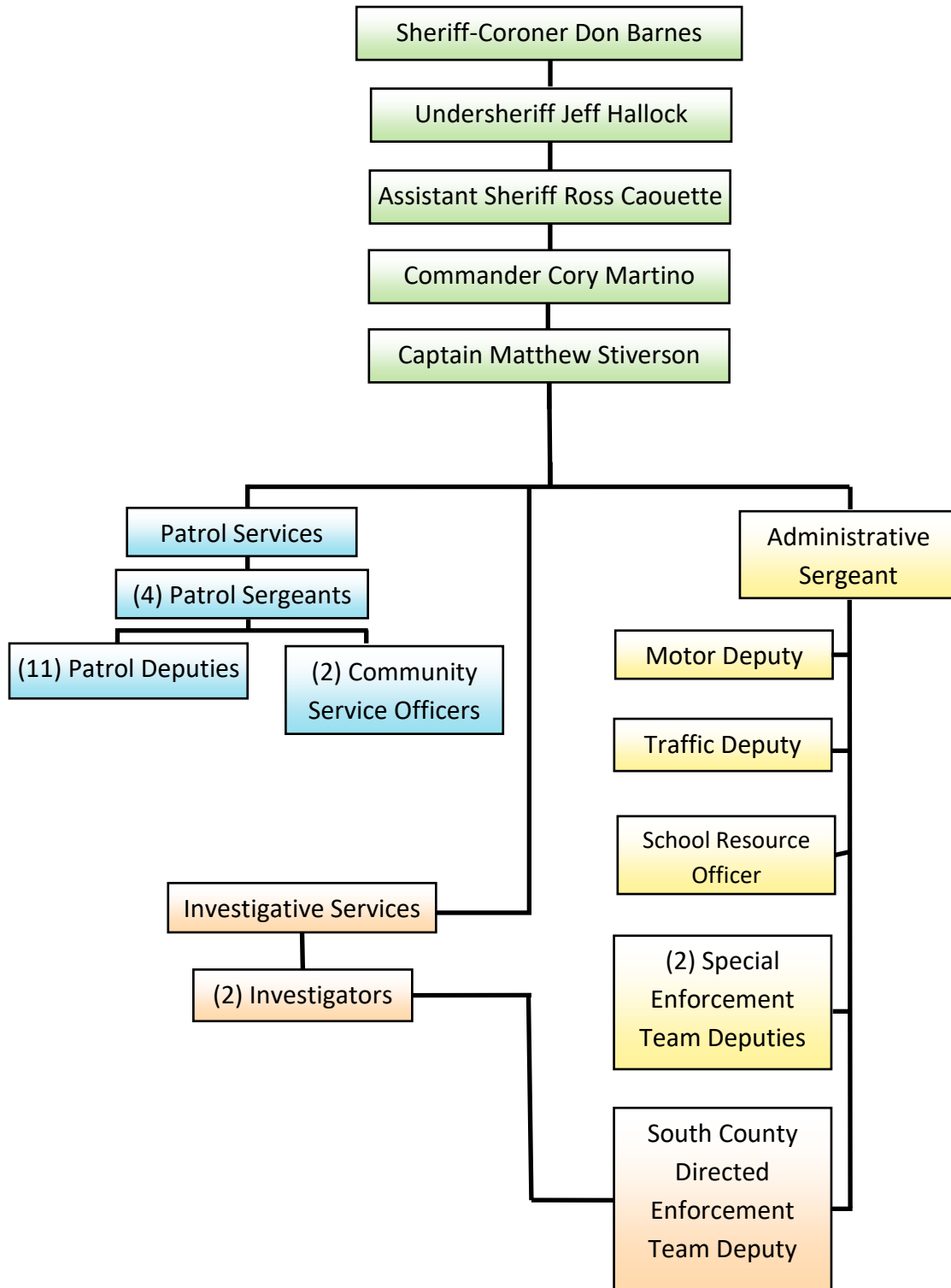
Interstate 5, 405 and 73 Toll Road

*Sources: City of Laguna Hills website, US Census Bureau



City of Laguna Hills Police Services

Organizational Chart





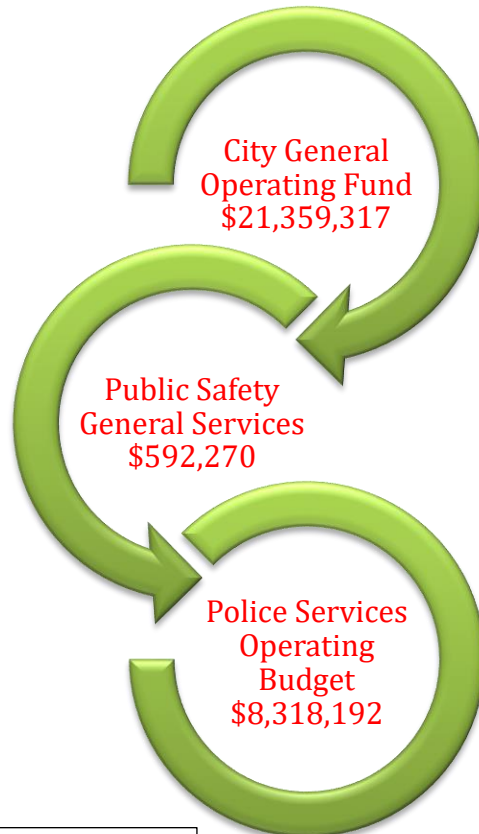
City of Laguna Hills Police Services

Police Services Budget

Fiscal Year 2020-2021*

Number of Personnel	Sworn Staff
1	Captain
5	Sergeants
14	Patrol Deputies
1	Motor Deputy
1	Traffic Deputy
1	School Resource Officer
2	Investigators
<u>Rotational / Ancillary Assignments</u>	
	Special Enforcement
	Directed Enforcement
	Homeless Liaison
Number of Personnel	Professional Staff
2	Community Service Officers
Total OCSD Contract Staff: 27	

City Programs
Emergency Management
Animal Control Services
Crossing Guard Services
Trauma Intervention Program
Special Events



Total Public Safety Budget
\$8,910,462

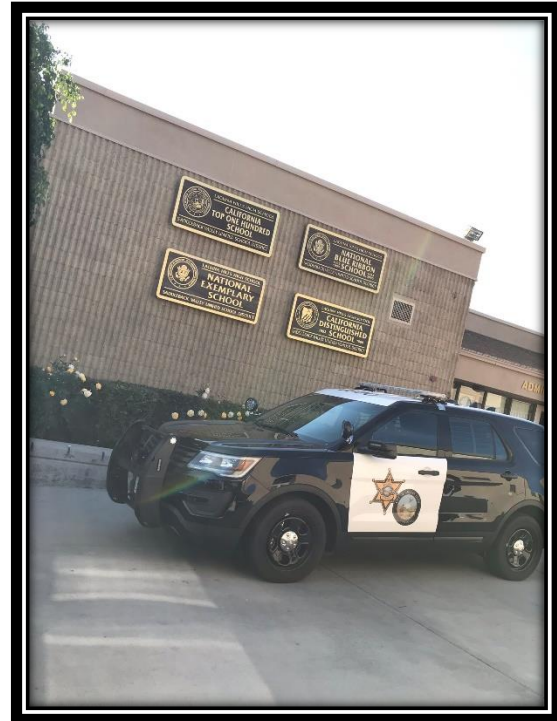
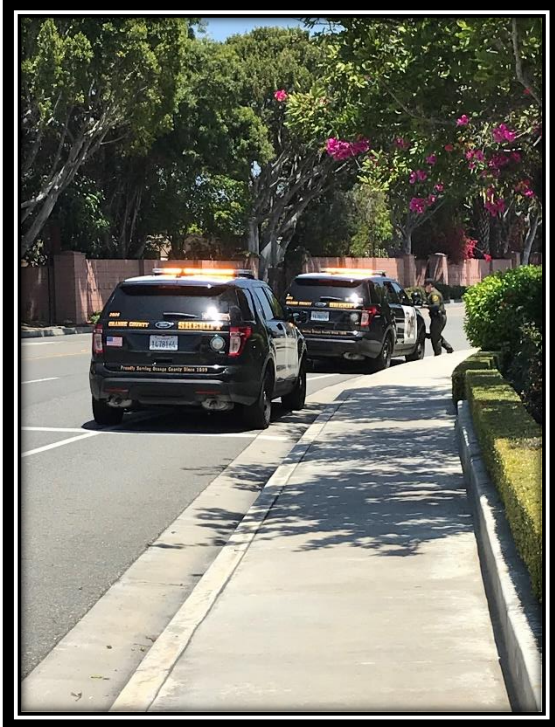
*Police Services Budget is provided by the City's Finance Department



City of Laguna Hills Police Services

Police Services Staffing

The men and women of the Orange County Sheriff's Department diligently enforce the law without fear or favor, protecting lives and property. They patrol the streets of Laguna Hills twenty-four hours a day to secure and promote safety in the community, acting as peacekeepers, mediators, mentors, counselors, educators, and role models.



Recognizing the importance of police services within our community, staffing levels are set to meet the anticipated service needs of the city. Supervision consists of one captain, four patrol sergeants and one administrative sergeant. In 2021, there were seventeen deputy positions allocated for Laguna Hills.

Fourteen deputies perform daily patrol functions, two deputies (one motor, one patrol car) target our traffic safety concerns, and one deputy is assigned as a School Resource Officer. Additionally, two Community Service Officers (CSO) and two Investigators actively work in the field to protect the community. Four patrol deputies have received specialized training and fulfill ancillary duties as Behavioral Health Liaison Deputies. As needed, deputies may be reassigned from routine patrol and deployed as a two-person Special Enforcement Team or assigned as a member of a regional Directed Enforcement Team. These teams utilize contemporary policing principles to address emerging crimes trends in the area, enhance our Community Oriented Policing approach and improve the quality of life for all Laguna Hills residents.



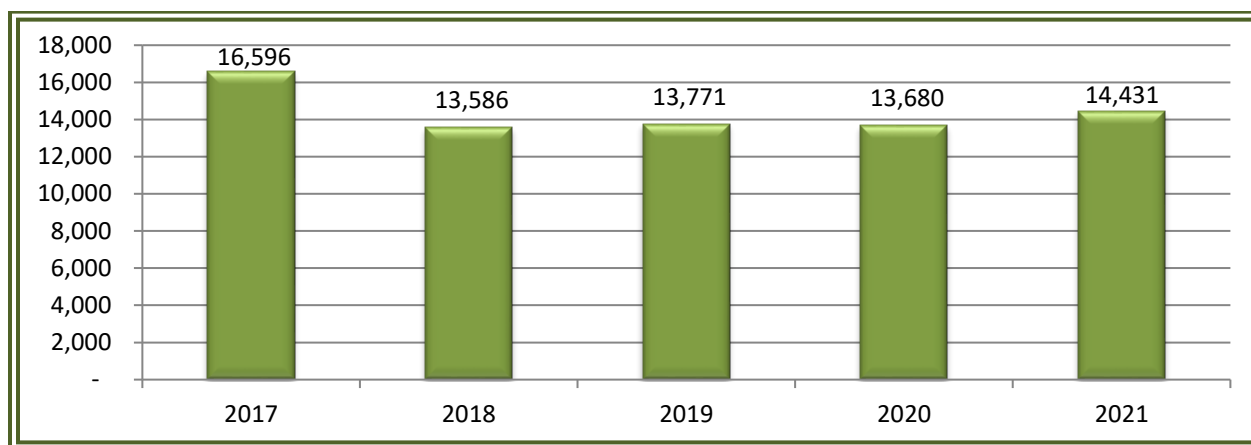
City of Laguna Hills Police Services

Patrol Statistics

Calls for Service*

Laguna Hills Police Services responded to 14,431 calls for service in 2021. The total calls for service include calls that were generated through dispatch and by the patrol deputies' self-initiated observations.

5-Year Comparison of Calls for Service



Preventative Patrol Time**

Consume Time is the measurement of time a deputy spends responding to calls for service, conducting self-initiated activities, finishing reports, attending briefings, lunch breaks, and other activities that consume a deputy's time.

Preventative Patrol Time is time used by deputies to be visible for crime suppression, speak with people in the community, enforce traffic laws, and look for criminal activity. A deputy visibly patrolling the city helps to deter crime, promotes a sense of security within the community, and provides faster response times to priority or life-threatening calls for service.

Average Preventative Patrol Time 5-year Comparison**

2017	2018	2019	2020	2021
46.85 %	50.10 %	51.89 %	50.11 %	46.20 %

*Calls for Service Statistics are calculated using the Orange County Sheriff's Department's CAD program

**Per the Matrix Consulting Group that completed a survey June 3, 2014, 40-50% preventative patrol time is recommended



City of Laguna Hills Police Services

Patrol Statistics

Response Times*

Priority One calls, also referred to as Emergency Response calls, are all calls for service that have the potential of being a life threatening incident and require the deputies to respond using the vehicle's lights and sirens.

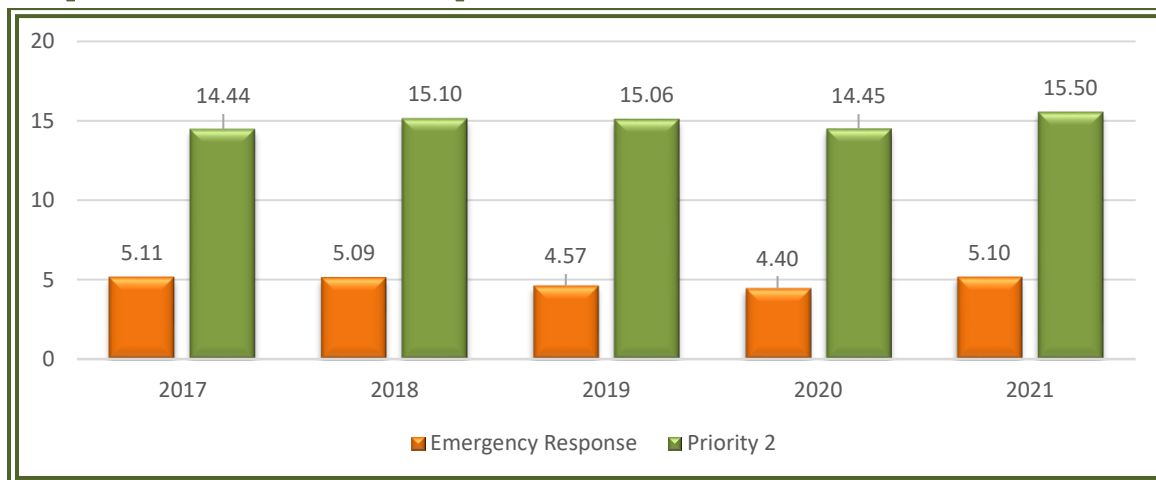
In 2013, the Sheriff's Department began looking at all emergency response calls that took longer than 5 minutes from when the call was received to when a deputy arrived at the scene in order to ascertain and record the reason for any delay in response. It was found that the program responsible for calculating response times, did not take into account many situations that effect response times, including but not limited to calls that escalate or de-escalate in severity. Emergency calls are now calculated by hand every month in order to report a more accurate "reconciled" response time.

- ❖ The average reconciled response time during 2021 for Priority One calls was **5 minutes and 10 seconds**, a 10.7% increase compared to 2020.

Priority Two calls include serious crimes that just occurred, incidents likely to escalate to a crime against a person, or any incident where a delay would impede further investigation or cause someone to be in jeopardy.

- ❖ The average response time during 2021 for priority 2 calls was **15 minutes and 50 seconds**, a 7.3% increase compared to 2020.

Response Times 5-Year Comparison



*Response Times are calculated using the Sheriff Department's COMPSTAT Report and reconciled monthly



City of Laguna Hills Police Services

Patrol Statistics

Arrest Statistics*

Police Services made a total of 464 arrests in 2021. The number of street arrests totaled 201. A street arrest is an arrest that results in the suspect being transported and booked at the Intake/ Release Center in Santa Ana. A total number of 195 citation arrests were made in 2021. A citation arrest is a misdemeanor arrest that results in the suspect being released in the field after being issued a criminal citation. Another category of arrests is warrant arrests with a total of 68 warrant arrests for 2021. Arrest statistics vary year-to-year based on a number of factors including but not limited to: staffing levels, calls for service and crime trends.

5-Year Comparison

Type of Arrest	2017	2018	2019	2020	2021
Street Arrests	202	245	187	253	201
Citation Arrests	135	120	107	243	195
Warrant Arrests	57	50	55	23	68
Total Arrests	394	415	349	519	464



*Arrest Statistics are received from the OCSD Statistical Department & calculated through the RMS program





City of Laguna Hills Police Services

Crime Statistics*

Crime Reporting

The task of compiling crime statistics rests with the Orange County Sheriff's Department Support Services Division. Statistics and data are gathered, tabulated in accordance with the FBI's Uniform Crime Reporting (UCR) Program Summary Reporting System (SRS) requirements and then forwarded to the Department of Justice. The UCR-SRS program divides offenses into two groups, Part I and Part II crimes. Part I crimes are violent or serious crimes that occur regularly, in all areas of the country, and are likely to be reported to the police. Part II crimes are all other crimes (not included in Part I crimes) that someone can be arrested or issued a criminal citation for. Part I and Part II crime data is represented below using the UCR-SRS methodology and is not representative of the new UCR National Incident Based Reporting System (NIBRS) requirements. UCR-NIBRS certification is pending.

Part I Crimes 5-Year Comparison

Crime	2017	2018	2019	2020	2021
Criminal Homicide	1	0	0	0	0
Rape	5	5	3	6	4
Robbery	18	16	15	16	10
Aggravated Assault	20	35	20	35	37
Burglary	117	97	82	73	86
Larceny	301	277	288	289	329
Auto Theft	49	28	35	57	69
Total	511	458	443	476	535

Major Part II Crimes 5-Year Comparison

Crime	2017	2018	2019	2020	2021
Assaults-Misdemeanor	85	106	103	125	130
Vandalism	101	102	82	100	89
Weapons Laws Violations	14	19	17	16	36
Offenses Against Family-Child	3	2	1	5	6
Sex Offenses	7	9	11	11	3
Narcotics Law Violations	78	105	69	145	177
Liquor Law Violations	7	10	8	9	10
Driving While Intoxicated	51	63	43	51	72
Disorderly Conduct	35	69	41	56	65

*UCR Crime Statistics can be found on the FBI website: <http://www.fbi.gov/>. OCSD reports UCR Crime Statistics to the DOJ on a monthly basis.



City of Laguna Hills Police Services

Investigations*



The Sheriff's Department continues to work hard to mitigate crime and ensure public safety in our contract cities. Many divisions and special details work closely with our patrol deputies to prevent, deter, and effectively respond to crime.

Our Investigations Division consists of a Criminal Investigations Bureau and a Special Investigations Bureau. Together these bureaus investigate and suppress criminal activity related to general crimes, homicides, sex crimes, family violence, economic and computer crimes, narcotics abuse, street gangs, and vice activities. These bureaus also participate in local, state, and federal task forces that focus on major crimes such as human trafficking, drug trafficking, and money laundering.

Two (2) investigators are assigned directly to the City of Laguna Hills. Investigators write follow-up reports; examine crime scenes; interview victims, witnesses, and suspects; and present cases to the District Attorney's Office for criminal filings. Investigators are highly trained and not only investigate crimes, but study patterns of criminal offenses in an effort to deter further criminal activity within the community.

Out of the 14,431 calls for service Laguna Hills Police Services responded to in 2021, it was determined 3,952 criminal offenses were committed. 1,207 of those cases were assigned to Investigators for additional follow-up.



* Investigator's Statistics received from Southwest Investigations.



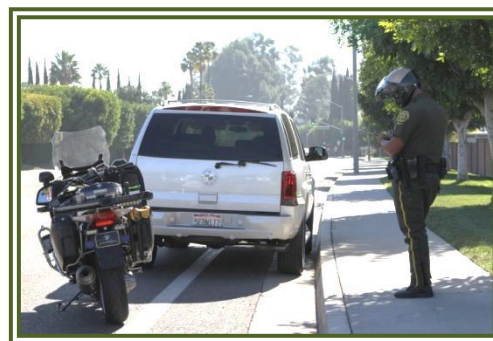
City of Laguna Hills Police Services

Traffic Enforcement

Traffic issues continue to be a priority of the community. Police Services has been very responsive to this and has reacted with a combination of education and enforcement. The goal of Police Services in this regard is to reduce traffic accidents by utilizing a heightened level of police presence, education, and enforcement.

Motorcycle Deputy

The primary assignment of the City's Motorcycle Deputy is to enforce the California Vehicle Code and the prima facie speed limits in the city. If a need arises, the motor deputy can also be utilized to assist patrol deputies, investigators, and community service officers with traffic accident investigations.



High Visibility Enforcement (HVE) Deputy

The (HVE) Deputy employs a universal traffic safety approach combining highly visible and proactive law enforcement strategies targeting specific traffic safety issues. This approach is designed to create deterrence and change unlawful traffic behaviors. The HVE Deputy is available to assist with routine calls for service and is also tasked with conducting high visibility patrol checks of city trails, recreational areas, and facilities.



Community Service Officers

The City's Community Service Officers (2) are assigned to perform parking enforcement and complete reports of both non-injury and injury traffic collisions. They are non-sworn personnel and are specifically trained in these areas.



City of Laguna Hills Police Services

Traffic Statistics*

Parking Enforcement

Parking citations include street sweeping, permit parking, handicap, and vehicle code violations. In 2021, Police Services' staff issued a total of 1,372 parking tickets.

5-Year Comparison

2017	2018	2019	2020	2021
2,564	2,071	2,107	1,372	1,372

Hazardous Moving Citations

A hazardous moving citation constitutes any act or omission of the vehicle code that is done while the vehicle is moving. This would include violations such as speeding, following too closely and failure to yield. The majority of these types of violations are commonly found to be the primary factors in traffic accidents. Enforcement has proven to be one of the major factors in reduction of traffic accidents. In 2021, Laguna Hills deputies issued a total of 1,124 hazardous moving citations.

5-Year Comparison

2017	2018	2019	2020	2021
1,114	1,046	951	506	1,124

All Other Citations

"All other" citations include all traffic related citations other than parking and hazardous moving violations, such as licensing and equipment violations. The Deputies issued a total of 72 citations in 2021.

5-Year Comparison

2017	2018	2019	2020	2021
578	299	213	115	72

*Traffic Citation Statistics vary based on a number of factors including but not limited to: traffic trends, staffing level, and calls for service.



City of Laguna Hills Police Services

Traffic Statistics

Enforcement Index*

The enforcement index is a measure of traffic enforcement effectiveness as it relates to the incidents of fatal and injury collisions. The index is based on the percentage of citations issued for hazardous violations compared to the number of fatal and injury collisions. Generally speaking, the higher the enforcement index percentage, the more aggressive the traffic officers have been in identifying and enforcing hazardous traffic violations. The index is determined by dividing the number of hazardous violations by the number of fatal and injury collisions. Per the Office of Traffic Safety, an enforcement index in the 25-35 percent range is desirable.

5-Year Comparison

2017	2018	2019	2020	2021
11.73%	8.79%	9.51%	6.74 %	17.5%

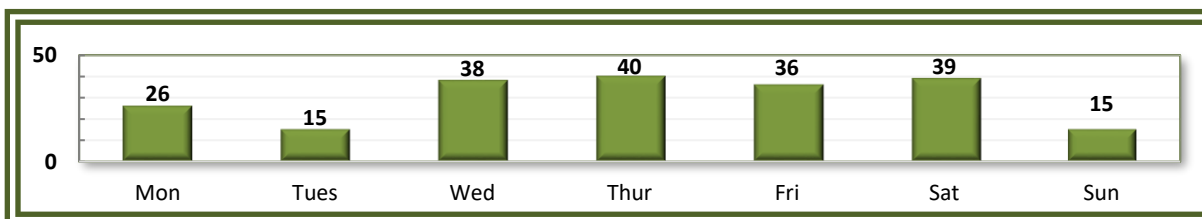
Traffic Accidents*

The City of Laguna Hills had a total of 209 reported traffic accidents in 2021. This represents a 33% increase in total traffic accidents from 2020.

5-Year Comparison

	2017	2018	2019	2020	2021
Non-Injury	175	134	111	82	119
Injury	98	95	98	72	89
Fatalities	0	4	2	3	1

Laguna Hills Traffic Collisions by Day of the Week for 2021



*The Enforcement Index & Traffic Accidents Statistics are received from the OCSD Regional Traffic Office



City of Laguna Hills Police Services

Specialty Details

Special Enforcement Team (SET)

The Special Enforcement Team (SET) is a problem-oriented policing unit designed to actively suppress criminal activity and mitigate emerging public safety concerns identified through crime analysis. The SET team's primary role is to actively address community issues by proactively enforcing laws and assisting Investigative teams in identifying and apprehending suspects in Laguna Hills. The SET team also provides active oversight of gang members, parolees, and probationers. The SET team is also responsible for assisting patrol deputies with high priority calls.

Directed Enforcement Team (DET)

The Directed Enforcement Team (DET) handles specific crime problems or concerns of South County Communities. The goal of DET is to apprehend offenders, search premises, and/ or seize evidence of illegal activity. The team is comprised of two Sergeants, one Investigator, and eight Deputies. One Laguna Hills Deputy is assigned to the team for eighteen months.

Bicycle Patrol Team

The Bicycle Patrol Team is an integral part of our community policing approach. It is an ancillary assignment comprised of specially trained patrol deputies who are equipped with bicycles designed to conduct law enforcement patrols and investigative stops. This team is utilized in areas such as shopping centers, bike trails, business parks, community parks, and during special events where access on foot or by patrol vehicle is hindered. Deployment of these teams increases engagement with the public and fosters communication and trust with the community we serve.



School Resource Officer

The School Resource Officer (SRO) is a sworn peace officer that is dedicated to serving the students and staff at the schools within Laguna Hills. The SRO has been to a variety of specialized training focused on assisting schools with security and safety. This allows for all students and staff to be able to function in a safe learning environment. In addition, the SRO will also assist in providing educational opportunities such as "Every Fifteen Minutes" (a DUI awareness program), and The Parent Project.



City of Laguna Hills Police Services

Behavioral Health Bureau

The Behavioral Health Bureau (BHB) works collaboratively with the county's Health Care Agency, mental health professionals, and community stakeholders to develop and utilize innovative methods to reduce recidivism and increase crisis intervention services for the residents of Orange County. In addition to this collaboration, the BHB will also work to further the scope of the department's Crisis Intervention Training program to afford these skills to all members of the department and to provide enhanced skills to those working in direct support of the BHB.

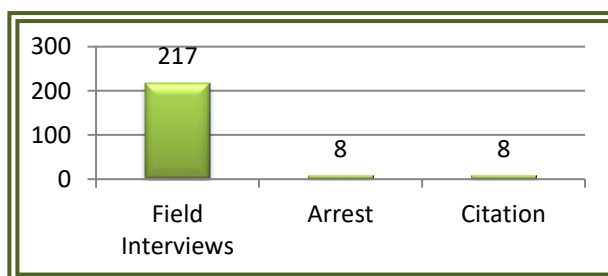
While the goals of the BHB are to reduce recidivism and increase crisis intervention services for the public, some peripheral benefits for the Department include increased officer safety, a reduction in incidents involving force, and a decrease in specific types of calls for service.

In support of the BHB, Laguna Hills Patrol Deputies who have received specialized training function as Behavioral Health Liaison Officer's (BHLO) during their shift. BHLO's work collaboratively with Mercy House, the City's contracted homeless support services provider, as well as various government agencies, faith-based groups, and private organizations to help transition homeless individuals off the streets and in to supportive housing and services. This collaborative approach focuses on outreach and is coupled with enforcement to assist the homeless population while simultaneously protecting the quality of life for the citizens of Laguna Hills.

Homeless Assisted with Resources in 2021

Food	Employment	Housing	Medical	Mental Health	Substance Abuse	V.A.
7	6	18	7	7	5	0

Homeless Interview & Enforcement Correlation



In 2021, 217 field interviews of homeless persons were conducted in Laguna Hills. Those contacts resulted in 8 arrests and 8 citations issued for law violations.



City of Laguna Hills Police Services

Crime Prevention

The City's Crime Prevention Program is structured to provide community outreach educating residents on how to help prevent crime and promote safety within their sphere of influence. Crime Prevention activities include the following programs.

Neighborhood Watch

Neighborhood Watch focuses on each neighborhood separately and the concerns they may have in their area of the city. The Crime Prevention Program focuses on teaching residents how they can better protect themselves and their property, how the sheriff's department operates for better communication between residents and deputies, and help promote communication between neighbors.

Business Watch

This program has the same premise as neighborhood watch but is applied to the business population of Laguna Hills. Businesses are encouraged to submit emergency contact information to be utilized by deputies should a major crime occur. This program offers training and education on topics relating to robbery prevention, business security, how to be a good witness, counterfeit money detection, and many others.

Community Outreach

The Crime Prevention Program is also involved in numerous school and city events throughout the year including but not limited to: National Night Out, Bike Rodeos, Walk-to-School events, station tours, and informational booths at public events throughout the year. Various social media platforms are also used to communicate with the public. These systems are utilized to disseminate public safety information, public event scheduling, and current crime trends in, and around, the City of Laguna Hills.



City of Laguna Hills Police Services

Volunteers

Reserves

Reserves provide support to the Orange County Sheriff's Department patrol operations and contract cities. Reserve Deputies act as a second officer in a patrol car, perform crowd/riot control, maintain crime scene security, special event enforcement, transport suspects to jail, and perform foot patrol, bike patrol, and traffic control. All of these duties help free-up full-time patrol deputies to continue to provide police services without a delay in response times, as well as be proactive in policing and preventing crimes in Laguna Hills. Additionally, utilizing Reserves saves time and money when additional staffing is required. Reserve Deputies donated 1,415 uncompensated hours to Laguna Hills in 2021 equating to a cost savings of approximately \$128,835.75.

Professional Services Responder (PSR)

Professional Services Responder volunteers provide administrative and leadership support in the areas of: emerging technologies, communications, industrial relations, graphic arts, healthcare, legal and accounting services, and emergency response resources. PSR's donated 322 uncompensated hours to Laguna Hills in 2021 equating to a cost savings of approximately \$14,168.00.

Explorers

The Explorer Program is sponsored by the Orange County Sheriff's Department as a community-based policing program. This successful program is designed to educate and involve young men and women in police operations. Explorers learn leadership skills and personal responsibilities. Whether or not they pursue law enforcement as a career, the Explorers have the opportunity to give of themselves to their community through this volunteer program. The Explorers volunteered 29 hours to Laguna Hills in 2021 equating to a cost savings of approximately \$3,262.50.





City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Administrative Services

The Administrative Bureau controls and manages the financial operations of the Sheriff's Department. Responsibilities include purchasing of services, supplies and equipment, administration of trust funds, expenditure and revenue control, payroll, inventory control, budget preparation and grant administration.

Air Support Bureau



The Sheriff's Department operates helicopters in the skies above Orange County. They are a critical adjunct to our responsibilities in our patrol areas. They also assist the Fire Department in fire observation and firefighting.

Canine Patrol

Currently, canine partners assist patrol deputies in their duties. The canine units work regular patrol areas and are deployed on all shifts. The dogs are used for building searches, locating lost or missing people, apprehension of criminal offenders and for community engagement events.



Communications



Sheriff's Communications provides centralized countywide coordinated communications systems for all local public service agencies (law enforcement, fire and paramedic) and for general government on a 24-hour basis. Other services include installation and maintenance of communications and electronic equipment, and operational, training and maintenance support for the coordinated communications systems. The Communications

Division is also the central coordinator/ program manager for the 800 MHz County-wide Coordinated Communications System Mobile Data Computer System for the Sheriff's Department.



City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Community Programs

This unit provides a comprehensive drug and gang awareness curriculum for kindergarten through high school, as well as for businesses and community groups. The program provides structured training programs that are valuable resources to clergy, teachers, coaches, business leaders and mentors to help steer young people away from drugs and gangs. The unit meets challenging trends with new innovative approaches to supplement existing methods of intervention and education.

Cyber Crimes

A high-technology Cyber Crimes Unit has been established within the Criminal Investigations Bureau. Investigators assigned to the Cyber Crimes section are responsible for the investigation of high technology crime which is divided into two distinct sections: (1) Crimes such as theft of components, computer intrusion, Internet crimes and theft of information; and (2) Forensic examination of information contained on computer hard drives and storage media that are seized during other types of investigations and may include evidence of sex crimes, narcotics, homicide, money laundering and other property crimes.



Contract Administration

The Department maintains a full-time Contract Manager position to administer contracts and facilitate the flow of information between the Department, other County agencies and the individual contract cities.

Corrections Operations Command

This Command maintains daily care, custody, and control of approximately 6,000 inmates within the County jail system operating from five separate facilities.





City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Advanced Surveillance & Protection

This specialized unit cooperates with state and federal police services agencies to combat organized crime and prevents terrorist activities in Orange County.

Economic Crimes

The Economic Crimes Detail includes the following investigative units: Fraudulent Checks, Credit Card Fraud, Major Fraud, Fiduciary Elder Abuse, Cyber Crimes, High-Tech Task Force (HTTF) and the Orange County Auto Theft Task Force (OCATT).

Checks / Credit Cards: Investigators assigned to this unit are responsible for the investigation of cases involving non-sufficient checks over \$1,500, check forgery, fraudulent use of stolen credit cards, and fraudulently obtained credit cards. In addition, they also handle cases involving the fraudulent use of a person's personal information (e.g., name, social security number, date of birth) to obtain goods and / or credit.



Major Fraud: Investigators assigned to the Major Fraud section are responsible for the investigation of cases involving grand theft, theft of public funds, embezzlement, theft by false pretenses, consumer fraud and various types of business fraud. In addition to these cases, they also handle cases of fiduciary elder abuse and real estate fraud.

Family Protection

Investigators assigned to Family Protection are responsible for the in-depth follow-up investigation of any criminal report / allegation involving the physical or emotional abuse of a child, dependent adult, or an elderly victim.



City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Field Training Bureau

The Orange County Sheriff's Department (OCSD) Field Training Program (FTP) provides policies and guidelines for Field Training Officers (FTOs) to facilitate the orientation and field training of newly assigned patrol deputies. The FTP is designed to provide basic patrol training and assists deputies in making the transition from other assignments to an operations division while performing general law enforcement uniformed patrol duties. This program also meets the field training requirement for Level I Reserve Deputies.

The FTP is comprised of a structured learning matrix, containing applicable procedures/guidelines and is the standardized training resource document for all OCSD Operations Divisions. The FTP meets all standardized requirements as set forth by California's Commission on Peace Officer Standards and Training (POST).

The program consists of four training phases formatted to provide the maximum flexibility in regards to the allotted training time and to facilitate the completion of the objectives of each phase. Standard training will last 14 weeks, but can be shortened or extended where applicable.

Laguna Hills Police Services maintains a qualified cadre of FTOs who train new deputies assigned to the City. The program is demanding, requiring dedication of time and personal resources from both trainees and FTOs alike.

Forensic Science Services

The Forensic Services Division provides critical services in support of criminal prosecution and death investigations. The division conducts scientific examinations, analysis and identification of evidence. Mobile units are used in the field for complete crime scene investigations as well as photographic services. Members of this division testify in court as "expert witnesses" in a number of specialized fields. The division also features both mobile and fixed laser technology for use in recovering latent prints at crime scenes, computerized searches of fingerprint records, handwriting examinations on criminal checks and forgery cases. Forensic Sciences also has a DNA laboratory that links criminals to crimes through "genetic fingerprinting."





City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Gang Enforcement Team

The deputies assigned to the Gang Enforcement Team (GET) target problem areas for special enforcement programs, conduct surveillance of known gang members, and assist with a variety of investigations. Members of the GET unit are also teamed with probation officers and assigned gang suppression duties throughout Orange County.

Narcotics Detail

The Narcotics Detail is part of the Special Investigations Bureau. Investigators assigned to this detail are directly responsible for the detection, investigation, analysis, deterrence and arrest of all street-level violators within the Sheriff's jurisdiction. The investigators conduct undercover operations, surveillances, and the collection of information from citizens as the foundation for their investigations.



VICE

Investigators assigned to this unit conduct investigations into gambling, prostitution, and related offenses.

Hazardous Devices

The Sheriff's Department Hazardous Devices Squad (HDS) is the only unit of its kind in Orange County and its services are available to all law enforcement agencies in the County. HDS investigators are sent to all explosions of suspicious origin and provide post-blast forensic examinations at the scene. The investigators also provide expert testimony in courts of law regarding hazardous devices. They are assisted in some of these duties by explosive detection dogs, remote controlled robots, unmanned aerial vehicles (UAV), and other highly sophisticated technical equipment.





City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Mounted Enforcement

The Mounted Patrol is a group of deputies who participate in a variety of equestrian events, provide crowd control, and specialized enforcement on County trails, beaches and parks.



Mutual Aid Bureau

The Mutual Aid Bureau provides a contingent of deputies and civilian law enforcement volunteers with specialized skills, training, and equipment. Examples of the duties performed by the Mutual Aid Bureau include coordination with allied agencies during large scale special events, requests for assistance, civil unrest, search and rescue, and disaster response. The unit also has specialized services supporting the following areas of operations: Air Support, Administration, Technical Services, Search and Rescue, Investigations, Harbor patrol, Professional Services, and Patrol.

Warrant Bureau

The Warrant Bureau serves arrest warrants on people who have committed crimes throughout the county. These warrants include those issued by local, state, or federal courts.

Professional Standards Division



Professional Standards is responsible for the recruitment and background investigation of all entry-level positions within the Sheriff's Department. It also administers promotions, transfers, retirements and terminations. The division's focus is on issues related to personnel services, employee relations and internal affairs.



City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

Special Victims Unit

Investigators assigned to Special Victims Unit are responsible for the in-depth follow-up investigation of any criminal report / allegation that is sexual in nature, including rape, sexual assault or battery, sexual abuse or exploitation of children, and pornography. The investigations can include: comprehensive interviews of victims, facilitation of medical exams for sexual assault evidence at local hospitals or medical facilities; participation in specialized interviews of children who are victims or witnesses, that are conducted by the Child Abuse Service Team (C.A.S.T.); planning and implementation of covert surveillances; preparation of chronological, investigative, and background reports pertinent to each investigation; preparation and service of search warrants and arrest warrants; presentation of criminal cases to the District Attorney's office, trial preparation and subsequent testimony in court.

S.M.A.R.T.

A School Mobile Assessment Resource Team (S.M.A.R.T.) was formed as a component to the Sheriff Department's Juvenile Services Bureau. S.M.A.R.T. members are Critical Incident Response Team (CIRT) / Rapid Deployment trained and work in conjunction with probation officers, Sheriff's School Resource Officers on campuses, and with multi-agency gang suppression "Target" teams. They assess individuals or groups who pose risks to community safety in and around schools. In addition, they investigate violent crimes on school campuses. The team consists of one Sheriff's Investigator, three Deputy Sheriff's, a Deputy District Attorney, a District Attorney Investigator, a Deputy Probation Officer and a Sergeant.





City of Laguna Hills Police Services

Orange County Sheriff's Department Support Services

S.O.N.A.R.

The Investigators assigned to the Sexual Offender Notification and Registration Team (S.O.N.A.R.) are responsible for risk assessment and monitoring of the registered sex offenders living within the community. Prevention is the S.O.N.A.R. team's ultimate goal, and they utilize the following methods to supervise registered sex offenders: residence and workplace visits; personal, family, and neighborhood interviews; extensive criminal and civil background investigations; strict enforcement of the state's registration laws; covert surveillance; partnership with supervisory agencies such as probation and parole; preparation and service of search warrants and arrest warrants, maintenance of the "Megan's Law" database for public information; and community notifications.

S.W.A.T.

Special Weapons And Tactics (SWAT) has the mission of saving lives during extraordinary law enforcement situations, requiring advanced tactical training beyond the scope of traditional police personnel. They also assist other sheriff's divisions and patrol stations with crime suppression, service of high risk search and arrest warrants, as well as providing advanced training and special security operations, such as high risk prisoner escorts and site/VIP protection.



Support Services

Support Services maintains all records for the Department and all records of people booked into the County jail system by all police agencies in Orange County. Teletype service is maintained nationwide. All written reports from patrol and investigation personnel are distributed and filed with the concerned bureaus and agencies, including the California Department of Justice, Federal Bureau of Investigation, as well as with contract cities. The Support Services Division also provides statistical reports that are used by management to determine crime trends for developing enforcement strategies, resource allocation, and patrol force deployment.





City of Laguna Hills Police Services

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Orange County Sheriff's Department Support Services

Homicide Detail

The Homicide Detail investigates all suspicious deaths and assaults resulting in serious bodily injury occurring within the Sheriff's jurisdiction. Staff assigned to the Homicide Detail have extensive training and experience in death investigation. They work as part of a team with representatives of the Coroner's Office and Forensic Science Services.

Crisis Negotiations Team

The Crisis Negotiation Team is comprised of deputies and investigators from various assignments throughout the Department. They can respond anywhere in the County to incidents involving hostages, barricaded suspects, or high-risk arrest situations requiring special weapons or tactics. Working closely with the SWAT team, the members of Crisis Negotiations assist in de-escalating hostage and barricaded suspect situations.



Traffic Services Bureau

The Traffic Services Bureau reviews all collision reports for each of the contract cities, provides follow-up investigations on crimes originating as a result of a traffic collision, files criminal cases with the District Attorney's Office, and provides community education in traffic safety matters. The Major Accident Reconstruction Team (MART) is a valuable component of this Bureau. This group of highly trained traffic personnel serves all contract cities as well as outside agencies upon request, conducting meticulous investigations of traffic collisions involving a loss of life, major injury, liability issues, and high profile cases.

Training

The Training Division operates the Sheriff's Training Academy. This includes the Basic Academy for recruits, in-service training for deputies, advanced officer training, and supervisory training to keep personnel up-to-date on mandated training, certifications, and legal requirements.





City of Laguna Hills Police Services

Fallen Officer

Steven Parsons

Born

February 1, 1964



End of Watch

June 19, 2000

Deputy Parsons gave his life while in the service to the residents of Laguna Hills and will be forever remembered.