CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY

SPECIAL MEETING AGENDA
Thursday, June 29, 2021 – 5:00 PM

Erica Pezold, Mayor

Don Sedgwick, Mayor Pro Tempore | **Janine Heft, Council Member**
Bill Hunt, Council Member | **Dave Wheeler, Council Member**

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

NOTICE REGARDING CORONAVIRUS (COVID-19): Please be advised that some, or all, of the City Council Members may attend this meeting via teleconference. This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. If you wish to attend the City Council meeting in person the City Council Chamber is located at 24035 El Toro Road, Laguna Hills, CA 92653. The public shall have the right to observe and offer public comment at this location on Items listed on this Special Meeting Agenda only. If you plan on attending, please follow the California Department of Health Guidelines by wearing a mask, washing your hands often, refraining from handshakes and maintaining social distance of six feet between individuals. You may also view the live stream of the meeting online at: http://lagunahillsca.iqm2.com/Citizens/Default.aspx.

Submission of Public Comments: While you may attend this meeting in person, given the health risks associated with COVID-19, the City encourages those wishing to make public comments at the June 29, 2021, Special City Council meeting on items listed on this Special Meeting Agenda only, to submit your comments by email to the City Clerk at publiccomments@lagunahillsCA.gov, by 3:00 p.m. on June 29, 2021. In the subject line of the email, please state your name and the item number you are commenting on. 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 on items listed on this Special Meeting Agenda received by 3:00 p.m. on the date of the meeting will be provided to the City Council in advance of the meeting to allow time for the Council Members to read them. Email comments will NOT be read by the City Clerk during the meeting, but will be announced and made part of the record. Electronic public comments may only be submitted via email and comments via text and social media (Facebook, Twitter, etc.) will not be accepted.

Announcement of Public Comments: During the Public Comment portion, the City Clerk will announce the name of the sender and subject matter of all comments on items listed on this Special Meeting Agenda received by 3:00 p.m. on June 29, 2021. The email comments, including your name, will become part of the record of the Special City Council meeting and will be public information.

JOINT CITY COUNCIL/PLANNING AGENCY MEETING

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.

PLEDGE OF ALLEGIANCE: Council Member Heft

ROLL CALL OF CITY COUNCIL/PLANNING AGENCY MEMBERS

JOINT CITY COUNCIL/PLANNING AGENCY PUBLIC HEARINGS

1 **The Village at Laguna Hills – 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, Including Adoption of the Fifth Addendum to the City of Laguna Hills General Plan Program Environmental Impact Report as Previously Addended (State Clearinghouse No. 20080811100) and Approval of Site Development Permit, Master Sign Program, Conditional Use Permits, Parking Use Permit, Vesting Tentative Tract Map, Development Agreement, Precise Plan No. USE-0010-2019**

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

1) Resume the Joint Public Hearing;

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."

CLOSED SESSION

ANNOUNCEMENT OF CLOSED SESSION ITEM(S)

The City Council will convene into Closed Session, in the City Council Conference Room or Chamber, 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
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) and paragraph (1) of subdivision (e) 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

CLOSED SESSION REPORT

ADJOURNMENT

The next Regular Meeting of the City Council/Planning Agency will be July 13, 2021, 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 June 28, 2021, at 5:00 pm.

June 28, 2021

City Clerk ***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: June 29, 2021

TO: Mayor/Chair and Council/Agency Members

FROM: David Chantarangsu
Community Development Director

ISSUE: Village at Laguna Hills Continued Public Hearing

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

1) Resume the Joint Public Hearing;

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."

SUMMARY:

On April 27, 2021, the City Council and 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 for 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 5:00p.m., in the Laguna Hills Community Center Heritage Room. At the continued public hearing on June 24, 2021, the City Council and Planning Agency received additional public comment, and closed the public comment portion of the Public Hearing. The City Council also voted to continue the Public Hearing to today's meeting.

BACKGROUND:

All hearing materials from the April 27, 2021, meeting are incorporated herein and are included in Attachment a by hyperlink to the City's website. The hearing materials from the June 24, 2021, meeting are incorporated herein and are included as Attachment b by hyperlink to the City's website.

<u>Population Clarifications</u>

At the June 24, 2021, meeting, the City Council discussed the topic of future population projections at the Project. The proposed Fifth Addendum for the General Plan PEIR relies on a population estimate for the Project that was derived from a 2015 study previously used to update the City's Quimby fee (Park In-Lieu Fee per Laguna Hills Municipal Code (LHMC) Chapter 8-07) which was prepared by Willdan Financial Services (Willdan). Willdan studied the City's population as determined by the 2010 Census and found that in areas where housing density exceeded 18 units per acre, a population of

1.42 persons per household, on average, existed in the City. The 1.42 persons per household figure was used to determine a population estimate for the Project since it exceeds 18 units per acre. This figure was used in the Project CEQA document and fiscal impact study since it had a basis in factual data the City has relied on in the past.

Public comment was received supporting the use of population figures based on a “two plus one rule”, indicating that each bedroom in a unit could support two persons, and that each unit could support one additional person. This approach appears to be based on a 1991 memorandum (the “Keating Memo”) issued by the U.S. Department of Housing and Urban Development (HUD) that dealt with HUD policies aimed at preventing housing discrimination against families with children. The Keating Memo describes how HUD could determine what the maximum occupancy of a housing unit might be relative to a family’s circumstances including bedroom and unit size, age of children in a family, and unit configuration. The Keating Memo expressly states that it is not intended to “establish occupancy policies or requirements for any particular type of housing.” In other words, it is not a population projection model.

A regulation the City maintains related to the number of occupants in a housing unit is LHMC Chapter 10-24 which is known as the “Laguna Hills Housing Code” (Housing Code). The Housing Code adopts the 1997 Uniform Housing Code which is still used nationwide (even though there have been updates), to enable cities to pursue code enforcement actions to eliminate substandard housing. For example, the Housing Code could be used to determine if a dwelling unit was large enough to accommodate the number of people who might be residing in a dwelling unit. Chapter 5 of the 1997 Uniform Housing Code contains regulations regarding “Space and Occupancy Standards”. Section 503.2 provides the following with respect to occupancy:

> “503.2 Floor Area. Dwelling units and congregate residences shall have at least one room that shall have not less than 120 square feet (11.2 m2) of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet (6.5 m2). Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet (4.65 m2) for each occupant in excess of two.”

Using the requirements above, it could be determined whether or not a substandard living condition existed due to the number of people living in a dwelling unit and the size of a dwelling unit. However, this regulation is not used to project the number of residents that will be occupying a residential unit, rather it is solely a code enforcement tool.

The owner of a luxury residential building has the authority, and has a self-interest, through terms of a rental or lease agreement to control the number of residents in each unit. Given the proposed Project Conditions of Approval requires each unit to be provided parking spaces at least meeting the City Code, and also provides for tow away authority for any vehicles found to be parked overnight in the retail parking spaces, the population in each unit is self-managed. Staff re-affirms its use of data supporting 1.42 persons per household on average for the Project.

Parking Standards

As indicated in previous Staff Reports and supporting information, the Residential Use on the Project site meets the City Parking Requirements on a standalone basis. Separately, the balance of the Project site meets the City Parking Requirements on the basis of Shared Parking. The Project boundaries include the parking that is provided on Calle de la Louisa and such parking will also be subject to parking controls established in the Conditions of Approval.

Applicant Comment Letter

Staff has attached a comment letter dated June 28, 2021, from the Applicant addressing Project consistency with the UVSP as Attachment c.

Public Comments

Since the June 24, 2021, continued public hearing, the City has received 12 additional written public comments as of June 24, 2021, 3:00 PM through Monday, June 28, 2021, at 3:00 PM. These are included as Attachment d.

Updated Resolutions and Ordinance

Staff has updated the resolutions and ordinance associated with the Project to reflect the continued public hearing dates. These are included as Attachments e through g.

CEQA FINDINGS:

See the April 27, 2021 staff report.

FISCAL IMPACT:

See the April 27, 2021, staff report.

ATTACHMENTS:

- Attachment a - Village at Laguna Hills April 27, 2021 Staff Report & Attachments
- Attachment b - Village at Laguna Hills June 24, 2021 Staff Report & Attachments
- Attachment c - June 28, 2021 Applicant Comment Letter
- Attachment d - Comment Letters Received After 3PM June 24, 2021
- Attachment e - Resolution Approving the Fifth Addendum
- Attachment f - Resolution of Approval
- Attachment g - Development Agreement Ordinance

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

Applicant Comment Letter

June 28, 2021

PERKINSCOIE

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June 28, 2021

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By Electronic Mail

The Honorable Erica Pezold, Mayor
The Honorable Don Sedgwick, Mayor Pro Tem
The Honorable Janine Heft, Councilmember
The Honorable Bill Hunt, Councilmember
The Honorable Dave Wheeler, Councilmember

Re: Village at Laguna Hills - Considerations of Project Consistency with Objective Criteria in the Urban Village Specific Plan

Dear Mayor Pezold, Mayor Pro Tem Sedgwick, and Members of the Laguna Hills City Council:

The purpose of this letter is to summarize MGP Fund X Laguna Hills, LLC's ("MGP") position with respect to the Council's evaluation of the Village at Laguna Hills ("VLH") for consistency with the City of Laguna Hills General Plan and the Urban Village Specific Plan ("UVSP"). In particular, the Mayor and other members of the Council suggested during the joint Planning Agency / City Council hearing of June 24, 2021, that the UVSP establishes a limitation of 200 residential units within the specific plan area, and on that basis, VLH is inconsistent with the UVSP. As further described below, such an interpretation would be inconsistent with all of the City's prior interpretations of the UVSP and violate MGP's rights to substantive due process and equal protection, and it would further violate State law as a basis upon which to deny the VLH applications.

MGP rejects any contention that the General Plan, the UVSP, or any other applicable regulatory control establishes a maximum residential unit cap within the specific plan area. As described in detail in the Fifth Addendum to the General Plan Program Environmental Impact Report, in the two staff reports submitted in advance of the April 27, 2021 and June 24, 2021, hearings and in the April 2021 Kelly Associates Management Group Memorandum, residential development is limited in the UVSP only by maximum density and by the availability of UVSP trip budgets. The City's professional staff, numerous expert planning and zoning consultants, and the City Attorney have all reached this same conclusion. There is no evidence whatsoever in the record before the Council, including the testimony from the June 24, 2021 hearing, to undermine that interpretation.

The City has repeatedly affirmed that the 200 residential units described in the UVSP's conceptual land use plan are not a limitation on residential development. Indeed, the City addressed this specific question as part of the 2009 General Plan Program Environmental Impact Report, which evaluated the environmental impacts of the City Council's updates to the General Plan, including additional development within the UVSP based on the establishment of a minimum residential density of 30 units per acre. In that document, the City responded to a comment from the City of Laguna Woods, in which Laguna Woods noted that the 30-units-per-acre density minimum could lead to as many as 985 units on the Oakbrook Village Site. The City's response -- which was formally certified by the City Council -- was as follows:

> The Oakbrook Village site is part of the Urban Village Specific Plan (UVSP) area and future expansion opportunities for Oakbrook Village are subject to the same limitations as are all future development projects in the UVSP. ***Future development in the UVSP area is limited by peak hour trips generated within the UVSP area and is allocated on a first-come, first-served basis***. ***For planning purposes, the peak hour trips authorized by the EIR are based on the following breakdown of land uses: 300,000 square feet (SF) of retail uses, a 250-room hotel, 200 residential units, and either 138,000 SF of medical office uses or 380,000 SF of general office uses***. ***The UVSP allows any of the land use categories to exceed the square footage numbers assumed for planning purposes, as long as there is a corresponding decrease in another land use category that has the impact of ensuring that the maximum peak hour trips are not exceeded***. It should be noted that ***any increase in residential development within the UVSP area will result in a corresponding peak hour trip reduction in other allowed land uses (i.e., office, retail, hotel) within the UVSP area***. Increasing residential development in the UVSP area will only potentially reduce commuting trips, not increase them, and thereby should reduce traffic, air quality, and noise impacts within the area and region . . . .

(Response to Comment 5-2, attached hereto as Attachment 1 (Emphasis added.))

The City's own response to Comment 5-2 directly rebuts any interpretation that the 200 unit references in the UVSP represent a cap on development, or that while other uses within the UVSP may be interchangeable (e.g., increasing office while decreasing retail) subject to UVSP trip budgets, residential use is capped at 200 units within the plan area.

The City has never interpreted the UVSP to limit residential development to 200 units. Former Mayor and Councilmember Allan Songstad noted in his June 10, 2021, letter that he was a member of the Council when the UVSP was adopted in 2002, when the General Plan was updated in 2009 and when the Council adopted modifications to the UVSP in 2011, and that "the specific uses in the original and modified UVSP were never meant to be a cap on any type of use."[1] In 2012, the City approved the Oakbrook Village Project within the UVSP for development of 489 residential units. In 2016, the City approved the Five Lagunas Project within the UVSP for 988 residential units. As required by the UVSP, the Council evaluated these projects to determine that minimum residential density was met, that maximum density was not exceeded, and that there were sufficient UVSP trip budgets available to accommodate that

[1] Letter from L. Allan Songstad to Hon. E. Pezold and City Council Members (June 10, 2021), attached here as Attachment 2.)

development. The Council adopted findings confirming that these projects were consistent with the UVSP. To determine now, after sixteen years of findings to the contrary, that the UVSP caps residential use at 200 units, would be arbitrary and capricious and deny MGP its rights to substantive due process and equal protection under state and federal law.

We also urge the Council to take notice of the Housing Accountability Act (Gov. Code § 65589.5; "HAA"). The California Legislature adopted the HAA as a means of addressing the State's critical housing shortage. In recent years, the Legislature has further strengthened the HAA to limit the ability of cities and counties to deny approval of residential projects that comply with "objective" land use criteria, including by denying development applications, enforcing new design standards, "downzoning" properties to limit density, or by establishing moratoria on residential development. A detailed summary of the HAA, including an explanation of its applicability to VLH, is included as Attachment "i" to the staff report for the April 27th hearing.

Application of a purported residential unit cap in the UVSP as a basis for rejecting VLH would be prohibited under State law. Per the HAA, an "objective" standard is one that involves "no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official."[2] It is beyond any reasonable debate that, to the extent the Council asserts there is a 200-unit limit on residential development, such density limitation would constitute an "objective" standard under this definition. Under the HAA, in order to reject an application for a qualifying project on the basis that it is inconsistent with an objective standard, the city or county must have provided written notice to the applicant "within 60 days of the date that the application for the housing development project is determined to be complete" for a project with 150 or more residential units.[3] Here, the VLH project applications were determined to be complete on January 22, 2021.[4] The City was required to provide MGP with written notice describing any claimed inconsistency with objective standards by March 23, 2021. The City did not provide the required notice; therefore, any claimed unit cap is irrelevant for purposes of evaluating the VLH applications as it could not legally be invoked as a basis for denying the applications or conditioning the residential component.

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[2] Cal. Govt. Code, § 65589.5(h)(8).
[3] Cal. Govt. Code, § 65589.5(j)(B)(2)(A)(ii).
[4] The formal completeness determination letter is attached hereto as Attachment 3.

MGP looks forward to the third hearing on VLH and hopes that the information provided here will help to focus the discussion on items that are germane to matters within the lawful purview of the Council.

Sincerely,

Matt Gray

Matthew S. Gray

MSG:gjc

cc: Gregory Simonian, City Attorney
David Chantarangsu, Community Development Director
Kenneth Rosenfield, Interim City Manager

Attachment 1

(2009 General Plan EIR Response to Comment 5-2)

CITY of LAGUNA WOODS

RECEIVED
APR 1 0 2009
CITY OF LAGUNA HILLS

April 10, 2009

Ms. Julie Molloy
Senior Planner
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

SUBJECT: **Comments on the City of Laguna Hills Draft General Plan Update and Draft Program Environmental Impact Report**

Dear Ms. Molloy:

Thank you for the opportunity to review and comment on the Laguna Hills Draft General Plan Update (DGPU) and related draft Program Environmental Impact Report (PEIR). The City of Laguna Woods (City) offers the following comments on these reports: 5-1

Increased Housing

Urban Village Specific Plan (UVSP)
The current Urban Village Specific Plan (UVSP) has 756 existing residential units which include the Prado apartment complex (360 units) and the Villa Valencia senior residential development (396 units). The DGPU would allow the UVSP to have a minimum of 30 dwelling units per acre and a maximum of 50 dwelling units per acre. Within the UVSP the Oakbrook Village 19.7 acre site includes 400 units. Under the proposed minimum 30 dwelling unit per acre standard, this could potentially increase to a minimum of 591 units or a maximum of 985 units. 5-2

The amount of residential development within the UVSP site raises concerns about traffic, noise, and air quality impacts that could affect residents and businesses in the City of Laguna Woods. Of particular concern are the effects on Laguna Woods' residents who live along Paseo de Valencia.

We recommend that a General Plan Amendment, Specific Plan Amendment, Site Specific Development Plan and Environmental Document be developed concurrently to more adequately analyze the potential impacts from this increase in intensification and the proposed mitigation measures that may be required.

24264 El Toro Road • Laguna Woods, CA 92637 • Phone (949) 639-0500 • Fax (949) 639-0591 • Website: www.lagunawoodscity.org

Letter 5 – City of Laguna Woods

5-1 This comment provides opening remarks and indicates that the City of Laguna Woods has provided comments. No formal response is required.

5-2 Comment noted. The statement that the Oakbrook Village site includes 400 residential units is erroneous. The Oakbrook Village site is part of the Urban Village Specific Plan (UVSP) area and future expansion opportunities for Oakbrook Village are subject to the same limitations as are all potential future development projects in the UVSP. Future development in the UVSP area is limited by peak hour trips generated within the UVSP area and is allocated on a first-come, first-served basis. For planning purposes, the peak hour trips authorized by the EIR are based upon the following breakdown of land uses: 300,000 square feet (SF) of retail uses, a 250-room hotel, 200 residential units, and either 138,000 SF of medical office uses or 380,000 SF of general office uses. The UVSP allows any of the land use categories to exceed the square footage numbers assumed for planning purposes, as long as there is a corresponding decrease in another land use category that has the impact of ensuring that the maximum peak hour trips are not exceeded. It should be noted that any increase in residential development within the UVSP area will result in a corresponding peak hour trip reduction in the other allowed land uses (i.e., office, retail, hotel) within the UVSP area. Increasing residential development in the UVSP area will only potentially reduce commuting trips, not increase them, and thereby should reduce traffic, air quality, and noise impacts within the areas and region (than would otherwise be generated by nonresidential development). The EIR fully considers the increase in the level of development allowed in the UVSP area, as anticipated in the proposed General Plan. No application for a specific development expansion plan has currently been filed for the UVSP area. When specific development projects are proposed, additional project-specific environmental analysis will be conducted. Additional environmental documentation could be required, including noise, air quality, and traffic studies. Additionally, the City will consider the appropriate planning documents that may be required, such as but not limited to Specific Plan and General Plan amendments, and site-specific development plans, as development projects are proposed.

Increased Commercial

Urban Village Specific Plan (UVSP)
The current UVSP includes a mix of retail, office, financial, medical, residential, and transportation uses. The area currently consists of approximately 527,000 sq. ft. medical center use, approximately 633,000 sq. ft. of office space, and 1,124,000 sq. ft. of retail space. The DGPU would allow an additional 117,000 square foot of retail space beyond that currently provided in the UVSP.

The City is concerned that without a project-specific plan proposed, potential impacts from traffic, noise, and air quality cannot be adequately analyzed. We have the same concern here as with the proposed residential intensification over impacts on Laguna Woods' residents who reside along Paseo de Valencia. 5-3

We recommend that a General Plan Amendment, Specific Plan Amendment, and a Site Specific Development Plan be developed concurrently so that the proposed 117,000 square foot increase in retail space can be more adequately analyzed along with appropriate mitigation measures that may be required.

Increased Traffic

Additional analysis of full implementation of the DGPU should be conducted on potential impacts on intersections in Laguna Woods. In particular, the City is concerned with additional trips on El Toro Road and Moulton Parkway from the proposed intensifications of the Urban Village, Via Lomis, and Moulton & LaPaz project areas.

According to Figure 5.14-5, 2030 Average Daily Traffic (ADT) volumes are projected to increase by 65% on Moulton Parkway north of the Laguna Woods city boundary and by 48% to the south of the City's boundary from what currently exists. There are no data provided in the DGPU or PEIR regarding potential impacts that this increased traffic would have on Moulton Parkway or intersections within the City of Laguna Woods. The latest Orange County Congestion Management Program (OC CMP) reports that the Moulton Parkway/El Toro Road intersection already operates at LOS D during both a.m. and p.m. peak hours. With the build-out of the approved Laguna Woods' General Plan, this intersection may reach LOS E. 5-4

Average daily trips for the main intersections serving the Urban Village area are projected to rise by 23,742 trips, but no analysis has been conducted of nearby intersections in or adjacent to Laguna Woods. For example, traffic along Paseo De Valencia is anticipated to increase 27% to 35% which would cause the level of service to rise from A's and B's to C's and D's. Actual traffic numbers may be greater than what is provided in the PEIR; a site specific project has not been proposed and a project specific traffic analysis has not been completed.

5-3 Please refer to response 5-2.

5-4 Please refer to topical response #1. In addition, please consider the following. The purpose of the traffic study conducted for this project is to update the City of Laguna Hills General Plan and analyze the impacts of implementing the proposed General Plan. As future development projects are proposed in Laguna Hills (e.g., specific development proposals in the Urban Village area) project-level environmental analysis, including a traffic analysis, will be conducted. This analysis would include analyzing the project's effect on traffic outside of the City of Laguna Hills (i.e., Laguna Woods intersections).

Changes in traffic volumes on arterial highways are due to growth in the entire region not just the City of Laguna Hills or Laguna Woods. Please refer to topical response #1 for further discussion on this subject. The Laguna Hills Traffic Analysis Model (LHTAM) is consistent with the Orange County Transportation Analysis Model (OCTAM) and the volumes described are anticipated in OCTAM regardless of the Laguna Hills General Plan Update.

The deletion of Santa Maria Avenue and portions of Ridge Route Drive is a proposal being pursued by other agencies and its impact must be independently evaluated. Any concerns regarding these deletions should be evaluated by the proponents of the deletions. The Laguna Hills Traffic Study is consistent with the MPAH that is currently approved, and analysis of the proposed arterial highway deletions is beyond the scope of this EIR.

Attachment 2

(June 10, 2021 A. Songstad Letter)

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L. Allan Songstad, Jr. Esq.
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June 10, 2021

The Honorable Mayor Erica Pezold and City Councilmembers
City of Laguna Hills
24035 El Toro Rd
Laguna Hills 92653

Re: Support of the Village at Laguna Hills Project

Dear Mayor Pezold and Councilmembers:

I write in support of the Village at Laguna Hills project. As a former 18-year member of the city council (5 of those years as mayor), I am writing to provide my perspective on the project, the staff report and recommendations and the Development Agreement (DA). I understand that a number of concerns have been raised by the public.

Consistency with the Urban Village Specific Plan as Modified (UVSP):

I was on the council in 2002 when the UVSP was adopted. I was also on the council in 2009 when the General Plan was updated and in 2011 when the UVSP was modified. The UVSP was essentially an invitation to redevelop the mall and surrounding property including Oakbrook Village. It was a concern of the council that the mall and surrounding areas were declining. As major assets to the city, it was thought that some incentive was needed to prompt action by the owners. Other than the trip count, the uses in the UVSP were not fixed intentionally to give the owners flexibility. Oakbrook took advantage of the council's vision and has redeveloped its site. I personally had meetings, along with the city manager, with the owner of the mall (Simon Companies) to encourage it to submit a plan. Unfortunately, Simon did not take advantage of the opportunity and the council's concerns regarding the viability of the mall have come to fruition. The specific uses in the original and the modified UVSP were never meant to be a cap on any type of use. Such a cap would have been counter to the goals of the council. Staff's analysis of this issue is absolutely accurate.

CEQA

I have also heard that concerns have been raised about the use of addendums to the PEIR for compliance with CEQA. This concern is unfounded. This process has been successfully used four times without challenge. The consultants and the city attorney are on solid ground in the use of this procedure. I speak not only as a former councilmember but as a practicing attorney for fifty years. I have attached my resume for your review.

Development Agreement

There should be no concerns about the DA. It is a well written document which provides benefits and obligations to both parties as do all negotiated agreements. In order to provide certainty to the owner it vests entitlement rights in exchange for concessions in favor of the city. Those benefits include $26 million dollars to the city. Over 2.2 million in community benefit payments for loss of sales tax and 18 million in nonrefundable and guaranteed park fees. The agreement provides for the timing of development, a hotel, affordable housing and substantial additional public benefits as described on pages 79- 84 of the April 27, 2021 staff report and sections 7 through 10 of the DA. Although the city has lost sales tax revenue, the owner has also had little to no return on its substantial investment in the property. Yet the owner in exchange for entitlements has agreed to considerable financial concessions to the city.

Disapproval

What happens if the project and DA are not approved? In that, hopefully, unlikely event, the city will most likely be subject to costly litigation from a variety of sources including the state of California. Since there would be no development agreement, the benefits as described in the staff report and Development Agreement would be lost. Loss of the Development Agreement would have severe financial consequences for the City. Disapproval would result in either a blighted area or a use (such as entirely residential) inconsistent with the mixed-use concept developed long ago. I am confident the council will not take this disastrous route.

Respectfully,

L. Allan Songstad

L. Allan Songstad, Jr., Esq.
of SONGSTAD RANDALL COFFEE &HUMPHREY LLP

SONGSTAD RANDALL COFFEE HUMPHREY LLP

Allan Songstad Jr

Allan Songstad, Jr.
Costa Mesa, California
Founding Partner

Allan Songstad, Jr. is a founding partner of Songstad Randall Coffee & Humphrey LLP. He was formerly a partner and managing partner of Meserve, Mumper & Hughes LLP. Mr. Songstad's practice involves all forms of real estate disputes, including enforcement and defense of contract actions, title and escrow claims, land use and real estate related partnership matters. Mr. Songstad has handled corporate disputes, including actions by and among shareholders, directors and officers, and the defense and prosecution of derivative and class actions. He has prosecuted and defended actions involving financial institutions, as well as professional liability actions, general commercial litigation, some forms of creditor bankruptcy matters and insurance coverage disputes, transportation law, employment, securities, corporations, partnerships, and oil and gas. Mr. Songstad has participated as lead counsel in both bench and jury trials in federal and state courts and has substantial appellate experience. Mr. Songstad was honored as a "Super Lawyer" by Law & Politics Magazine and the publishers of Los Angeles Magazine which recognizes the best lawyers in Southern California.

Arbitrator, Los Angeles County Bar Association Attorney Fee Dispute Resolution Program
Member, Orange County Bar Association
Member, Los Angeles County Bar Association
Member, American Bar Association
Member, Association of Business Trial Lawyers
Licensed Real Estate Broker

Areas of Practice

Real Estate
Title and Escrow
Land Use
Transportation Law
Oil and Gas
Trade Secret
Unfair Competition

Educational History

J.D., Hastings College of Law (1970)
B.A. (Political Science), University of Southern California (1967)
Member, Hastings Law Journal

Bar Admissions

State of California
U.S. District Court, Central District of California
U.S. District Court, Eastern District of California
U.S. District Court, Western District of California
U.S. District Court, Southern District of California
U.S. District Court, Northern District of California
U.S. Court of Appeals for the Ninth Circuit
U.S. Court of Appeals for the Tenth Circuit

Legal History

Partner, Songstad Randall Coffee & Humphrey LLP (1996 to present)
Managing Partner, Meserve, Mumper & Hughes (1979-1996)
Partner, Meserve, Mumper & Hughes (1977-1996)

Legal, Business and Civic Activities

Council Member, City of Laguna Hills
Mayor, City of Laguna Hills (five terms)
Member, Board of Directors of the El Toro Reuse Planning
Chairman of the Board of Directors of the El Toro Reuse Planning Authority
President, Orange County Division of the League of California Cities
Member, Board of Directors of the League of California Cities
Member, Board of Directors for the Orangewood Children's Foundation
Lecturer, California Continuing Education of the Bar
Panelist, Los Angeles County Bar Association Law and Motion
Judge Pro Tem, Los Angeles Municipal Court

Attachment 3

(January 22, 2021 Application Completeness Determination Letter)

CITY OF LAGUNA HILLS

January 22, 2021

Mr. Dave Geiser
MGP Fund X Laguna Hills, LLC
4365 Executive Drive
San Diego, CA 92121

SUBJECT: **USE-0010-2019 (THE VILLAGE AT LAGUNA HILLS)**
COMPLETENESS REVIEW (January 14, 2021 RESUBMITTAL)

Dear Mr. Geiser,

On January 14, 2021 the Community Development Department received a resubmittal of application materials for the Village at Laguna Hills. Pursuant to the City's development application review process, City staff conducted an in-depth review of the project materials to determine the completeness and accuracy of the resubmittal. Based on our review, in accordance with Section 9-92.050 (Requirements for Complete Applications) of the Laguna Hills Development Code (Title 9 [Zoning and Subdivisions] of the Laguna Hills Municipal Code) and Section 65943(a) of the California Government Code, the City has determined that the development application is **complete**.

If you have any questions, please feel free to contact me at (949) 707-2675.

Sincerely,

David Chantarangsu, AICP
Community Development Director

Cc: Ken Rosenfield, Acting City Manager
Greg Simonian, City Attorney
Jay Wuu, Senior Planner
Jorge Estrada, Placeworks
Karen Gulley, Placeworks
Bill Kelly, KAMG

The Village at Laguna Hills

Attachment d

Public Comments Received After 3PM

June 24, 2021

Public Commenters
for
The Village Public Hearing

received between June 24, 2021, at 3:00p.m. & June 28, 2021, at 3:00p.m.

LH Business Owner
Resident
Non-Resident

In Favor of Project as Presented

Letter and Emails Submissions

1 Business

Michael King, Director of Real Estate & Development, King's Fish House

Against the Project as Presented

11 Individuals

Dawn Ford
Hsiao Mei Li
Howard Weissman
Nicole Emmons
Alex Mardiossian
Leon Johnson
Shanna Howard
Dennis Andrews
James Basiao
David Tomlinson
Dylan Drake

The Hon. Erica Pezold
Mayor
City of Laguna Hills
24035 El Toro Rd.
Laguna Hills, CA 92653

June 24, 2021

Dear Mayor Pezold,

I represent King's Fish House located on the site of the Laguna Hills Mall. King's Seafood Company is a third-generation family business and as such we understand the importance of longevity and growth. And as a restaurant company we appreciate the importance of having great places to gather as a community. We believe that the Village at Laguna Hills will reinvigorate this area and the local economy.

We cannot have the Laguna Hills Mall continue to languish year after year with no end in sight. We have experienced the full cycle of change here at the Laguna Hills Mall, and it is more evident than ever that this development needs to be improved. An approval of this project will not only provide a shot in the arm to the economic health of the city but will be a gathering place with which the city can be proud.

An approval means jobs. It means a revitalized retail space. It means new housing at a time it is needed most. It also means the continued success for the few remaining tenants open here. This has been a trying year for all of us, we are looking forward to an improved Village at Laguna Hills.

Please vote to approve this project without delay tonight.

Sincerely,

Michael King
Director of Real Estate & Development
King's Seafood Company

cc: The Hon. Don Sedgwick, Mayor Pro Tem
The Hon. Janine Heft, Council Member
The Hon. Bill Hunt, Council Member
The Hon. Dave Wheeler, Council Member

King's Seafood Company 3185 J Airway Avenue, Costa Mesa, CA 92626 ph: 714.432.0400 fax: 714.432.0111 www.kingsseafo

Jennifer Lee

Subject: FW: The Village At Laguna Hills June 24 meeting

From: Dawn <nascar4mommy@cox.net>
Sent: Thursday, June 24, 2021 4:53 PM
To: Public Comments
Subject: The Village At Laguna Hills June 24 meeting

Dear Madame Mayor and Laguna Hills city Council,
I planned on being at this meeting in person tonight but my dog is terminally ill so I need to be at home with her during these last days of life.
I hope that the city and the developer of The Village At Laguna Hills will reconsider the plan of putting in so many apartments at this location of the former Laguna Hills mall. I wish the original plan of this whole project would not have been changed. First it was 800 apartments now the developer plans to put in almost double. Look at the parking issues of SoFi apartments. They are parking on the street. When you build apartments not just one family will occupy each apartment.
If anything the plan should be changed to more shops and restaurants and open space for us residents in the city to be able to use and mingle with our neighbors. Irvine Spectrum is constantly busy with business. I don't understand why we can't have a mini spectrum shopping center. We have no stores to shop at in Laguna Hills. Big Lots, Dicks, Marshalls and Ashley Furniture are mostly all we have of big stores. No one from other cities has a reason to exit off the freeway and venture into Laguna Hills. We as a city have nothing to offer anymore. Let alone us residents who want to spend the money and stay local to shop.
If housing needs to go in then we should consider condos or townhomes. People take more pride in ownership and the residents will occupy the home longer since they won't be renting.
This project is huge for Laguna Hills and this big slice of property is not beneficial to us existing residents that moved here many years ago if you are going to fill it with apartments instead of entertainment and restaurants for us to patronize.

Thank you
Dawn Ford

[[[External E-mail]]]

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

---

From: Hsiao Mei Li <info@email.actionnetwork.org>
Sent: Thursday, June 24, 2021 5:47 PM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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,

Hsiao Mei Li
li2222@hotmail.com
25462 La Habra ct
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.

Jennifer Lee

Subject: FW: No to the Village at Laguna Hills

From: Howard Weissman <info@email.actionnetwork.org>
Sent: Thursday, June 24, 2021 7:04 PM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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,

Howard Weissman
hyouknowwho@gmail.com
25212 Stockport St, Apt. 22
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.

Jennifer Lee

Subject: FW: No to the Village at Laguna Hills

From: Nicole Emmons <info@email.actionnetwork.org>
Sent: Thursday, June 24, 2021 10:31 PM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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,

Nicole Emmons
dnlajoie@yahoo.com
26561 Bridlewood drive
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.

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

From: Aleck Mardirossian <aleckmardirossian@ymail.com>
Sent: Thursday, June 24, 2021 11:17 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 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,

Aleck Mardirossian
aleckmardirossian@ymail.com
24781 Clarington 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.

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

From: Leon Johnson <Noelelite@msn.com>
Sent: Friday, June 25, 2021 7:32 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 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,

Leon Johnson
Noelelite@msn.com
13 Deer Creek 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.

Jennifer Lee

Subject: FW: Say no to the “Village”

From: Shanna Howard <info@email.actionnetwork.org>
Sent: Friday, June 25, 2021 6:31 PM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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, Shanna Howard

Shanna Howard
oshan2998@aol.com
25001 Mackenzie St.
Laguna Hills, California 92653

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

---

From: Dennis Andrews <info@email.actionnetwork.org>
Sent: Friday, June 25, 2021 9:33 PM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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,

Dennis Andrews
denandrews46@gmail.com
24642 Cresta Court
Laguna Hills, California 92653

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

---

From: James Basiao <info@email.actionnetwork.org>
Sent: Saturday, June 26, 2021 1:51 PM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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,

James Basiao
jmspbasiao@yahoo.com.sg
25561 indian hill lane unit-V
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.

Jennifer Lee

Subject: FW: No Hotel at Village at Laguna Hills. Oppose this Massive Project

---

From: David Tomlinson <info@email.actionnetwork.org>
Sent: Sunday, June 27, 2021 7:52 AM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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 open space and recreational. Even a boating lake perhaps. (not for power boats). Use your imagination.! Make laguna hills a place to be proud of.!!

Sincerely,
David. Tomlinson.
Laguna Hills.

David Tomlinson
david.tomlinson@hotmail.com
25795 la serra
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.

Jennifer Lee

Subject: FW: Say no to the "Village"

From: Dylan Drake <info@email.actionnetwork.org>
Sent: Sunday, June 27, 2021 8:18 AM
To: Erica Pezold; Dave Wheeler; Janine Heft; Bill Hunt; Donald M. Sedgwick; Cindy Sands; Public Comments; Melissa Au-Yeung
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,

Dylan Drake
dylandrakedesign@gmail.com
25008 Acacia Lane
Laguna Hills, California 92653

The Village at Laguna Hills

Attachment e

Resolution of Approval for Fifth Addendum to the Laguna Hills General Plan Update EIR

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 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.

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 ___________, 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, which was subsequently continued to June 29, 2021; 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 ____ day of _____________, 2021.

ERICA PEZOLD, 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. __________ was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the ____ day of ____________, 2021, and that thereafter, said ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the ____ day of _____________, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

MELISSA AU-YEUNG, CITY CLERK

The Village at Laguna Hills

Exhibit A of Attachment e

Due to file size limitations, the 5th Addendum to the City of Laguna Hills General Plan Update EIR and Appendices for the Village at Laguna Hills Project can be viewed and downloaded at:

https://www.lagunahillsca.gov/474/2965/Environmental-Documents

Direct Download Links
Addendum to the City of Laguna Hills General Plan Update EIR Village at Laguna Hills Project
Appendix A - Mitigation Monitoring and Reporting Program
Appendix B - Air Quality and Greenhouse Gas Emissions Calculations
Appendix C - Cultural Resources
Appendix D - Geology and Soils
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The Village at Laguna Hills

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Resolution of Approval for the Village at Laguna Hills Project

RESOLUTION NO. PA2021-

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 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 subsequently continued to June 29, 2021; 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.*

<u>Master Sign Program</u>

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.

<u>Parking Use Permit</u>

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 innovate 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.

<u>Vesting Tentative Tract Map</u>

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.

<u>Precise Plan</u>

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:

<u>GENERAL CONDITIONS</u>

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. 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

6. Prior to the adoption of the Ordinance approving the Development Agreement the Applicant shall agree in writing to these Conditions of Approval.

7. 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.

<u>PARKING</u>

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. Up to a 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.

<u>LANDSCAPING</u>

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.

<u>PUBLIC ART</u>

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 LHMC Chapter 9-46 (Landscaping Standards and Guidelines) and LHMC 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.

<u>LIGHTING</u>

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 LHMC 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.

<u>BUILDING CODE REQUIREMENTS</u>

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 LHMC 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.

<u>SIGNS</u>

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. Ledgestone used for the project shall be Bear Canyon ledgestone, or equivalent. Ledgestone 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.

<u>DIGITAL DISPLAY</u>

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.

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

Attachment: Attachment f - Resolution of Approval (2500 : Village at Laguna Hills Continued Public Hearing)

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 11cubic yards per week).

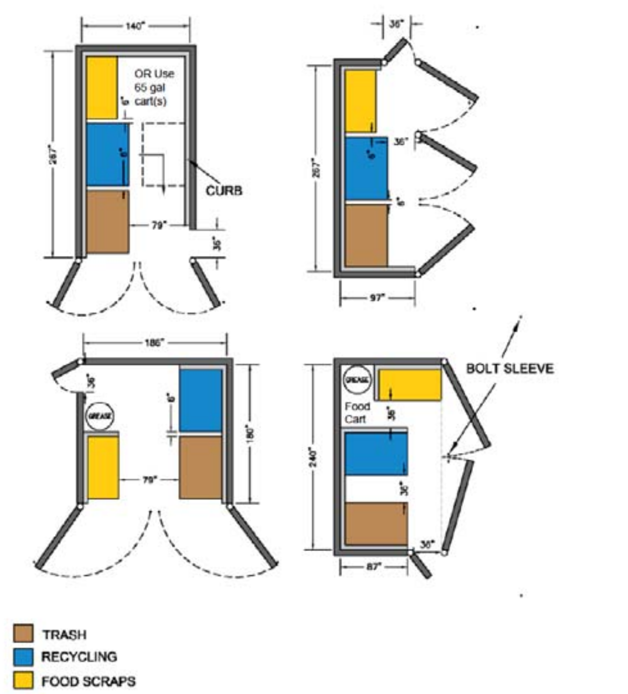
- **Organic Material Recycling Service Needs:** One 64-gal organics cart serviced 1 day per week (0.3 yards of weekly organics recycling service exceeds the projected organics generation levels of 0.0625 cubic yards per week).

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. DIMENSIONS TO INSIDE WALLS. NOTE: 65 gal FOOD CART Dimension equal to grease barrel

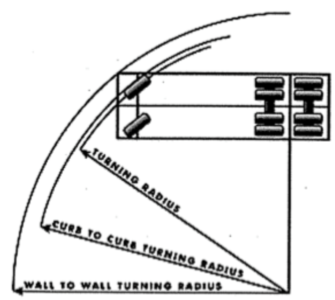
128. The figures provided in Table 1 provide annualized generation rates and do not take into account seasonal fluctuations in waste and recyclables generation volumes that may especially impact retail, multi-family, and hospitality business uses. The volume of recyclables and waste generated fluctuates 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.

TURNING RADIUS



Description	Dimension (inches)
Turning radius	37.39
Curb to curb turning diameter	76.86
Wall to wall turning diameter	85.04

*Note: the numbers above are a compilation of maximum numbers for the fleet.

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.

<u>REMEDIATION</u>

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 27th day of April, 2021.

____

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. PA2021- adopted by the Planning Agency and City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 27th day of April, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
MELISSA AU-YEUNG, CITY CLERK

The Village at Laguna Hills

Attachment g

Ordinance Approving and Adopting the Development Agreement

ORDINANCE NO. ORD 2021-1

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 June 29, 2021 the City adopted Resolution No. PA2021-06-29-2 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 June 29, 2021, adopted Resolution No. PA2021-06-29-1 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 __________, 2021, 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 pubic 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 ___________, 2021.

SECTION 6. This ordinance shall become effective 30 days after its adoption, on __________, 2021.

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 _______, 2021.

____
ERICA PEZOLD, 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 2021-1 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the ____ day of ______, 2021, and that thereafter, said ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the ____ day of ____, 2021, 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 ________, 2021 ("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 upon verification that the vehicle trip generation impacts created by the new development will 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 "Five Lagunas."

G. Owner now desires to modify the 2016 Five Lagunas Project through implementation of land use entitlements in order to continue to redevelop 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, 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 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.

O. On ________________, 2021, 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, 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 2021-1 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 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.

1.6 Complete Construction, Completed Construction, or Completion of Construction. With respect to Residential Buildings, Retail Buildings, and Office Buildings, "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 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, "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.

1.7 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.

1.8 City Manager. "City Manager" means the City Manager of the City of Laguna Hills or his or her designee.

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 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.

1.10 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.

1.11 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.

1.12 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.

1.13 Development Agreement Ordinance. The "Development Agreement Ordinance" means Chapter 9-84 of the Laguna Hills Municipal Code.

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.

1.15 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.

1.16 Development Plan. "Development Plan" means Development of the Property pursuant to 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.

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. "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, 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.

1.19 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.

1.20 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.

1.21 Five Lagunas Project. "Five Lagunas Project" means development of the Property in the manner authorized by the Five Lagunas Entitlements.

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.

1.23 General Plan. "General Plan" means the General Plan of the City.

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 approximate size and location of the Hotel is depicted on the Site Plan attached as **Exhibit C** to this Development Agreement as "Hotel."

1.25 Litigation Delay. "Litigation Delay" means any period of excusable delay described in Subsection 22.1.1(D) of this Development Agreement.

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

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.

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.

1.29 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.

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

1.31 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.

1.32 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.

1.33 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.

1.34 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. "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."

1.36 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.

1.37 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."

1.38 Owner's Public Art Obligation. "Owner's Public Art Obligation" shall have the meaning ascribed in Section 7.4 of this Development Agreement.

1.39 Parties; Party. "Parties" means the Owner and the City. A "Party" refers to either the Owner or the City.

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.

1.41 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.

1.42 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 be Affordable Units; (v) the construction of park and open space improvements within the Village Park; (vi) and the construction of associated pubic 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.

1.43 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.

1.44 Property. The "Property" means the real property described and depicted in **Exhibit A** to this Development Agreement.

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. "Residential Buildings" 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.

1.47 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."

1.48 Quimby Act. "Quimby Act" shall mean California Government Code Section 66477, as it may be amended from time to time.

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

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.

1.51 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.

1.52 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, 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.

1.53 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.

1.54 Term. "Term" is defined in Section 2 of this Development Agreement.

1.55 Third Party Challenge. "Third Party Challenge" shall have the meaning ascribed in Subsection 22.1.1(D) of this Development Agreement.

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).

1.57 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 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.

1.59 Veteran(s). "Veteran(s)" means an individual(s) that is/are a United States armed forces veteran(s).

1.60 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.

1.61 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, 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. 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 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 absolute discretion, and is thereby 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 will 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(F), 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) <u>Assurance of Timely Development of Village Park and Retail Buildings</u>. 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) <u>Concurrent Development of Residential Building I and Associated Retail Buildings</u>. 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) 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) 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.

(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. 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, will 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).

(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 and Ten).

(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) <u>Concurrent Development of Residential Building I and Associated Retail Buildings</u>. 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) <u>Residential Building IV</u>. 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) <u>Development of Office Buildings</u>. 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 <u>Subsequent Phases</u>. 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 Nine and Ten), 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 will 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 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 the construction and improvement 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.

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 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 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.

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 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 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 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 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, 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, 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 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 10.5.5 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 amount of 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 any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E), below, such portion shall be applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for said residential unit, provided a vertical building permit is issued for 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 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 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 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 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 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 units[2] 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

[1] This amount is calculated as follows: [($15,636 per unit X 804 units) – ($6,000,000)] / 804 units.
[2] This amount applies to the 805th residential unit through the 1,162nd residential unit.

fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Nine). 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 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 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 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 (8) years after the Development Agreement Date (**Exhibit D**, Milestone Seven). 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.

10.5.3 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 Survival of Termination of Development Agreement. Except as expressly provided in the next sentence, notwithstanding any other provision of this Development Agreement, 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, or Section 20 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 20 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 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 Sections 17, 18, 19, 20, or any other provisions of this Development Agreement, and without complying with the provisions of Sections 17, 18, 19, and 20, 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, 2030, 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, Owner expressly agrees that, while this Development Agreement is in effect, City shall have 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 will 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 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, 20, 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. 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 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 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 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 Sections 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 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 of the Development Agreement, and City may proceed in accordance with Section 19.1.

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

19.1 Defaults by Owner. 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, 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 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.

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.

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.

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.

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 and has not cured that default in the timeframe permitted by Sections 18 and 19 of this Development Agreement, as applicable.

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.

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 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, 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, Seven, and Nine, 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 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 will 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. In addition to any other rights or remedies, 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 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. ROSENFIELD,
Interim City Manager

ATTEST:

____
MELISSA AU-YEUNG,
City Clerk

APPROVED AS TO FORM:

____
GREGORY E. SIMONIAN,
City Attorney

"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

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.

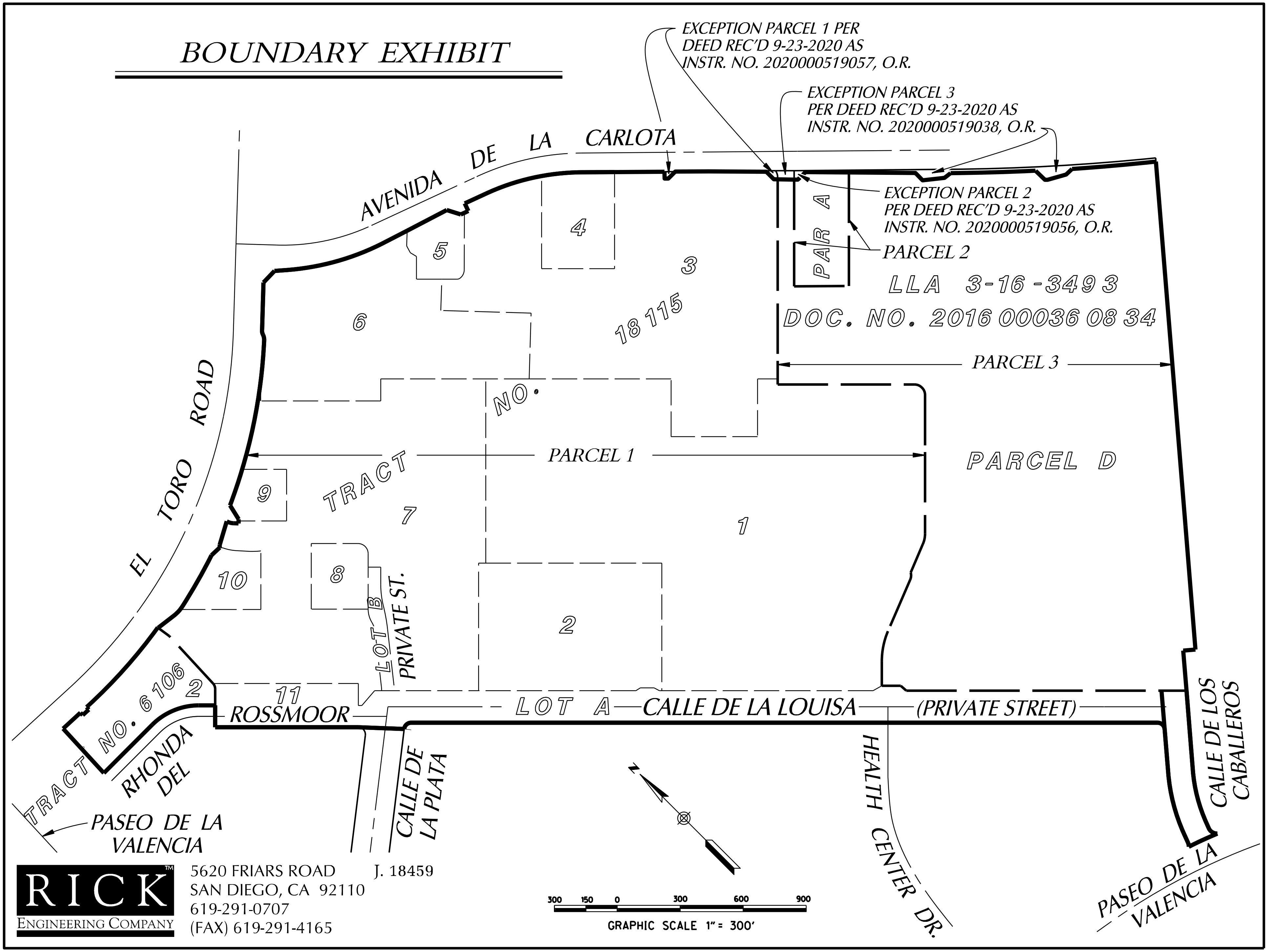
EXCEPTING THEREFROM THAT PORTION OF SAID LOT 2 LYING SOUTHEASTERLY AND EASTERLY OF THAT CERTAIN LINE DESCRIBED IN "CONSTRUCTION", "OPERATION AND RECIPROCAL EASEMENTS AGREEMENT" ALSO CALLED "REA" EXECUTED BY ROSSMOOR CORPORATION, A CALIFORNIA CORPORATION AND OTHERS, RECORDED FEBRUARY 29, 1972 IN BOOK 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.

______________________________ __3-16-2021_________

PATRICK A. MCMICHAEL, L.S. 6187 DATE



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Attachment: Attachment g - Development Agreement Ordinance (2500 : Village at Laguna Hills Continued)

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 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 amount of 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 any residential unit to which the fees apply pursuant to Subsections 10.3.3 (A)-(E) of this Development Agreement, such portion shall be applied to reduce the amount of the Public Park In-lieu Fee due at the time of issuance of a vertical building permit for said residential unit, provided a vertical building permit is issued for 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. 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 In-lieu Fees During Pendency of Litigation Delay). The Parties acknowledge and agree that the

[1] This amount is calculated as follows: [($15,636 per unit X 804 units) – ($6,000,000)] / 804 units.

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 units[2] 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 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 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 pages 39-40, of the Specific Plan. The Parties understand and agree that the City shall have the right to approve, in advance, the

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

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.

<u>Credit</u>. 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.

<u>Nonrefundable Advance</u>. 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.

<u>Traffic Impact Mitigation Fees</u>

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)

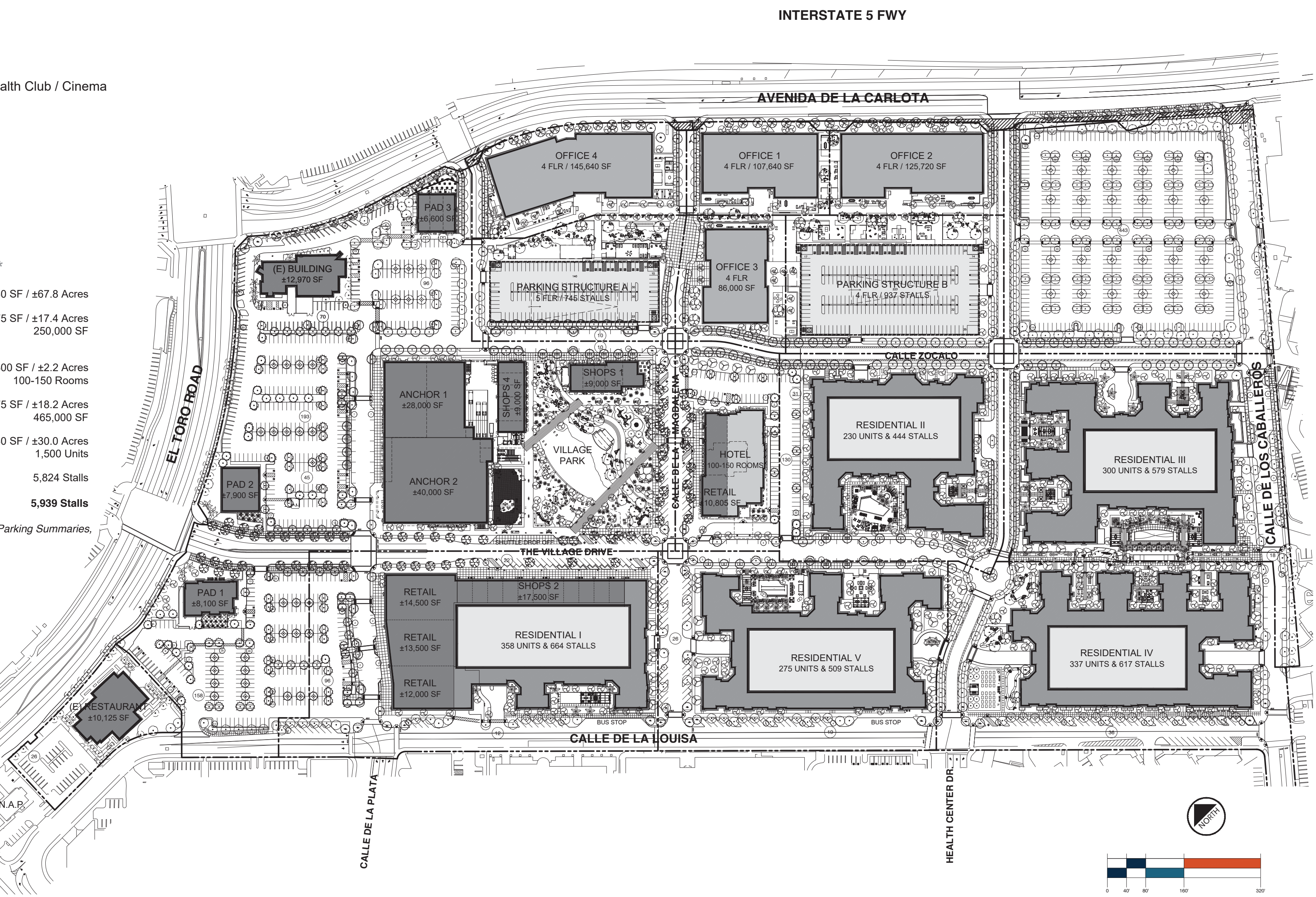
SITE PLAN
GROUND LEVEL

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 Retail / Restaurant / Health Club / Cinema	±756,175 SF / ±17.4 Acres 250,000 SF
District Area Hotel	±97,300 SF / ±2.2 Acres 100-150 Rooms
District Area Office	±796,175 SF / ±18.2 Acres 465,000 SF
District Area Residential / Mixed-Use	±1,286,080 SF / ±30.0 Acres 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

SD 1.0?

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 **Retail** / Restaurant / Health Club / Cinema	±756,175 SF / ±17.4 Acres 250,000 SF
District Area Hotel	±97,300 SF / ±2.2 Acres 100-150 Rooms
District Area Office	±796,175 SF / ±18.2 Acres 465,000 SF
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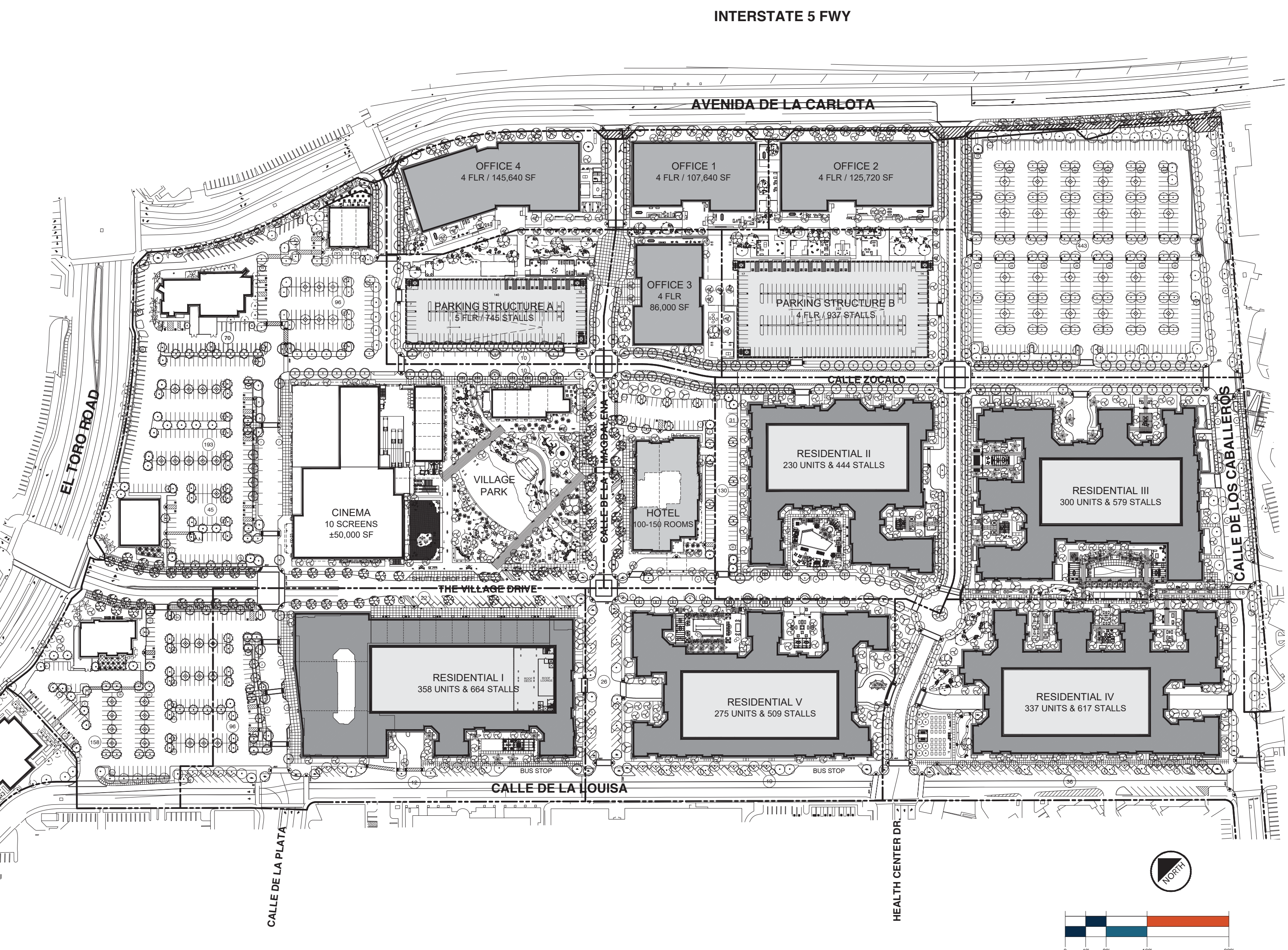
** See full breakdown on Project & Parking Summaries, Sheets SD1.01 & SD1.02.*



THE VILLAGE AT LAGUNA HILLS

MerloneGeier Partners

SITE PLAN
Laguna Hills, CA
03/05/2021

SD 1.0

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 will be Developed (§5.4.1(A))	Yes

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]	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	8 Years from Development Agreement Date	Owner shall have either: Completed Construction of Hotel (if entitled to 1-year extension) or Submitted an additional Community Benefit Fee to City of $500,000 (§5.4.1(F) and §10.5.2)	Yes No
Milestone Eight	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 be Developed (§5.4.2(A)) 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 Yes
Milestone Nine	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 805^{th} residential unit through the $1,162^{nd}$ residential unit (§10.3.3(E))	No

Milestone	Outside Date	Nature of Obligation	Subject to Excusable Delay?
Milestone Ten	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 Ten must be completed by Milestone Nine.

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 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. Ledgestone used for the project shall be Bear Canyon ledgestone, or equivalent. Ledgestone 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. <u>Payment for Vehicular Video Detection Equipment for Retrofit of Avenida de la Carlota</u>. 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. <u>Payment for Replacement of Existing Illuminated Street Name Signs</u>. 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. <u>Payment for Replacement of City Wayfinding Signage</u>. 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. <u>Construction / Reconstruction of Project Entrances Along Avenida de la Carlotta</u>. 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. <u>Construction of Asphalt Concrete Overlay on Avenida de la Carlota, From El Toro Road to Southerly Project Boundary</u>. 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. <u>Marketing and Management Plan</u>. 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

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 __)

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. <u>Affordability Restrictions for Moderate Income Units</u>.

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 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.

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; (iv) initial occupancy date of the unit by the Tenant Household; (v) dates of any vacancies during the previous year; (vi) number of people in the Tenant Household residing in the unit; (vii) total gross household income of the Tenant Household; (viii) documentation of source of household income; and (ix) 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 tenantship. 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

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

LEGAL DESCRIPTION OF SITE

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.

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

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

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 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. <u>Owner's Public Art Obligation</u>

A. <u>Owner's Public Art Obligation</u>. 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. <u>In-Lieu Payment Contribution</u>. 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. <u>Actual Art Obligation</u>. 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 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, 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 be selected and the criteria that will 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 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 financing and planning of larger, Project-serving Pubic 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 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 be binding on and enforceable against future transferees, assignees, and developers.

7. <u>Maintenance Standards</u>. Proposed minimum maintenance standards for Public Art that is installed on the Property.

8. <u>O&M Funding and Implementation</u>. A description of the mechanism through which operation and maintenance of Public Art installed on the Property will be funded and implemented for the life of the Project.

C. <u>Review and Approval by Planning Agency</u>. 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. <u>Amendments</u>. The Conceptual Project Art Program may be amended from time to time with the approval of the City's Planning Agency.

III. <u>Final Art Submittals</u>

A. <u>Final Art Submittal Required</u>. 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.

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.