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Clerk, City Council)
City of Fontana)
)
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City of Fontana)
8353 Sierra Avenue)
Fontana, CA 92335)
Attention: City Clerk)
)

Exempt from Filing Fees, Government Code Section 6103

DEVELOPMENT AGREEMENT 23-0085R2

**FIRST AMENDMENT TO AND RESTATEMENT OF DEVELOPMENT AGREEMENT
NO. 23-085, APPLICABLE TO THE NORTH PALISADES PROPERTY**

AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN

**CITY OF FONTANA
a California Municipal Corporation**

and

NORTH PALISADE PARTNERS, LLC

DEVELOPMENT AGREEMENT NO. 23-0085R2

This First Amendment to and Restatement of Development Agreement 23-085, Applicable to the North Palisades Property (hereinafter "**Amended and Restated Agreement**") is entered into effective on _____ (hereinafter the "**Effective Date**") by and among the City of Fontana, a California municipal corporation (hereinafter, "**CITY**"), and North Palisade Partners, LLC, a Delaware Limited Liability Company. (hereinafter, "**OWNER**");

RECITALS

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

WHEREAS, Acacia Real Estate Group, Inc. ("**Acacia**"), filed an application for, and the City Council of the City of Fontana ("**City Council**"), approved, three design reviews (DRP No. 22-029R1, DRP No. 22-062R1, and DRP No. 22-061R1); three tentative parcel maps (TPM No. 22-009R1, TPM No. 22-030R1, and TPM No. 22-031R1), a general plan amendment (GPA No. 23-004), a zone code amendment (ZCA No. 23-006), a specific plan amendment (SPA No. 23-004), and a development agreement (collectively, MCN No. 23-100) (hereinafter the "**Project**") for that certain real property located north of Santa Ana Avenue, east of Citrus Avenue, and west of Cypress Avenue, identified as Assessor's Parcel Numbers ("**APN(s)**") 0255-021-17, -18, -22 thru -24; and 0255-011-13, -14, -18, -19, -25 thru -32, as more particularly described on Exhibit "A-1" to this Amended and Restated Agreement (the "**Property**"); and

WHEREAS, APNs 0255-011-13, 0255-011-14, 0255-011-18, 0255-011-19 and 0255-011-25 thru 0255-011-32 are located north of Santa Ana Avenue, east of Citrus Avenue, and west of Oleander Avenue, as more particularly described on Exhibit "A-3" to this Amended and Restated Agreement ("**North Palisades Property**"); and

WHEREAS, APN 0255-021-17 is located north of Santa Ana Avenue, east of Oleander Avenue, and west of Cypress Avenue, as more particularly described on Exhibit "A-2" to this Amended and Restated Agreement ("**Acacia Property**"); and

WHEREAS, APNs 0255-021-18, and 0255-021-22 thru 0255-021-024 are located north of Santa Ana Avenue, east of Oleander Avenue, west of Cypress Avenue, as more particularly described on Exhibit "A-4" ("**Remaining Original DA Property**"); and

WHEREAS, the owners of the Property were aware of the Project and expressly authorized and consented to the filing and approval of the related applications, including the application for and approval and execution of Development Agreement No. 23-085 ("**Original DA**"), with the CITY in connection therewith; and

WHEREAS, the CITY and Acacia entered into the Original DA on or about November 15, 2023, and the Original DA was recorded against the Property in the Official

Records of San Bernardino County on December 18, 2023, as document number 2023-0311188; and

WHEREAS, subsequent to the execution of the Original DA, Acacia desired to limit the scope of its development to the Acacia Property ("**Acacia Project**"), and to enter into a separate amendment to and restatement of the Original DA ("**Acacia Amended and Restated Agreement**"), as applicable only to the Acacia Property; and

WHEREAS, in connection with revising its development plans, Acacia determined that it no longer requires the remaining parcels of the Property outside the Acacia Property for the purposes of its current project; and

WHEREAS, OWNER has acquired the North Palisades Property for development of the portion of the Project planned for the North Palisades Property ("**North Palisades Project**"), and in connection therewith desires to enter into this Amended and Restated Agreement, as applicable only to the North Palisades Property; and

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

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

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

WHEREAS, prior to the adoption of the Development Approvals described in this Amended and Restated Agreement, the City Council reviewed, considered, and certified the Environmental Impact Report ("**EIR**") for the Citrus/Oleander Industrial Center of which the Project, as that term is defined below, is a part, and made findings concerning the mitigation measures for the Project, and adopted a Mitigation Monitoring and Reporting Program in accordance with CEQA and the State and CITY CEQA Guidelines; and

WHEREAS, this Amended and Restated Agreement and the Project are consistent with the CITY's Comprehensive General Plan and any Specific Plan applicable thereto; and

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

WHEREAS, development of the Property in accordance with this Amended and Restated Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

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

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

1.1.1. **“Acacia Amended and Restated Agreement”** means an amendment to and restatement of the Original DA, entered into by and between the CITY and the fee owner of the Acacia Property, which shall be applicable to and binding upon the fee owner of the Acacia Property and its successors in interest.

1.1.2. **“Acacia Project”** the development of the Acacia Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of the Acacia Amended and Restated Agreement.

1.1.3. **“Acacia Property”** means APN 0255-021-17, which is located north of Santa Ana Avenue, east of Oleander Avenue, and west of Cypress Avenue, as shown on Exhibit “A-2”.

1.1.4. **“Amended and Restated Agreement”** means this First Amendment to and Restatement of Development Agreement No. 23-085.

1.1.5. **“APN(s)”** means assessor’s parcel numbers as used by the San Bernardino County Clerk/Recorder.

1.1.6. **“Certificate”** has the meaning assigned to that term in Section 6.6.

1.1.7. **“CITY”** means the City of Fontana, a municipal corporation, organized and existing pursuant to the laws of the State of California.

1.1.8. **“City Council”** means the City Council of the City of Fontana, California.

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

1.1.10. **“Development Approvals”** means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the North Palisades Property including, but not limited to:

- (a) conditional use permits and design review permits;
- (b) tentative parcel maps;
- (c) General Plan and Zoning Code amendments; and,
- (d) grading, encroachment and building permits.

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

1.1.12. **“Development Impact Fee”** means a monetary exaction other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include park “in lieu” fees specified in Government Code Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

1.1.13. **“Development Plan”** means the Existing Development Approvals and the Existing Land Use Regulations, as those terms are defined herein, applicable to development of the Property.

1.1.14. **“Effective Date”** means the date upon which all of the following have occurred: (1) the ordinance approving this Amended and Restated Agreement becomes effective, (2) the ordinance approving the Acacia Amended and Restated Agreement becomes effective, (3) the Acacia Amended and Restated Agreement has been executed by the fee owner of the Acacia Property and delivered to the CITY within one hundred twenty (120) days following the approval (second reading) of the ordinance approving the Acacia Amended and Restated Agreement; and (4) this Amended and Restated Agreement has been executed by the fee owner of the North Palisades Property and delivered to the CITY within the later of (a) one hundred twenty (120) days following the close of escrow for acquisition of the North Palisades Property by OWNER and (b) one hundred twenty (120) days following the entitlements for the North Palisades Property becoming final and non-appealable (and in no event more than 210 days following the City’s grant of entitlements for the North Palisades Property).

1.1.15. **“EIR”** means the Environmental Impact Report for the Citrus/Oleander Industrial Center as certified by the City Council, designated as State Clearinghouse number 2022110389.

1.1.16. **“Existing Development Approvals”** means all Development Approvals approved or issued on or prior to the Effective Date.

1.1.17. **“Existing Land Use Regulations”** means all Land Use Regulations in effect on the Effective Date.

1.1.18. **“Fund”** has the meaning assigned to that term in Section 9.2.

1.1.19. **“General Plan”** means the Comprehensive General Plan of the City of Fontana, as such General Plan existed as of the Effective Date of this Amended and Restated Agreement.

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

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;

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

1.1.21. **“Mortgagee”** means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.22. **“North Palisades Project”** the development of the North Palisades Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Amended and Restated Agreement.

1.1.23. **“North Palisades Property”** means APNs 0255-011-13, 0255-011-14, 0255-011-18, 0255-011-19 and 0255-011-25 thru 0255-011-32, which are located north of Santa Ana Avenue, east of Citrus Avenue, and west of Oleander Avenue, as shown on Exhibit “A-3”.

1.1.24. **“OWNER”** means the persons and entities listed as OWNER on page 1 of this Amended and Restated Agreement and their successors in interest to all or any part of the North Palisades Property.

1.1.25. **“Project”** means the development of the Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Amended and Restated Agreement.

1.1.26. **“Property”** means the real property described on Exhibit “A-1” as shown on to this Amended and Restated Agreement.

1.1.27. **“Public Benefit Fee”** means the public benefit fee to be paid by OWNER as described in Section 4.3 of this Amended and Restated Agreement.

1.1.28. **“Remaining Original DA Property”** means APNs 0255-021-18, and 0255-021-22 thru -24, which are located north of Santa Ana Avenue, east of Oleander Avenue, and west of Cypress Avenue, as shown on Exhibit “A-4”.

1.1.29. **“Reservations of Authority”** means the rights and authority excepted from the assurances and rights provided to OWNER under this Amended and Restated Agreement and reserved to CITY under Section 3.6 of this Amended and Restated Agreement.

1.1.30. **“Subsequent Development Approvals”** means all Development Approvals required subsequent to the Effective Date in connection with development of the North Palisades Property.

1.1.31. **“Subsequent Land Use Regulations”** means any Land Use Regulations adopted and effective after the Effective Date of this Amended and Restated Agreement.

1.1.32. **“Term”** has the meaning assigned to that term in Section 2.3.

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

Exhibit “A-1” — Legal Description the Property.

Exhibit “A-2” — Legal Description the Acacia Property.

Exhibit “A-3” — Legal Description the North Palisades Property.

Exhibit “A-4” — Legal Description of Remaining Original DA Property

Exhibit “B” — Map showing Property and its location.

Exhibit “C” – Form of Assignment and Assumption Agreement

Exhibit “D” – Subsequent Development Approvals Integrated Into Vested Rights under Section 3.5

2. GENERAL PROVISIONS.

2.1 Binding Effect of Original DA.

- (a) Upon the occurrence of the Effective Date, the North Palisades Property shall be subject to this Amended and Restated Agreement. OWNER agrees and acknowledges that (1) the Original DA shall remain in full force and effect unless and until the Effective Date occurs, and (2) if this Amended and Restated Agreement and/or the Acacia Amended and Restated Agreement are rescinded or invalidated for any reason, the Original DA shall remain binding upon and applicable to the North Palisades Property, its owners, and their successors in interest.
- (b) Development of the North Palisades Property is hereby authorized and shall be carried out only in accordance with the terms of either this Amended and Restated Agreement (if, and for so long as, this Amended and Restated Agreement is effective and applicable to the North Palisades Property) or the Original DA.
- (c) For so long as this Amended and Restated Agreement is effective and applicable to the North Palisades Property, this Amended and Restated Agreement shall supersede the Original DA in its entirety with respect to the North Palisades Property.
- (d) For the avoidance of doubt, if either (1) the Acacia Amended and Restated Agreement has not been executed by the fee owner of the Acacia Property within one hundred twenty (120) days following the approval (second reading) of the ordinance approving the Acacia Amended and Restated Agreement; or (2) this Amended and Restated Agreement has not been executed by fee owner of the North Palisades Property within the later of

(a) one hundred twenty (120) days following the close of escrow for acquisition of the North Palisades Property by OWNER and (b) one hundred twenty (120) days following the entitlements for the North Palisades Property becoming final and non-appealable (and in no event more than 210 days following the City's grant of entitlements for the North Palisades Property), then this Amended and Restated Agreement shall never become effective, and the Original DA shall remain binding upon and applicable to the North Palisades Property, its owners, and their successors in interest.

2.2 Ownership of North Palisades Property. OWNER represents and covenants that it is the legal or equitable owner of the fee simple title to the North Palisades Property. Prior to CITY's execution and recordation of this Amended and Restated Agreement, OWNER shall submit to CITY reasonable proof of its fee ownership of the North Palisades Property as determined by CITY in its sole and absolute discretion.

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

- (a) OWNER provides at least ninety (90) days written notice to CITY prior to the expiration of the initial term; and
- (b) OWNER shall have obtained building permits for at least sixty-seven percent (67%) of the gross area of the industrial building(s) contemplated by the North Palisades Project; and
- (c) OWNER is not then in uncured default of this Amended and Restated Agreement.

The initial term and, if and upon extension, the 5-year extension, shall sometimes be referred to herein collectively as the "**Term.**"

The term of this Amended and Restated Agreement shall not be considered to run and shall toll for any period in which the North Palisades Project is being challenged or litigated by a third-party.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the North Palisades Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410 et seq.) to any person, partnership, joint venture, firm or corporation at any time during the term of this Amended and Restated Agreement; provided, however, that any such sale,

transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Amended and Restated Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Amended and Restated Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the North Palisades Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY, in writing, of such sale, transfer or assignment and shall provide CITY with an executed agreement, in a form substantially similar to that attached hereto as Exhibit "C" which has been deemed reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Amended and Restated Agreement.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Amended and Restated Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Amended and Restated Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Amended and Restated Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed.

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

(a) OWNER no longer has a legal or equitable interest in all or any part of the North Palisades Property.

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

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

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

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

2.4.4 Partial Release of Purchaser, Transferee or Assignee of Industrial or Commercial Lot. A purchaser, transferee or assignee of a lot within the North Palisades Property, which has been finally subdivided as provided for in the Development Plan and for which a commercial or industrial plot plan for development of the lot has been finally approved pursuant to the Development Plan, may submit a request, in writing, to CITY to release said lot from the obligations under this Amended and Restated Agreement relating to all other portions of the North Palisades Property. Within thirty (30) days of such request, CITY shall review, and if the above conditions are satisfied shall approve the request for release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.4 shall cause, or otherwise affect, a release of OWNER from its duties and obligations under this Amended and Restated Agreement.

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

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

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

2.5 Amendment or Cancellation of Amended and Restated Agreement. This Amended and Restated Agreement may be amended or canceled in whole or in part only by written consent of all parties in the manner provided for in Government Code Section 65868 and the Development Agreement Policies. This provision shall not limit any remedy of CITY or OWNER as provided by this Amended and Restated Agreement. Any amendment of this Amended and Restated Agreement which has been requested by OWNER shall only be processed and considered by the CITY upon the payment of the applicable processing charge.

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

(a) Expiration of the stated term of this Amended and Restated Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Amended and Restated Agreement (in which case the Original DA shall remain binding upon and applicable to the North Palisades Property, its owners, and their successors in interest).

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Amended and Restated Agreement (in which case the Original DA shall remain binding upon and applicable to the North Palisades Property, its owners, and their successors in interest).

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

(e) Termination of this Amended and Restated Agreement based on any default of OWNER and following the termination proceedings required by the Development Agreement Policies.

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

2.7 Notices.

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

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to CITY:
City of Fontana

8353 Sierra Avenue
Fontana, CA 92335
Attn: City Manager
Telephone: (909) 350-7600

Copy to:

Best, Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761
Attn: City Attorney
Telephone: (909) 989-8584
Facsimile: (909) 944-1441

If to OWNER:

North Palisade Partners, LLC
Attn: Brian Wong
303 N. Glenoaks Blvd., Suite 340
Burbank, CA 91502
Telephone: (310) 242-1612

Copy to:

Allen Matkins Leck Gamble Mallory & Natsis, LLP
Attn: Jonathan Shardlow
2010 Main Street, 8th Floor,
Irvine, CA 92614
Telephone: (949) 553-1313

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

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Amended and Restated Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the North Palisades Property in accordance with, and to the extent of, the Development Plan. The North Palisades Project shall remain subject to all Subsequent Development Approvals required to complete the North Palisades Project as contemplated by the Development Plan. Except as otherwise provided in this Amended and Restated Agreement, the permitted uses of the North Palisades Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

If the either (1) the Acacia Amended and Restated Agreement has not been executed by the fee owner of the Acacia Property within one hundred twenty (120) days following the approval (second reading) of the ordinance approving the Acacia Amended and Restated Agreement; or (2) this Amended and Restated Agreement has not been executed by the fee owner of the North Palisades Property within one hundred twenty (120) days following the approval (second reading) of the ordinance approving this Amended and Restated Agreement, then (A) OWNER shall take no action in furtherance of development of the Project without the CITY's prior written approval, which CITY may grant or withhold in its sole and absolute discretion, (B) all entitlements and approvals issued for or in connection with the Project shall be deemed automatically rescinded by CITY without further action by the CITY and without any further obligation by the CITY to the OWNER with respect thereto, and shall be null and void and of no further force or effect, and (C) CITY may, in its sole and absolute discretion, elect to take formal action to rescind any entitlements issued for or in connection with the Project; OWNER expressly waives and releases any and all rights, vested or otherwise, that it may have to object to or interfere with such formal action.

3.2 Effect of Amended and Restated Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Amended and Restated Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the North Palisades Property, the density and intensity of use of the North Palisades Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the North Palisades Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise its discretion in accordance with the Development Plan, and as provided by this Amended and Restated Agreement including, but not limited to, the Reservations of Authority. CITY shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the North Palisades Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the North Palisades Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan or the Phasing Plan set forth in Section 3.4. Notwithstanding anything to the contrary set forth in this Section 3.3 or in this Amended and Restated Agreement, CITY acknowledges that OWNER shall have no obligation to construct the North Palisades Project and that OWNER shall not be subject to any penalty nor shall CITY be entitled to

any legal or equitable remedy, including, without limitation, a claim for specific performance of this Amended and Restated Agreement, if OWNER determines not to construct the North Palisades Project for any reason.

3.4 Phasing Plan. Development of the North Palisades Property shall be subject to all timing and phasing requirements established by the Development Plan.

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

- (a) Alter the permitted uses of the North Palisades Property as a whole;
- or,
- (b) Increase the density or intensity of use of the North Palisades Property as a whole; or,
 - (c) Increase the maximum height and size of permitted buildings; or,
 - (d) Delete a requirement for the reservation or dedication of land for public purposes within the North Palisades Property as a whole; or,
 - (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Amended and Restated Agreement, the following Subsequent Land Use Regulations shall apply to the development of the North Palisades Property.

- (a) Processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations, policies, and rules governing construction standards and specifications including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

(d) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exaction shall be applicable to development of the North Palisades Property unless such Development Exaction is applied uniformly to development, either throughout the CITY or within a defined area of benefit which includes the North Palisades Property. No such subsequently adopted Development Exaction shall apply if its application to the North Palisades Property would physically prevent development of the North Palisades Property for the uses and to the density or intensity of development set forth in the Development Plan. In the event any such subsequently adopted Development Exaction fulfills the same purposes, in whole or in part, as the fees set forth in Section 4 of this Amended and Restated Agreement, CITY shall allow a credit against such subsequently adopted Development Exaction for the fees paid under Section 4 of this Amended and Restated Agreement to the extent such fees fulfill the same purposes.

(e) Regulations which may be in conflict with the Development Plan, but which are reasonably necessary to protect the public health and safety. To the extent possible, any such regulations shall be applied and construed so as to provide OWNER with the rights and assurances provided under this Amended and Restated Agreement.

(f) Regulations which are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the North Palisades Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the North Palisades Property.

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

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Amended and Restated Agreement, prevent or preclude compliance with one or more of the provisions of this Amended and Restated Agreement, such provisions of this Amended and Restated Agreement shall be modified or suspended as may be necessary to comply

with such State or Federal laws or regulations, provided, however, that this Amended and Restated Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Amended and Restated Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

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

3.7 Public Works. If OWNER is required by this Amended and Restated Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction.

3.8 Provision of Real Property Interests by CITY. In any instance where OWNER is required to construct any public improvement on land not owned by OWNER, OWNER shall at its sole cost and expense provide or cause to be provided, the real property interests necessary for the construction of such public improvements. In the event OWNER is unable, after exercising reasonable efforts, including, but not limited to, the rights under Sections 1001 and 1002 of the Civil Code, to acquire the real property interests necessary for the construction of such public improvements, and if so instructed by OWNER and upon OWNER'S provision of adequate security for costs CITY may reasonably incur, CITY shall negotiate the purchase of the necessary real property interests to allow OWNER to construct the public improvements as required by this Amended and Restated Agreement and, if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests. OWNER shall pay all costs associated with such acquisition or condemnation proceedings. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the North Palisades Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the North Palisades Project under the Subdivision Map Act or other legal authority.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects

of the development of the North Palisades Property separately from or jointly with CITY and this Amended and Restated Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Parcel Map Extension. Notwithstanding the provisions of Section 66452.6 of the Government Code, no tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the North Palisades Property, shall be granted an extension of time except in accordance with the Existing Land Use Regulations.

3.11 Vesting Tentative Maps. If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with development of the North Palisades Property, is a vesting map under the Subdivision Map Act (Government Code Section 66410 *et seq.*) and if this Amended and Restated Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to OWNER, then and to that extent the rights and protections afforded OWNER under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Amended and Restated Agreement. Except as set forth immediately above, development of the North Palisades Property shall occur only as provided in this Amended and Restated Agreement, and the provisions in this Amended and Restated Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.12 Utilities. The North Palisades Project shall be connected to all utilities necessary to provide adequate water, sewer, gas, electric, and other utility service to the North Palisades Project. OWNER shall contract with the CITY for CITY-owned or operated utilities serving the North Palisades Project for such prices and on such terms as may be mutually agreed to between the parties.

3.13 Effect of Original DA on Remaining Original DA Property. The Original DA shall remain effective and binding as to the Remaining Original DA Property. Without limiting the foregoing, the owner of the Remaining Original DA Property shall remain obliged to fulfill the public benefit obligations set forth in Section 4 of the Original DA, undiminished by the payment of public benefit obligations under this Amended and Restated Agreement and/or under the Acacia Amended and Restated Agreement.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the North Palisades Property will result in substantial public needs which will not be fully met by the Development Plan and further acknowledge and agree that this Amended and Restated Agreement confers substantial private benefits on OWNER which should be balanced by

commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the North Palisades Project.

4.2 Development Impact Fees.

4.2.1 Amount and Components of Fee(s). Development Impact Fees shall be paid by OWNER. The Development Impact Fees to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Amended and Restated Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Amended and Restated Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permits. No fees shall be payable for building permits issued prior to the Effective Date of this Amended and Restated Agreement, but the fees required pursuant to Subsection 4.2.1 shall be paid prior to the re-issuance or extension of any building permit for which such fees have not previously been paid.

4.2.3 Credits. OWNER shall be entitled to credit against the fees required pursuant to Subsection 4.2.1 for the dedication of land, the construction of improvements or the payment of fees.

4.3 Public Benefit Fee. Prior to the issuance of the Building Permit for any building on the North Palisades Property, as consideration for the privileges conferred by this Amended and Restated Agreement, OWNER shall pay to the CITY a public benefit fee totaling \$1,709,161. Prior to issuance of a Certificate of Occupancy for a building on the North Palisades Property, as consideration for the privileges conferred by this Amended and Restated Agreement, OWNER shall pay to CITY an additional one-time public benefit fee totaling \$1,709,161 (for a total public benefit fee payment in the amount of \$3,418,322).

5. FINANCING OF PUBLIC IMPROVEMENTS.

If deemed appropriate, CITY and OWNER will cooperate in the formation of any special assessment district, community facilities district or alternate financing mechanism to pay for the construction and/or maintenance and operation of public infrastructure facilities required as part of the Development Plan. CITY also agrees that, to the extent any such district or other financing entity is formed and sells bonds to finance such reimbursements, OWNER may be reimbursed to the extent that OWNER spends funds or dedicates land for the establishment of public facilities. Notwithstanding the foregoing, nothing contained in this Amended and Restated Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic Review. The Planning Director shall review this Amended and Restated Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by OWNER with the terms of the Amended and Restated Agreement. OWNER shall submit an Annual Monitoring Report, in a form acceptable to the Planning Director, within thirty (30) days after written notice from the Planning Director. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of this Amended and Restated Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually or as deemed necessary by resolution of the City Council.

6.2 Special Review. The City Council may order a special review of compliance with this Amended and Restated Agreement at any time. The Planning Director shall conduct such special reviews.

6.3 Procedure.

(a) During either a periodic review or a special review, OWNER shall be required to demonstrate good faith compliance with the terms of this Amended and Restated Agreement. The burden of proof on this issue shall be on OWNER.

(b) Upon completion of a periodic review or a special review, the Planning Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by OWNER with the terms of this Amended and Restated Agreement and his or her recommended finding on that issue.

(c) If the City Council finds on the basis of substantial evidence that OWNER has complied in good faith with the terms and conditions of this Amended and Restated Agreement, the review shall be concluded.

(d) If the City Council makes a preliminary finding that OWNER has not complied in good faith with the terms and conditions of this Amended and Restated Agreement, the Council may modify or terminate this Amended and Restated Agreement as provided in Section 6.4 and Section 6.5. Notice of default as provided under Section 7.4 of this Amended and Restated Agreement shall be given to OWNER prior to or concurrent with, proceedings under Section 6.4 and Section 6.5.

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.3, CITY determines to proceed with modification or termination of this Amended and Restated Agreement, CITY shall give written notice to OWNER of its intention to do so. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether CITY proposes to terminate or to modify this Amended and Restated Agreement; and,

(c) Such other information as is reasonably necessary to inform OWNER of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, OWNER shall be given an opportunity to be heard. OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Amended and Restated Agreement. The burden of proof on this issue shall be on OWNER. If the City Council finds, based upon substantial evidence, that OWNER has not complied in good faith with the terms or conditions of this Amended and Restated Agreement, the City Council may terminate this Amended and Restated Agreement or modify this Amended and Restated Agreement to impose such conditions as are reasonably necessary to obtain compliance with the terms of this Amended and Restated Agreement. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Amended and Restated Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("**Certificate**") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Amended and Restated Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review but was concealed from or otherwise not known to the Planning Director or City Council.

7. DEFAULT AND REMEDIES.

7.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Amended and Restated Agreement if it were to be liable in damages under this Amended and Restated Agreement, or with respect to this Amended and Restated Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Amended and Restated Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or

claim any damages against CITY or its agents, employees, officers, attorneys, and representatives:

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

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

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

7.2 Specific Performance. Except as set forth in Section 3.3, above, the parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Amended and Restated Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 7.1 above.

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

7.3 Release. Except for non-damage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Amended and Restated Agreement or because of the terms of this Amended and Restated Agreement.

7.4 Termination or Modification of Amended and Restated Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.5 herein, CITY may terminate or modify this Amended and Restated Agreement for any failure of

OWNER to perform any material duty or obligation of OWNER under this Amended and Restated Agreement, or to comply in good faith with the terms of this Amended and Restated Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Amended and Restated Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

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

8. THIRD PARTY LITIGATION.

8.1 General Plan Litigation. CITY has determined that this Amended and Restated Agreement is consistent with the General Plan, and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination.

CITY shall have no liability in damages under this Amended and Restated Agreement for any failure of CITY to perform under this Amended and Restated Agreement or the inability of OWNER to develop the North Palisades Property as contemplated by the Development Plan of this Amended and Restated Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

8.2 Third Party Litigation Concerning Amended and Restated Agreement. OWNER shall defend, at its expense, including reasonable attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Amended and Restated Agreement or the approval of any permit granted pursuant to this Amended and Restated Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible

to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

8.3 Indemnity. In addition to the provisions of 8.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including reasonable attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

8.4 Environmental Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the North Palisades Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including reasonable attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

8.5 Reservation of Rights. With respect to Sections 8.2, 8.3 and 8.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including reasonable attorneys' fees, upon billing and accounting therefor.

8.6 Survival. The provisions of this Sections 8.1 through 8.6, inclusive, shall survive the termination of this Amended and Restated Agreement.

9. MORTGAGEE PROTECTION.

9.1 Encumbrances. The parties hereto agree that this Amended and Restated Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the North Palisades Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the North Palisades Property. CITY acknowledges that the lenders providing such financing may require certain Amended and Restated Agreement interpretations and modifications and agrees upon request, from time to time, to meet

with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Amended and Restated Agreement. Any Mortgagee of the North Palisades Property shall be entitled to the following rights and privileges:

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the North Palisades Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Amended and Restated Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Amended and Restated Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Amended and Restated Agreement.

(d) Any Mortgagee who comes into possession of the North Palisades Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the North Palisades Property, or part thereof, subject to the terms of this Amended and Restated Agreement. Notwithstanding any other provision of this Amended and Restated Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Amended and Restated Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Amended and Restated Agreement.

9.2. Deposit of Legal Defense Costs. In the event of any litigation or legal challenge filed against CITY as described in this Section 9, then within twenty (20) calendar days following written demand by CITY therefor, Owner shall deposit with CITY funds into a deposit account maintained by CITY ("**Fund**") to reimburse CITY for CITY's costs and expenses, including without limitation attorney's fees, ultimately incurred by CITY to defend any such claim, action, or proceeding. The initial deposit shall be the sum of fifty thousand dollars (\$50,000). The Fund, once established, shall at all times contain an amount necessary to cover not less than three (3) months of budgeted or anticipated

expenditures by CITY relating to CITY's defense of such claim, action, or proceeding, including any and all appeals from decisions related thereto, as such budgeted or anticipated expenditures are determined by CITY in its sole and absolute discretion. For such purposes, CITY may from time to time, in CITY's sole and absolute discretion, make written demand upon Owner for deposit of additional funds by Owner into the Fund, in which event Owner shall deposit such additional funds into the Fund within twenty (20) calendar days following written demand by CITY.

10. MISCELLANEOUS PROVISIONS.

10.1 Recordation of Amended and Restated Agreement. This Amended and Restated Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. If the parties to this Amended and Restated Agreement or their successors in interest amend or cancel this Amended and Restated Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Amended and Restated Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

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

10.3 Severability. If any term, provision, covenant or condition of this Amended and Restated Agreement shall be determined invalid, void or unenforceable, the remainder of this Amended and Restated Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Amended and Restated Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Amended and Restated Agreement, including the payment of the fees set forth therein, are essential elements of this Amended and Restated Agreement and CITY would not have entered into this Amended and Restated Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Amended and Restated Agreement shall be null and void and of no force and effect whatsoever.

10.4 Governing Law; Interpretation. This Amended and Restated Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Amended and Restated Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect

that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Amended and Restated Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

10.7 Joint and Several Obligations. If at any time during the term of this Amended and Restated Agreement the North Palisades Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Amended and Restated Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Amended and Restated Agreement except as provided under Section 4 hereof.

10.8 Time of Essence. Time is of the essence in the performance of the provisions of this Amended and Restated Agreement as to which time is an element.

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

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

10.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Amended and Restated Agreement is caused by floods, earthquakes, epidemics, pandemics, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Amended and Restated Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Amended and Restated Agreement shall not be extended under any circumstances for more than five (5) years.

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

10.13 Successors in Interest. The burdens of this Amended and Restated Agreement shall be binding upon, and the benefits of this Amended and Restated Agreement shall inure to, all successors in interest to the parties to this Amended and Restated Agreement. All provisions of this Amended and Restated Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the North Palisades Property: (a) is for the benefit of and is a burden upon every portion of the North Palisades Property; (b) runs with the North Palisades Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the North Palisades Property or any portion thereof.

10.14 Counterparts. This Amended and Restated Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

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

10.16 North Palisades Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the North Palisades 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 Amended and Restated Agreement. No partnership, joint venture or other association of any kind is formed by this Amended and Restated Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

10.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Amended and Restated Agreement and the satisfaction of the conditions of this Amended and Restated 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 Amended and Restated Agreement to carry out the intent and to fulfill the provisions of this Amended and Restated Agreement or to evidence or consummate the transactions contemplated by this Amended and Restated Agreement.

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

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

10.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Amended and Restated Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Amended and Restated Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Amended and Restated Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Amended and Restated Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 10.20 prior to CITY's issuance of such certificates.

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

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

OWNER

North Palisade Partners, LLC
a Delaware Limited Liability Company

By: _____
Brian Wong

Its: Managing Director

Dated: _____

ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before _____ me,

(insert name and title of the officer)

personally _____ appeared

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

CITY:

CITY OF FONTANA, a California
municipal corporation

By: _____
Acquanetta Warren, Mayor

Dated: _____

By: _____
Matthew C. Ballantyne, City Manager

ATTEST:

By: _____
Germaine Key, City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

City Attorney

ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before _____ me,

(insert name and title of the officer)

personally _____ appeared

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A-1"

LEGAL DESCRIPTION OF THE PROPERTY

TENTATIVE PARCEL MAP NO. 20707

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

BEING A CONSOLIDATION OF PARCELS 1, 2 AND 3 OF PARCEL MAP 1778, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 22, PAGE 80 OF PARCEL MAPS, TOGETHER WITH A PORTION OF THE WEST HALF OF FARM LOT 758 OF MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMTI-TROPIC LAND AND WATER COMPANY, AS PER MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TENTATIVE PARCEL MAP NO. 20708

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

BEING A CONSOLIDATION OF THE EAST 10 ACRES OF FARM LOT 757 OF MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMTI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TENTATIVE PARCEL MAP NO. 20709

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

BEING A CONSOLIDATION OF THE EAST 3 ACRES OF THE WEST 8 ACRES OF FARM LOT 757 OF MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMTI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, TOGETHER WITH PARCELS 1, 2, 3 AND 4 OF PARCEL MAP NO. 5352, AS PER MAP FILED IN BOOK 51, PAGE 89 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "A-2"

LEGAL DESCRIPTION OF THE ACACIA PROPERTY

The Land referred to herein below is situated in the City of Fontana, County of San Bernardino, State of California, and is described as follows:

THE EAST ONE HALF OF THE WEST ONE HALF OF FARM LOT 758, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI -TROPIC LAND AND WATER COMPANY, AS PER PLAT RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

(AREAS AND DISTANCES COMPUTED TO STREET CENTERS.)

For conveyancing purposes only: APN 0255-021-17-0-000

EXHIBIT "A-3"

LEGAL DESCRIPTION OF THE NORTH PALISADES PROPERTY

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

PARCEL A: (APN 0255-011-13)

THE EAST 3 ACRES OF THE WEST 5 ACRES OF THE EAST 10 ACRES OF FARM LOT 757, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, AS PER MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. THE ACREAGE OF THE ABOVE DESCRIBED REAL PROPERTY IS COMPUTED TO THE CENTER OF ALL STREETS AND ROADS AS SHOWN ON SAID MAP.

PARCEL B: (APN 0255-011-14)

THE WEST 2 ACRES OF THE WEST 5 ACRES OF THE EAST 10 ACRES OF LOT 757, SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11, PAGE 12, OF MAPS, RECORDS OF SAID COUNTY. THE AREA AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

PARCEL D: (APN 0255-011-18)

THE EAST 1/2 OF THE EAST 3 ACRES OF THE WEST 8 ACRES OF FARM LOT 757, ACCORDING TO THE MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11, PAGE 12, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL E: (APN 0255-011-19)

THE WEST ONE-HALF OF THE EAST 3 ACRES OF THE WEST 8 ACRES OF FARM LOT 757, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY.

PARCEL F: (APN 0255-011-25)

THE EAST 5 ACRES OF FARM LOT 757, ACCORDING TO MAP SHOWING SUBDIVISIONS OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11, PAGE 12, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. EXCEPTING THEREFROM THE NORTH 450 FEET. ALSO EXCEPTING THEREFROM THE WEST 3 FEET OF THE EAST 33 FEET. ALSO EXCEPTING THEREFROM THE NORTH 14 FEET OF THE SOUTH 44 FEET. AREA AND DISTANCES COMPUTED TO STREET CENTERS.

PARCEL G: (APN 0255-011-26)

THE SOUTH 150 FEET OF THE NORTH 450 FEET OF THE EAST 5 ACRES OF FARM LOT 757, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11, PAGE 12, RECORDS OF SAID COUNTY. EXCEPT THEREFROM THE WEST 3 FEET OF THE EAST 33 FEET. AREAS AND DISTANCES OF ABOVE PROPERTY ARE COMPUTED TO THE CENTER OF THE ADJOINING STREETS SHOWN ON SAID MAP.

PARCEL H: (APN 0255-011-27)

THE SOUTH 150 FEET OF THE NORTH 300 FEET OF THE EAST 5 ACRES OF FARM LOT 757, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11, PAGE 12, OF MAPS, RECORDS OF SAID COUNTY. EXCEPT THEREFROM THE WEST 3 FEET OF THE EAST 33 FEET THEREOF.

PARCEL I: (APN 0255-011-28)

THE NORTH 150 FEET OF THE EAST 5 ACRES OF FARM LOT 757, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. EXCEPT THEREFROM THE WEST 3 FEET OF THE EAST 33 FEET. AREAS AND DISTANCES COMPUTED TO STREET CENTERS AS SHOWN ON SAID MAP.

PARCEL J: (APN 0255-011-29)

PARCEL 1 OF PARCEL MAP NO. 5352, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 OF PARCEL MAPS, PAGE 89, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL K: (APN 0255-011-30)

PARCEL 2 OF PARCEL MAP NO. 5352, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 51 PAGE 89, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. EXCEPTING THEREFROM, THAT PORTION OF SAID PARCEL 2, AS CONVEYED TO THE CITY OF FONTANA, A MUNICIPAL CORPORATION, IN GRANT DEED RECORDED JULY 29, 2010 AS INSTRUMENT NO. 2010-0304886, OF OFFICIAL RECORDS.

PARCEL L: (APN 0255-011-31)

PARCEL 3 OF PARCEL MAP NO. 5352, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 PAGE 89 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY RECORDER.

PARCEL M: (APN 0255-011-32)

PARCEL 4 OF PARCEL MAP NO. 5352, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 PAGE 89 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY RECORDER.

EXHIBIT "A-4"

LEGAL DESCRIPTION OF THE REMAINING ORIGINAL DA PROPERTY

LEGAL DESCRIPTION

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

THE EAST 5 ACRES OF FARM LOT 757, ACCORDING TO MAP SHOWING SUBDIVISIONS OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 11, PAGE 12](#), OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 450 FEET.

ALSO EXCEPTING THEREFROM THE WEST 3 FEET OF THE EAST 33 FEET.

ALSO EXCEPTING THEREFROM THE NORTH 14 FEET OF THE SOUTH 44 FEET.

NOTE: AREA AND DISTANCES COMPUTED TO STREET CENTERS.

[APN: 0255-011-25](#)

0255-021-18

LEGAL DESCRIPTION:

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

THE SOUTH 240 FEET OF THE WEST, 1/2 OF THE WEST 1/2 OF LOT 758, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

0255-021-22

LEGAL DESCRIPTION:

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

PARCEL NO. 1 OF PARCEL MAP NO. 1778, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 22 OF PARCEL MAPS, PAGE 80, RECORDS OF SAID COUNTY.

0255-021-23

LEGAL DESCRIPTION:

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

PARCEL 2 OF PARCEL MAP NO. 1778, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 22 OF PARCEL MAPS, PAGE 80, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

0255-021-24

LEGAL DESCRIPTION:

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

PARCEL NO. 3 OF PARCEL MAP NO. 1778, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT FILED IN BOOK 22, PAGE 80 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"

MAP SHOWING THE PROPERTY AND ITS LOCATION



EXHIBIT "C"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[SEE FOLLOWING PAGES]

Recording Requested by and
When Recorded Return To:

(Space above this line for recorder's use only)

DOCUMENTARY TRANSFER TAX: \$-0- (No consideration)

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

This PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made and entered into as of _____, 202_, by and between _____ ("Assignor") and _____ ("Assignee") having an address at _____, with reference to the following recitals.

RECITALS

A. Assignor was the owner of approximately ____ gross acres of land area located in the City of Fontana, County of San Bernardino, State of California, more particularly described in Exhibit "A" attached hereto ("**Project Site**").

B. Assignor and the City of Fontana, a California municipal corporation ("**City**"), are parties to that certain "First Amendment and Restatement of Development Agreement No. 23-085, Applicable to the _____ Property", dated _____ (the "**Development Agreement**"), relating to the development of the Project Site (the "**Project**"). The Development Agreement is recorded as instrument _____ in San Bernardino County Official Records.

C. Assignor has transferred a portion of the Project Site, generally described as _____ and more particularly described in Exhibit "B" attached hereto (the "**Assigned Property**") to Assignee in accordance with the terms of a grant deed and (iv) retained ownership of the remainder of the Project Site, consisting of _____ (the "**Retained Property**"). *[NTD: IF THE ASSIGNMENT IS A FULL ASSIGNMENT, THEN PROVISIONS RELATING TO RETAINED OBLIGATIONS WILL BE REMOVED]*

D. In accordance with Section 2.4 of the Development Agreement, Assignor desires to assign all rights and obligations of Assignor under the Development Agreement as to the Assigned Property ("**Assigned Property Rights and Obligations**")

and (ii) retain, as the owner of the Retained Property, all remaining obligations under the Development Agreement (the “**Retained Property Rights and Obligations**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Effective Date. This Agreement shall not be deemed to be effective unless and until the transfer of title to the Assigned Property from Assignor to Assignee occurs, as evidenced by the recordation of a grant deed in the San Bernardino County Official Records conveying the Assigned Property from Assignor to Assignee (the date of recordation of such grant deed, the “**Effective Date**”).

2. Assignment of Development Agreement. Assignor does hereby sell, transfer, assign, convey and deliver to Assignee all of Assignor's rights, title, obligations, and interests in the Assigned Property Rights and Obligations. This Agreement is only intended to assign the Assigned Property Rights and Obligations and does not assign any other rights or obligations under the Development Agreement. Assignor makes no representation or warranties, express or implied, to Assignee concerning the Development Agreement, except as provided herein.

3. Assumption of Responsibilities. Assignee hereby assumes, as of the Effective Date, the Assigned Property Rights and Obligations and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement with respect to the Assigned Property Rights and Obligations and to be subject to all of the terms and conditions of the Development Agreement with respect to the Assigned Property Rights and Obligations, in each case to the extent arising on or after the Effective Date. Assignor and Assignee acknowledge and agree that, from and after the Effective Date, Assignee shall be the “Owner” under the Development Agreement with respect to the Assigned Property and the Assigned Property Rights and Obligations.

4. Amendments. Any amendments or modifications to this Agreement must be in writing, signed by duly authorized representatives of each of the parties hereto, acknowledged and approved by the City, and recorded in the Official Records for San Bernardino County, California.

5. Governing Law; Venue. This Agreement and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law. All rights and obligations of the Parties under this Assignment are to be performed in the City of Fontana, and the County of San Bernardino shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

6. Severability. Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

7. Further Assurances. Each party shall execute and deliver such other certificates, agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Agreement provided the same does not increase such party's obligations and liabilities or reduce such party's rights under this Agreement and/or the Development Agreement other than to a de minimis extent.

8. Authority of Signatories to Bind Principals. The persons executing this Agreement on behalf of their respective principals represent that (i) they have been authorized to do so and that they thereby bind the principals to the terms and conditions of this Agreement and (ii) their respective principals are properly and duly organized and existing under the laws of _____, and are permitted to do business in, the State of California.

9. No Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

10. Interpretation. The parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both parties, and the parties agree that since both have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.

11. Recordation. Assignor and Assignee shall record this Agreement against the Assigned Property in the Official Records contemporaneously with the recordation of the instrument conveying title to the Assigned Property to Assignee and prior to the lien of any security interest that will encumber the Assigned Property after the conveyance.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date set forth above.

“Assignor”

“Assignee”

_____ a _____ limited liability company

_____ a _____ limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Project Site Legal Description

EXHIBIT "B"

Assigned Property Legal Description

EXHIBIT "D"

**SUBSEQUENT DEVELOPMENT APPROVALS INTEGRATED INTO VESTED
RIGHTS UNDER SECTION 3.5**