

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA APPROVING, PURSUANT TO THE POPLAR SOUTH DISTRIBUTION CENTER PROJECT FINAL ENVIRONMENTAL IMPACT REPORT (SCH #2022090611), DEVELOPMENT AGREEMENT NO. 23-003 BETWEEN THE CITY OF FONTANA AND LIT INDUSTRIAL LIMITED PARTNERSHIP, WHICH PROVIDES A PUBLIC BENEFIT FEE IN THE AMOUNT OF \$2,084,901 DOLLARS

WHEREAS, the City Council ("City Council") of the City of Fontana ("City") is authorized by California Government Code sections 65864 et seq. and section 30-322 of the City's Development Code ("Development Code") to enter into an agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, City has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved; and

WHEREAS, because of the logistics, magnitude of the expenditure, and considerable lead time required to plan and develop the Poplar South Distribution Center ("Developer") has proposed to enter into a development agreement concerning the Property ("Development Agreement"), to provide assurances that the Property can be developed without disruption caused by a change in the City's planning policies and requirements except as provided in the Development Agreement, which assurances will thereby reduce the actual or perceived risk of planning for and proceeding with development of the Property; and

WHEREAS, the City of Fontana, a California Municipal Corporation ("City") and Developer are supportive of entering into a Development Agreement whereby Developer will acquire fee title to certain real property located at Catawba Avenue and Rose Avenue (the "Property"); and

WHEREAS, Developer's interest in the Property, including that interest to be conveyed pursuant to the DA, constitutes a legal or equitable interest in real property pursuant to California Government Code section 65865; and

WHEREAS, Developer proposes the development of the Property for three industrial buildings totaling approximately 490,565 square feet, including up to 10,000 square feet of office space, entailing front end investment in the planning, entitlement and

development of the Property to achieve the goals of the City's General Plan ("General Plan"), as further described and conditioned in the Development Agreement (collectively, such development shall be referred to herein as the "Project"); and

WHEREAS, City desires the timely, efficient, orderly and proper development of the Project in furtherance of the goals of the General Plan; and

WHEREAS, City has found that the development agreement attached hereto as "Exhibit A" and incorporated herein by reference ("Development Agreement") is consistent with City's General Plan; and

WHEREAS, consistent with the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), an Environmental Impact Report (EIR) has been prepared for the Citrus/Oleander Project; and

WHEREAS, on November 14, 2023, pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) ("CEQA"), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) the City certified the Citrus/Oleander EIR (SCH #2022090611), and approved the Mitigation Monitoring and Reporting Program (MMRP); and

WHEREAS, City has determined that by entering into the Development Agreement: (i) City will promote orderly growth and quality development on the Property in accordance with the goals and policies set forth in the General Plan and (ii) City will benefit from increased employment and industrial opportunities created by the Project for residents of the City; and

WHEREAS, on November 14, 2023, the City Council introduced this Ordinance through a first reading of this Ordinance; and

WHEREAS, the terms and conditions of the Development Agreement have undergone review by City at publicly noticed hearings and have been found to be fair, just and reasonable, and consistent with the General Plan. Further, City finds that:

(i) the economic interests of the City's citizens and the public health, safety and welfare will be best served by entering into the Development Agreement;

(ii) the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Property is located;

(iii) the Development Agreement is consistent with the General Plan;

(iv) the Development Agreement is in conformity with the public convenience, general welfare and good land use practice;

(v) the Development Agreement will not be detrimental to the public health, safety and general welfare; and

(vi) the Development Agreement will not adversely affect the orderly development or the preservation of property values for the Property or any other property.

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

SECTION 1. Recitals. The City Council hereby incorporates by reference the Recitals set forth herein and adopts those Recitals as its own as though fully set forth in this Ordinance. Pursuant to California Government Code section 65867.5(b), and based on the entire record before the City Council, including all written and oral evidence presented to the City Council, the City Council hereby finds that the Development Agreement is consistent with the General Plan because the Development Agreement will result in the development of the Property at the intensity and density allowed under the General Plan and with the restrictions and standards set forth in the City's Municipal Code.

SECTION 2. California Environmental Quality Act. As the decision-making body for the Development Agreement, the City Council has reviewed and considered the certified EIR, any oral or written comments received, and the administrative record prior to making any decision on the Development Agreement. Based on the substantial evidence set forth in the record, including but not limited to, the certified EIR, and all related information presented to the City Council, the Council finds that the Development Agreement does not necessitate any modifications to the certified EIR. The Council further finds that no new or additional mitigation measures or alternatives are required, and that there is no substantial evidence in the administrative record supporting a fair argument that the Development Agreement may result in any significant environmental impacts beyond those analyzed in the certified EIR. Therefore, pursuant to State CEQA section 15164 and Section 8.06 of the City of Fontana's 2019 Local Guidelines for Implementing CEQA the Council finds that the preparation of a subsequent or supplemental EIR is not required for the Development Agreement.

SECTION 3. Findings of Public Health, Safety and Welfare. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds this Ordinance promotes the public health, safety and welfare of the community because the Development Agreement will enable needed public improvements at the Property and the economic development of the Property will benefit the citizens of the City.

SECTION 4. Findings of Best Interest of City. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds that the Development Agreement is in the best interests of the City, and represents good land use practices, as it ensures the orderly development of the Property with amenities and infrastructure that will be beneficial to the community.

SECTION 5. Findings of Public Benefit. The City Council further finds that among the public benefits to accrue to the residents of the City as a result of the Development Agreement are:

1. The revitalization of an underdeveloped site.
2. The development of onsite infrastructure upgrades that would not occur otherwise.
3. The generation of additional property tax.
4. The stimulation of adjacent areas in the City by introducing new industrial facility and opportunities.
5. The implementation of numerous City planning and economic development policies which benefit the health and fiscal welfare of the City and its residents.

The payment of a public benefit fee from the Developer to the City to offset certain private benefits received by Developer under the DA.

SECTION 6. Approval. Pursuant to California Government Code sections 65865 *et seq.*, the City Council hereby approves Development Agreement No. 23-003, attached hereto as “Exhibit A” and incorporated by reference herein, between LIT Industrial Limited Partnership and the City of Fontana, a California municipal corporation.

SECTION 7. Certification. The City Clerk shall cause to be recorded with the San Bernardino County Recorder a copy of the executed Development Agreement at the time and in the manner provided for in the DA.

SECTION 8. Effective Date/Publication. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Fontana Herald News, a local newspaper of the general circulation, published and circulated in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

SECTION 9. Severability. If any provision of this Ordinance or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

APPROVED and ADOPTED this 14th day of November 2023.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Germaine Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted

by the City Council and was introduced at a regular meeting on the 14th day of November 2023, and was finally passed and adopted not less than five days thereafter on the 12th day of December 2023 by the following vote to wit:

AYES:

NOES:

ABSENT:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk

EXHIBIT "A"
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY:

Order No:

WHEN RECORDED MAIL

DOCUMENT TO:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attn.: City Clerk

Space Above This Line for Recorder's Use Only
Exempt from Recording Fees Pursuant
to Gov. Code §§ 27383, 6103

**ROSE PROJECT
DEVELOPMENT AGREEMENT No. 22-003**

BETWEEN

**THE CITY OF FONTANA,
a California municipal corporation**

and

**LIT INDUSTRIAL LIMITED PARTNERSHIP
a Delaware Limited Partnership**

Dated as of November 14, 2023 for reference purposes

RECORDING REQUESTED BY:

Order No:

WHEN RECORDED MAIL

DOCUMENT TO:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attn.: City Clerk

Space Above This Line for Recorder's Use Only
Exempt from Recording Fees Pursuant
to Gov. Code §§ 27383, 6103

**ROSE PROJECT
DEVELOPMENT AGREEMENT No. 22-003**

BETWEEN

**THE CITY OF FONTANA,
a California municipal corporation**

and

**LIT INDUSTRIAL LIMITED PARTNERSHIP
a Delaware Limited Partnership**

Dated as of November 14, 2023 for reference purposes

ROSE AVENUE PROJECT DEVELOPMENT AGREEMENT

The ROSE AVENUE PROJECT DEVELOPMENT AGREEMENT ("Agreement") is entered into by the City of Fontana a California municipal corporation (hereinafter "City"), and LIT Industrial Limited Partnership, a Delaware limited partnership (hereinafter "Owner"). This Agreement is dated November 14, 2023 for reference purposes only; it will not become effective until the "Effective Date" (defined below). City and Owner are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

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, Owner has requested that City enter into this Development Agreement with respect to that certain real property located on Rose Avenue in the City, consisting of 41 parcels identified as Assessor's Parcel Numbers (APNs) 0237-171-01 through -19, 0237-172-01 through -12, -19, -22, -23, -26, -27, -28, and -30 through -33, as more particularly described on Exhibit "A" and shown on Exhibit "B" to this Agreement (the "Property"), and proceedings have been taken in accordance with the rules and regulations of City; and

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

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

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

WHEREAS, prior to the adoption of the Development Approvals described in this Agreement, the City Council has reviewed and considered the Environmental Impact Report and made findings concerning the mitigation measures and adopted a Mitigation Monitoring and Reporting Program in accordance with CEQA and the State and City CEQA Guidelines; and

WHEREAS, Owner has filed an application for, and the City Council has approved, General Plan Amendment (GPA) No. 22-007, Specific Plan Amendment (SPA) No. 22-003, Design Plan Review (DRP) No. 22-040 and Tentative Parcel Map No. 20638; and

WHEREAS, this Agreement and the Project are consistent with the City's Comprehensive General Plan and Specific Plan (as defined in Section 1 below), as amended; 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 Agreement and Development Plan (as defined in Section 1 below) will provide substantial benefits to City and will further important policies and goals of City;

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure the installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under 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 the vesting of its legal rights to develop the Property in accordance with this Agreement and Development Plan (defined below).

COVENANTS

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

1. DEFINITIONS AND EXHIBITS

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

1.1.1 **"Agreement"** means this Development Agreement.

1.1.2 **"City"** means the City of Fontana, a municipal corporation, organized and existing pursuant to the laws of the State of California.

1.1.3 **"Owner"** means LIT Industrial Limited Partnership, a Delaware limited partnership, and its successors in interest to all or any part of the Property.

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

1.1.5 **"Development Agreement Policies"** means those certain development agreement policies approve by City pursuant to Ordinance No. ___, adopted on ___ as may be amended, as Resolution No. ___, adopted on ___, as may be amended.

1.1.6 **"Development Approvals"** means all permits and other entitlements subject to approval or issuance by City in connection with the Development

of the Property as set forth in attached Exhibit C, including, but not limited to: general plan amendments; specific plans and specific plan amendments; tentative and final subdivision and parcel maps; design review; conditional use permits; zoning; and grading and building permits.

1.1.7 "**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, including those imposed in accordance with the MMRP.

1.1.8 "**Development Impact Fee**" means a monetary exaction other than a tax or special assessment, 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 City to the applicant in connection with the 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)..

1.1.9 "**Development Plan**" means the development of the Property permitted by the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.10 "**Effective Date**" means the date the ordinance approving this Agreement becomes effective.

1.1.11 "**Existing Development Approvals**" means all Development Approvals approved or issued prior to, or as of, the Effective Date. Existing Development Approvals includes the Development Approvals described on the attached Exhibit C and all other Development Approvals which are a matter of public record on the Effective Date. The Existing Development Approvals are sufficient in order to develop the Property and to implement the Project.

1.1.12 "**Existing Land Use Regulations**" means all Land Use Regulations in effect on the Effective Date.

1.1.13 "**Land Use Regulations**" means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use,

subdivision requirements, 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 Property. "*Land Use Regulations*" do not include any City ordinance, resolution, code, rule, regulation, or official policy governing: the conduct of businesses, professions, and occupations; taxes and assessments; the control and abatement of nuisances; the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or the exercise of the power of eminent domain.

1.1.14 "***Mitigation Monitoring and Reporting Program***" or "***MMRP***" means the mitigation monitoring and reporting program for assessing and ensuring compliance with required environmental impact mitigation measures approved by City Council Resolution No. _____, 2023 in conjunction with the City Council's certification of the EIR.

1.1.15 "***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 in interest to all or any part of the Property.

1.1.16 "***Parcel Map***" means the subdivision map identified in City records as Tentative Parcel Map No. 20638 and approved by the City Council on _____, 2023.

1.1.17 "***Project***" means the Development of the Property contemplated by the Development Plan, as such Development Plan may be further defined, enhanced, or modified pursuant to the provisions of this Agreement. The Project will consist of a logistics facility totaling approximately 490,565 square feet.

1.1.18 "***Property***" means the certain real property located on Rose Avenue in the City, consisting of 41 parcels identified as Assessor's Parcel Numbers (APNs) 0237-171-01 through -19, 0237-172-01 through -12, -19, -22, -23, -26, -27, -28, and -30 through -33, as more particularly described in **Exhibit A** and shown on **Exhibit B** to this Agreement.

1.1.19 "***Reservations of Authority***" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.20 "***Specific Plan***" means the "Southwest Industrial Park Specific Plan (SWIP)" identified in City records as SP No. 09-02 and adopted by City Council Ordinance No. 1663 on June 12, 2012.

1.1.21 "***Subdivision Map Act***" means Government Code Sections 66410, et seq.

1.1.22 "**Subsequent Development Approvals**" means all Development Approvals required subsequent to the Effective Date in connection with the Development of the Property.

1.1.23 "**Subsequent Land Use Regulations**" means any Land Use Regulations adopted and effective after the Effective Date.

1.1.24 "**Term**" has the meaning given in Section 2.3 of this Agreement.

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

Exhibit A – Legal Description of the Property

Exhibit B – Map showing Property and its location

Exhibit C – Existing Development Approvals

2. GENERAL PROVISIONS

2.1 **Binding Effect of Agreement.** The Property is hereby made subject to this Agreement. The Development of the Property is hereby authorized and shall be carried out only in accordance with the provisions of this Agreement.

2.2 **Property Ownership and Interest.** The Owner represents and covenants that it is the legal or equitable owner of the fee simple title to the Property.

2.3 **Term.** The term of this 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 Agreement.

2.4 Sale or Assignment.

2.4.1 **Right to Assign.** Subject to the City's written consent, which shall not be unreasonable withheld, delayed or conditioned, Owner shall have the right to sell, transfer, or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act) to any person, partnership, joint venture, affiliate, firm, or corporation at any time; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

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

(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 reasonably acceptable to

City, executed by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement.

Any sale, transfer or assignment not made in compliance with the foregoing conditions shall constitute a default by Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute this agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. Notwithstanding the foregoing, Owner shall have the right to transfer its interest in this Agreement to an "Owner Affiliate". Notwithstanding the foregoing, Owner shall have the right to transfer its interest in this Agreement to an "Owner Affiliate." An "Owner Affiliate" is an entity in which the original owner owns a majority financial or voting interest. Owner shall provide written notification to City concurrently with the completion of such a transfer.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, Owner shall continue to be obligated under this Agreement as to that portion of the Property sold, transferred or assigned, unless Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by Owner of all of the following conditions:

- (a) Owner no longer has a legal or equitable interest in all or any part of the Property sold.
- (b) Owner is not then in default under this Agreement.
- (c) Owner has provided City with the notice and executed agreement required under paragraph (2) of subsection 2.4 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, 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 Agreement relating to all other portions of the 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 Agreement.

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot 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 Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

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

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

2.5 Amendment or Cancellation of Agreement. This 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 for a party's breach of the Agreement as provided by this Agreement.

2.6 Termination. This Agreement shall terminate and be of no further effect upon the occurrence of any of the following events:

2.6.1 Expiration of the stated term of this agreement as set forth herein.

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

2.6.3 The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

2.6.4 The completion of the Project in accordance with the terms of this Agreement, including, without limitation, the issuance of all required occupancy permits and acceptance by City (or other applicable public agency) of any required public dedications.

2.6.5 Termination by the City upon a default by Owner, as provided in this Agreement.

2.6.6 Termination of this Agreement will not operate to automatically terminate any Development Approvals or other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination, or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant

to Section 4.2 of this Agreement by Owner to City buildings on which construction has not yet begun shall be refunded to Owner by City.

2.6.7 Notwithstanding any provision herein to the contrary, subject to the provisions of Section 4.3.3, the obligation of Owner to pay the Public Benefit Fee as set forth in Section 4.3.1 shall survive the termination of this Agreement until all buildings have been constructed on the Property pursuant to the Development Plan or otherwise.

2.7 Notices.

2.7.1 As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

2.7.2 All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; (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, postage and postal charges prepaid, and addressed to the recipient named below; or (iii) by overnight courier, on the first (1st) business day after being delivered to a recognized overnight courier. 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

with a copy to:

Best, Best & Krieger, LLP
2855 East Guasti Rd., Suite 400
Ontario, CA 91761
Attn: Fontana City Attorney
Telephone: (909) 989-8584

If to Owner:

LIT Industrial Limited Partnership
c/o Seefried Industrial Properties
2321 Rosecrans Ave. Suite 2220
El Segundo, CA 90245
Attn: Scott Irwin
Telephone: (310) 536-7900

with a copy to:

Allen Matkins Leck Gamble
Mallory & Natsis LLP
2010 Main Street, Suite 800
Irvine, CA 92614
Attn: John C. Condas, Esq.
Telephone: (949) 553-1313

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

3. **DEVELOPMENT OF THE PROPERTY**

3.1 **Rights to Develop.** Subject to the terms of this Agreement, including the Reservations of Authority, Owner shall have the vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to be a covenant to develop or construct the Project or any portion of the Project.

3.2 **Effect of Agreement on Land Use Regulations.** Except as otherwise provided under the terms of this Agreement, including the Reservations of Authority, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, City shall exercise its reasonable discretion in accordance with the Development Plan and as provided by this 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 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. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is City's and Owner's intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property, or not, 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.

3.4 **Development Phasing Plan.** The Development of the Property is subject to any timing and phasing requirements established by the Development Plan.

3.5 **Changes and Amendments.**

3.5.1 The parties acknowledge that refinement and further development of the Project may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. If in years one (1) through seven (7) during the Term of this Agreement, 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 Agreement, including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to **Exhibit C** and may be further changed from time to time as provided in this Section 3.5.

If in years eight (8) through ten (10) during the Term of this Agreement, Owner finds that changes to the Existing Development Approvals are necessary or appropriate for the refinement and further development of the Project, Owner shall apply for a Subsequent Development Approval and City shall process and act on such application in accordance with the land use regulations existing at the time of such application. Notwithstanding any provision herein to the contrary, Owner shall pay any and all fees and Development Exaction in place following years one (1) through five (5) and shall be required to pay any and all fees and exactions adopted at the time of applications for permits and approvals related to the Development Plan, including any amendments thereto.

3.5.2 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 Agreement; but instead will require only the approval of City's Director of Planning; provided the change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
 - (b) Increase the density or intensity of use of the 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; or,
 - (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

(e) The provisions of this Agreement require a close degree of cooperation between the City and the Owner. It is anticipated due to the term of this Agreement that refinements to the Development Approvals may be appropriate with respect to the details of performance of the City and the Owner. To the extent allowable by law, the Owner shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement and exhibits thereto. When and if the Owner finds it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with the Owner, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provisions of this Agreement pertaining to amendments. The authority to enter into such

Operating Memoranda is hereby delegated to the City Manager, and the City Manager is hereby authorized to execute any Operating Memoranda hereunder without Planning Commission or City Council action and without public hearing. Although other matters may also fall within the scope of Operating Memoranda, any amendment to this Agreement which does not relate to the Term, permitted uses of the Project, provisions for the reservation or dedication of land, grant of easement, or the conditions, terms, restrictions and requirements relating to Subsequent Development Approvals of City, revisions to Public Benefits (other than to the time for performance of such Public Benefits) or monetary exactions of Owner, shall be considered an "Operating Memorandum".

3.6 **Reservations of Authority.**

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations and fees and expenses shall apply to the Development of the Property (collectively, the "**Reservations of Authority**"):

(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 governing construction standards and specifications, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.

(d) Regulations imposing Development Exactions; In years one (1) through five (5) during Term of this Agreement, no such subsequently adopted Development Exaction shall be applicable to development of the Property unless such Development Exaction is applied uniformly to development, either throughout the City or within a defined area of benefit which includes the Property. No such subsequently adopted Development Exaction within the aforementioned timeframe shall apply if its application to the Property would physically prevent development of the 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 Agreement, City shall allow a credit against such subsequently adopted Development Exaction for the fees paid under Section 4 of this Agreement to the extent such fees fulfill the same purposes.

(e) Regulations that may be in conflict with the Development Plan but that are reasonably necessary to eliminate or mitigate a serious threat to 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 Agreement.

(f) Regulations that 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 Property, or which shall increase the cost of development of the Project, shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the property during years one (1) through five (5) of the Term of this Agreement.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or on the basis of any Subsequent Land Use Regulation which does not conflict with the Development Plan. Upon approval of any Subsequent Development Approval, such Subsequent Development Approval shall be deemed vested pursuant to the provisions of this Agreement, without any further action by City or Owner being required.

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 Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

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.

3.7 Public Works. Owner shall construct all public improvements related to the Project in accordance with City's or other applicable public agency's then applicable public works engineering standards.

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 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 Project, and then only in accordance with valid conditions imposed by the City upon the development of the Project under the Subdivision Map Act or other legal authority.

3.9 **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 Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies.

3.10 **Tentative Tract Map And Other Development Approval Extensions.** Pursuant to the provisions of Section 66452.6 of the Government Code and relevant portions of the Fontana Municipal Code, all tentative subdivision maps or tentative parcel maps and all other Development Approvals approved in connection with development of the Project, shall automatically be granted extensions of time, for a seven (7) year lifespan.

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 Property, is a vesting map under the Subdivision Map Act (Government Code Section 66410 et seq.) and if this 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 Agreement. Except as set forth immediately above, development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

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

4. **PUBLIC BENEFITS**

4.1 **Intent.** The parties acknowledge and agree that the Development of the Property will result in substantial public needs which will not be fully met by the Development Plan and further acknowledge and agree that this 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 Project.

4.2 **Development Impact Fees.**

4.2.1 Amount and Components of Fee. The amount of the public facilities and services mitigation fees may be periodically adjusted by the City.

4.2.2 Time of Payment. The fees required pursuant to this section 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 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.

4.3 Public Benefit Fee.

4.3.1 As consideration for City's approval and performance of its obligations as set forth in this Agreement, Owner agrees to pay to the City a one-time public benefit fee in the amount of Four Dollars and Twenty five Cents (\$4.25) per building square foot, which is estimated to be Two Million Eighty Four Thousand Nine Hundred One Dollars (\$2,084,901) ("Public Benefit Fee"). Payment of the Public Benefit Fee shall be in addition to any other customary fees or charges to which the Project would otherwise be subject (e.g., development impact fees and application fees). The actual amount of the Public Benefit Fee shall be set, based upon the actual building square footage, prior to the issuance of any certificate of occupancy for the Project, and Owner shall pay the Public Benefit Fee to the City prior to the issuance of any certificate of occupancy for the Project.

4.3.2 The City has sole discretion to determine the uses for the Public Benefit Fee. The City has not designated a specific project or purpose for the Public Benefit Fee. Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement, and that Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of the Public Benefit Fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 et seq.), or otherwise.

4.3.3 Notwithstanding any provision herein to the contrary, the obligation of Owner to pay the Public Benefit Fee as set forth in Section 4.3.1 shall survive the termination of this Agreement until all buildings have been constructed on the Property pursuant to the Development Plan or otherwise. If the Public Benefit Fee has not been paid prior to the expiration of the Term, payment of the Public Benefit Fee shall be waived and shall no longer be due and payable if the City, after expiration of the Term, amends the Existing Land Use Regulations so that the Project, or other uses which previously were permitted under the Existing Land Use Regulations, no longer are legally permitted.

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 in order 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, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring City or the City Council to form any such district or to issue and sell bonds.

6. **REVIEW FOR COMPLIANCE**

6.1 **Periodic Review.** As required by California Government Code Section 65865.1, the Director of Planning will review this Agreement annually, on or before each anniversary of the Effective Date, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Owner shall submit an Annual Monitoring Report, in a form acceptable to the Director of Planning, within 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 the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council.

6.2 **Special Review.** The City Council may order a special review of Owner's compliance with this Agreement at any time. The Director of Planning will conduct the special review.

6.2.1 During either an annual or special review. Owner will be required to demonstrate its good faith compliance with this Agreement. The burden of proof on this issue shall be on Owner.

6.2.2 Upon completion of an annual or special review, the Director of Planning will submit a report to the City Council setting forth the evidence concerning Owner's good faith compliance with this Agreement and his or her recommended finding on that issue.

6.2.3 If the City Council finds on the basis of substantial evidence that Owner has materially complied in good faith with the terms and conditions of this Agreement, then the review will be concluded.

6.2.4 If the City Council makes a preliminary finding that Owner has not materially complied in good faith with this Agreement, then, following notice and opportunity to cure as provided under Section 6.4, the City Council may modify or terminate this Agreement as provide in Section 6.4 and 6.5. Notice of default as provided under Section 7.4 of this Agreement shall be given to Owner prior to or concurrent with, proceedings under Section 6.4 and Section 6.5.

7. **PROCEEDINGS FOR MODIFICATION OR TERMINATION.**

7.1 **Proceedings Upon Modification or Termination.** If, upon a finding under Section 6.2, City determines to proceed with modification or termination of this Agreement, City shall give written notice to Owner of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

7.1.1 The time and place of the hearing;

7.1.2 A statement as to whether or not City proposes to terminate or to modify the Agreement; and

7.1.3 Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

7.2 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 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 the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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

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

8. DEFAULT AND REMEDIES

8.1 Remedies in General. The parties agree that the City would not have entered into this Agreement if it were to be liable for damages under this Agreement, or with respect to this Agreement or the application itself.

8.1.1 In general, and subject to those procedural prerequisites required under the Development Agreement Policies or this Agreement, each of the parties may pursue any remedy at law or equity available for the breach of this 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:

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

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

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

8.2 Specific Performance.

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

(a) Monetary damages are unavailable against City as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such time, Owner may be precluded from other options it may have had with regard to the Property or any portions thereof. Moreover, Owner has invested significant time and resources in the planning and processing of the Project. Owner will be investing even more time and resources in implementing the Project in reliance upon this Agreement and it is not possible to determine the sum of money that would adequately compensate Owner for such efforts.

8.3 **Release.** Except for non-damage remedies, including the remedy of specific performance as provided in Section 8.2, Owner, for itself, its successors and assignees, releases City, its officials, 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 upon Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance that seeks to impose any other liability or damage, whatsoever upon City because it entered into this Agreement or because of the terms of this Agreement.

8.4 City's Termination of Agreement or Exercise of Other Remedies Upon Owner's Default. City may terminate or modify this Agreement as to all or a portion of the Property upon Owner's failure to perform any material duty or obligation under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, City may modify or terminate this Agreement pursuant to this Section only after providing written notice to Owner of default setting forth the nature of the default and the actions, if any, required by Owner to cure such default and, where the default can be cured, if Owner fails to cure the default within sixty (60) days after its receipt of the notice, or if the default is of a type that cannot be cured within sixty (60) days but can be cured within a longer time, and Owner fails to commence the actions necessary to cure the default within sixty (60) days and to diligently proceed to cure the default.

8.5 Owner's Termination of Agreement or Exercise of Other Remedies Upon City's Default. Owner may terminate this Agreement only in the event of a default by City in the performance of a material term of this Agreement and only after providing written notice to City of default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, City has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to

commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.6 **Informal Resolution.** The parties recognize that good faith disagreements may arise between City and Owner during the administration and implementation of this Agreement. The parties will meet and confer in a good-faith attempt to resolve any dispute and will consider alternative dispute resolution mechanisms.

9. **THIRD PARTY LITIGATION**

9.1 **General Plan Litigation.** City has determined that this Agreement is consistent with its Comprehensive General Plan, herein called General Plan, and that the General Plan meets all requirements of law. Owner has reviewed the General Plan and concurs with City's determination.

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

9.2 **Third-Party Litigation Concerning Agreement.** Owner shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless City. City may in its discretion participate in the defense of any such claim, action or proceeding. Anything in this Agreement to the contrary notwithstanding, the Term set forth in Section 4.3 of this Agreement and the expiration date of all Development Approvals will automatically be extended by the longer of (i) the number of days in the period commencing on the date of filing any legal action of the type described in this Section and ending on the date that the claim, action or proceeding is either settled or fully and finally resolved in City's and Owner's favor, as evidenced by the expiration of all appeal periods with no further appeal being filed or the issuance of a full, final and non-appealable judgment or decisions; or (ii) the number of days in the period commencing on the date that a referendum conceding the Development Approvals is timely qualified for the ballot and the date that a referendum is certified resulting in upholding and approving the Development Approvals. City will execute, in recordable form, any instrument which Owner may reasonably require to evidence the extension.

9.3 **Indemnity.** In addition to the provisions of Section 9.2, 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 and damages to the extent caused by the negligence or willful misconduct of City or its officers, agents, employees, contractors, subcontractors, and independent contractors. Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. City may in its discretion participate in the defense of any such legal action.

9.4 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, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 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 upon written request for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor. If City chooses to conduct its own defense, City's separate counsel's billing rates shall be identical to the rates City pays for its typical municipal litigation rates for legal challenges for the type being defended.

10. MORTGAGEE PROTECTIONS

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the City in

the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

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

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

11. MISCELLANEOUS PROVISIONS

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Owner agrees that immediately following recordation of the grant deed by which the Owner acquires title, the Owner will immediately record this Development Agreement against the real property.

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

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

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

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

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

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

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, 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 Agreement and the time for performance by either party of any of its obligations hereunder will be extended for the period of time that such events prevented such performance, provided that the Term of this Agreement shall not be extended under any circumstances due to a force majeure event for more than five (5) years.

11.12 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.

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

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

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

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property by the Owner of such property.

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

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

11.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process

upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. 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).

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

[Signatures on following pages]

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF FONTANA
AND POPLAR SOUTH DC, LLC**

City

CITY OF FONTANA,
a California municipal corporation

By: _____
Acquanetta Warren, Mayor

By: _____
Matthew Ballantyne, City Manager

LIT INDUSTRIAL LIMITED PARTNERSHIP,
a Delaware limited partnership

By: LIT Holdings, GP, LLC,
a Delaware limited liability company,
its general partner

By: _____
Name: Michael Marrone
Title: Senior Vice President

ATTEST:

By: _____
Germaine Key, City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

Ruben Duran, 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 of notary)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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 of notary)

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

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

WITNESS my hand and official seal.

Signature_____

(Seal)

EXHIBIT A

**TO DEVELOPMENT AGREEMENT BETWEEN
THE City OF FONTANA AND POPLAR SOUTH DC, LLC**

Legal Description of the Property

Real property in the City of Fontana, County of San Bernardino, State of California,
described as follows: TENTATIVE PARCEL [MAP NO. 20638](#), BEING A DIVISION OF
THE FOLLOWING:

TRACT 1: (APN 0237-171-04-0-000)

LOT 16, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#),
INCLUSIVE, RECORDS OF SAID COUNTY.

TRACT 2: (APN 0237-171-03-0-000)

LOT 17 OF TRACT NO. 3074, IN THE COUNTY OF SAN BERNARDINO, STATE
OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 43, PAGE 14](#) OF MAPS, IN THE
OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 3: (APN 0237-171-02-0-000)

LOT 18 OF TRACT NO. 3074 IN THE UNINCORPORATED AREA, COMMONLY
KNOWN AS FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA,
AS PER MAP RECORDED IN [BOOK 43, PAGE 14](#) OF MISCELLANEOUS MAPS, IN
THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY.

TRACT 4: (APN 0237-171-01-0-000)

LOT 19 OF TRACT NO. 3074, IN THE CITY OF FONTANA, COUNTY OF SAN
BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 43,
PAGE\(S\) 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID
COUNTY.

TRACT 5: (APN 0237-171-05-0-000)

LOT 15, TRACT 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF
CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE 14](#), RECORDS
OF SAID COUNTY.

TRACT 6: (APN 0237-171-06-0-000)

LOT 14 OF TRACT NO. 3074, AS PER MAP RECORDED IN [BOOK 43, PAGE 14](#)

OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 7: (APN 0237-171-07-0-000)

LOT 13 OF TRACT 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE 14](#), RECORDS OF SAID COUNTY.

TRACT 8: (APN 0237-171-08-0-000)

LOT 12, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43, PAGE\(S\) 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 9: (APN 0237-171-09-0-000)

LOT 11 OF TRACT 3074, AS PER MAP RECORDED IN [BOOK 43, PAGE 14](#) OF MAPS, IN THE OFFICE OF THE SAN BERNARDINO COUNTY RECORDER.

TRACT 10: (APN 0237-171-10-0-000)

LOT 10, TRACT NO. 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#), RECORDS OF SAID COUNTY.

TRACT 11: (APN 0237-171-11-0-000)

LOT 9 OF TRACT 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, CALIFORNIA AS PER MAP RECORDED IN [BOOK 43, PAGE\(S\) 14](#), OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 12: (APN 0237-171-12-0-000)

LOT 8 OF TRACT NO. 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 43, PAGE\(S\) 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY.

TRACT 13: (APN 0237-171-13-0-000)

LOT 7, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#), OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 14: (APN 0237-171-14-0-000)

LOT 6, TRACT NO. 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE 14](#), RECORDS

OF SAID COUNTY.

TRACT 15: (APN 0237-171-15-0-000)

LOT 5, TRACT NO. 3074, AS PER PLAT RECORDED IN [BOOK 43, OF MAPS PAGE 14](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 16: (APN 0237-171-16-0-000)

LOT 4 OF TRACT 3074 AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 43, PAGE(S) 44 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 17: (APN 0237-171-17-0-000)

LOT 1, TRACT NO. 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE 14](#), RECORDS OF SAID COUNTY.

TRACT 18: (APN 0237-171-18-0-000)

LOT 2, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#), INCLUSIVE, RECORDS OF SAID COUNTY.

TRACT 19: (APN 0237-171-19-0-000)

LOT 3 OF TRACT 3074, AS PER MAP RECORDED IN [BOOK 43, PAGE 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 20: (APN 0237-172-05-0-000)

LOT 20 OF TRACT NO. 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43, PAGE\(S\) 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 21: (APN 0237-172-04-0-000)

LOT 21 OF TRACT NO. 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43, PAGE 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 22: (APN 0237-172-03-0-000)

LOT 22, TRACT 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 43, PAGE\(S\) 14](#), OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 23: (APN 0237-172-02-0-000)

LOT 23, TRACT 3074, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE 14](#), RECORDS OF SAID COUNTY.

TRACT 24: (APN 0237-172-01-0-000)

LOT 24, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#), INCLUSIVE, RECORDS OF SAID COUNTY.

TRACT 25: (APNS 0237-172-06-0-000 AND 0237-172-07-0-000)

LOT 25 AND 26 OF TRACT NO. 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP, RECORDED IN [BOOK 43, PAGE 14](#) OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 26: (APN 0237-172-08-0-000)

LOT 27, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#), INCLUSIVE, RECORDS OF SAID COUNTY.

TRACT 27: (APN 0237-172-09-0-000)

LOT 28, TRACT NO. 3074, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE 14](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 28: (APN 0237-172-10-0-000)

LOT 29 OF TRACT NO. 3074, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 43, PAGE 14](#) OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 29: (APN 0237-172-11-0-000)

LOT 30, TRACT NUMBER 3074, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 43 OF MAPS, PAGE\(S\) 14](#), INCLUSIVE, RECORDS OF SAID COUNTY.

TRACT 30: (APN 0237-172-12)

THE WEST 75 FEET OF THE SOUTH 340 FEET OF THE EAST ONE-HALF OF THE FARM LOT 863, ACCORDING TO THE MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), IN THE OFFICE OF COUNTY

RECORDER OF SAID COUNTY.

TRACT 31: (APN 0237-172-32-0-000)

PARCEL NO. 1:

THE WEST 1/2 OF THE EAST 150 FEET OF THE WEST 225 FEET OF THE SOUTH 340 FEET OF THE EAST 1/2 OF LOT 863, ACCORDING TO MAP SHOWING SUBDIVISION OF LAND BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, AS PER MAP RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

PARCEL NO. 2:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE WESTERLY 10 FEET OF THE EAST 1/2 OF THE EAST 150 FEET OF THE WEST 225 FEET OF THE SOUTH 340 FEET OF THE EAST 1/2 OF LOT 863, ACCORDING TO MAP SHOWING SUBDIVISION OF LAND BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, AS PER MAP RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

TRACT 32: (APN 0237-172-33-0-000)

THE EAST 75.00 FEET OF THE WEST 225 FEET OF THE SOUTH 340.00 FEET TO THE EAST HALF OF LOT 863, ACCORDING TO THE MAP SHOWING SUBDIVISION OF LAND BELONGING TO SEMI TROPIC LAND AND WATER COMPANY, AS PER MAY RECORDED IN [BOOK 11, PAGE 12](#), OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TRACT 33: (APN 0237-172-26-0-000)

THE EAST 75 FEET OF THE WEST 300 FEET OF THE SOUTH 340 FEET OF THE EAST 1/2 OF FARM LOT 863, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, AS PER PLAT RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

AREA AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY COMPUTED TO STREET CENTERS. TRACT 34: (APN 0237-172-27-0-000)

THE EAST 75 FEET OF THE WEST 375 FEET OF THE SOUTH 340 FEET OF THE EAST 1/2 OF FARM LOT 863 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 PER PLAT RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

TRACT 35: (APN 0237-172-19-0-000)

THE WEST 75 FEET OF THE EAST 285 FEET OF THE SOUTH 340 FEET OF THE

FARM LOT 863, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP SHOWING SUBDIVISION OF LAND BELONGINGS TO 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.

TRACT 36: (APN 0237-172-23-0-000)

THE SOUTH 340 FEET OF THE EAST 1/2 OF LOT 863, ACCORDING TO THE MAP SHOWN IN SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 11 PAGE 12](#), OF MAPS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE WEST 450 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE SOUTH 260 FEET THEREOF.

AREA AND DISTANCES ARE COMPUTED TO STREET CENTERS AS SHOWN ON SAID MAP. TRACT 37: (APN 0237-172-30-0-000)

PARCEL 1:

THE NORTH 65 FEET OF THE SOUTH 260 FEET OF THE EAST 1/2 OF FARM LOT 863, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, AS PER MAP RECORDED IN [BOOK 11 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

EXCEPT THE WEST 450 FEET THEREOF.

AREAS AND DISTANCES COMPUTED TO STREET CENTERS AS SHOWN ON SAID MAP. PARCEL 2:

A RIGHT OF WAY FOR INGRESS AND EGRESS OVER AND ACROSS THE NORTH 6 FEET OF THE EAST 125 FEET OF THE SOUTH 195 FEET OF SAID LOT 863.

TRACT 38: (APN 0237-172-31-0-000)

THE NORTH 65 FEET OF THE SOUTH 195 FEET OF THE EAST 1/2 OF FARM LOT 863, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE 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.

EXCEPTING THEREFROM, THE WEST 450 FEET THEREOF.

AREAS AND DISTANCES COMPUTED TO STREET CENTERS AS SHOWN ON SAID MAP. TRACT 39: (APN 0237-172-28-0-000)

THE SOUTH 65 FEET OF THE NORTH 195 FEET OF THE SOUTH 260 FEET OF

THE EAST HALF OF FARM LOT 863, 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 OF MAPS, PAGE 12](#), RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE WEST 150 FEET THEREOF, AREAS AND DISTANCES COMPUTED TO STREET CENTERS.

TRACT 40: (APN 0237-172-22-0-000)

THE SOUTH 65 FEET OF THE EAST 1/2 OF FARM LOT 863, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 11 OF MAPS, PAGE\(S\) 12](#), RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE WEST 450 FEET THEREOF.

NOTE: AREA AND DISTANCES COMPUTED TO STREET CENTERS.

APN: 0237-171-01, 0-000, 0237-171-02-0-000, 0237-171-03-0-000, 0237-171-04-0-000, 0237-171-05-0-000, 0237-171-06-0-000, 0237-171-07-0-000, 0237-171-08-0-000, 0237-171-09-0-000, 0237-171-10-0-000, 0237-171-11-0-000, 0237-171-12-0-000, 0237-171-13-0-000, 0237-171-14-0-000, 0237-171-15-0-000, 0237-171-16-0-000, 0237-171-17-0-000, 0237-171-18-0-000, 0237-171-19-0-000, 0237-172-01-0-000, 0237-172-02-0-000, 0237-172-03-0-000, 0237-172-04-0-000, 0237-172-05-0-000, 0237-172-06-0-000, 0237-172-07-0-000, 0237-172-08-0-000, 0237-172-09-0-000, 0237-172-10-0-000, 0237-172-11-0-000, 0237-172-12-0-000, 0237-172-19-0-000, 0237-172-22-0-000, 0237-172-23-0-000, 0237-172-26-0-000, 0237-172-27-0-000, 0237-172-28-0-000, 0237-172-30-0-000, 0237-172-31-0-000, 0237-172-32-0-000 and 0237-172-33-0-000 (Referenced for informational purposes only)

EXHIBIT B

**TO DEVELOPMENT AGREEMENT BETWEEN
THE City OF FONTANA AND POPLAR SOUTH DC, LLC**

EXHIBIT B – Map Showing Property and its location:

Local Vicinity



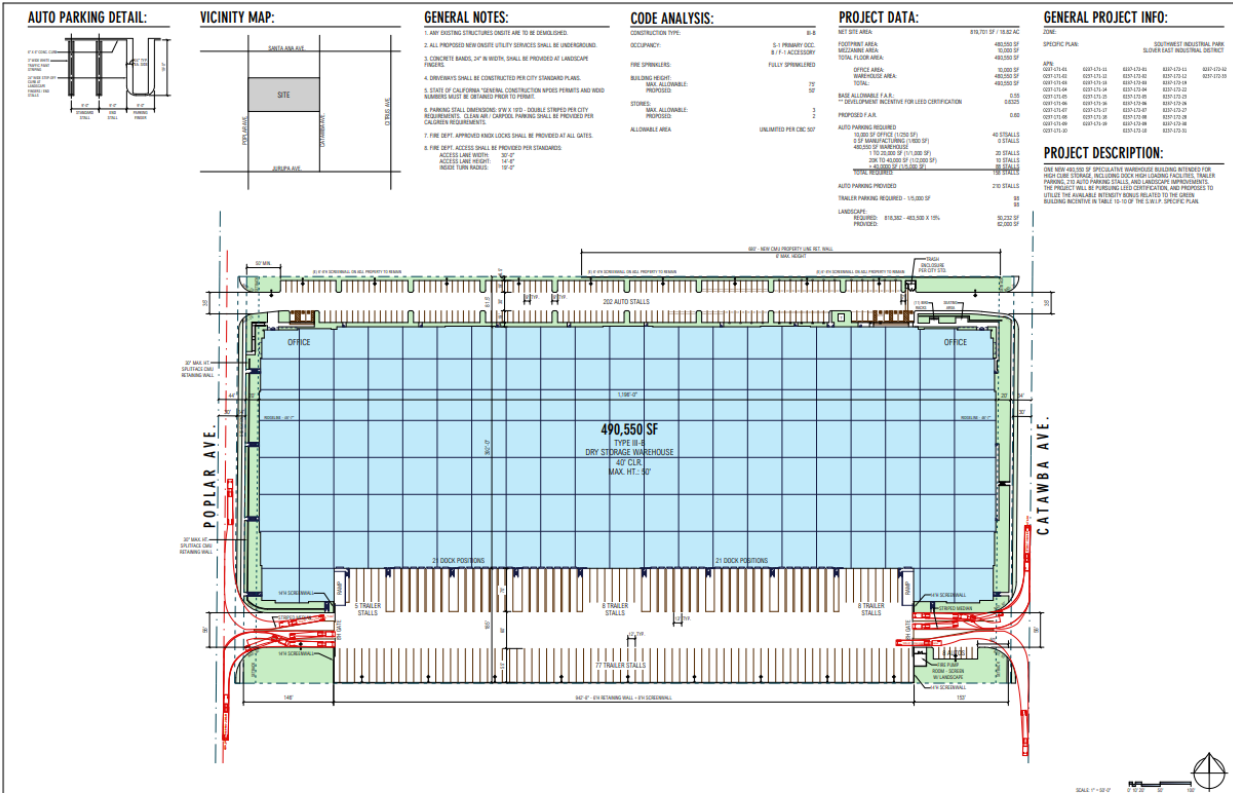
Poplar South Distribution Center
City of Fontana

Figure 3-2

EXHIBIT C

**TO DEVELOPMENT AGREEMENT BETWEEN
THE City OF FONTANA AND POPLAR SOUTH DC, LLC**

Existing Development Approval



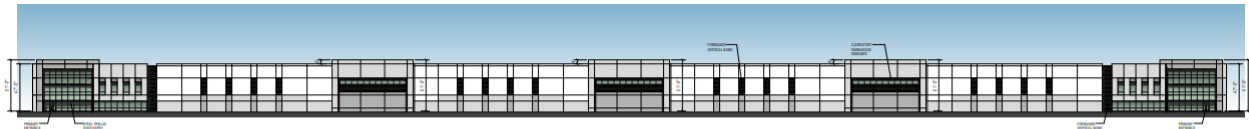
POPLAR SOUTH DISTRIBUTION CENTER

FONTANA, CA

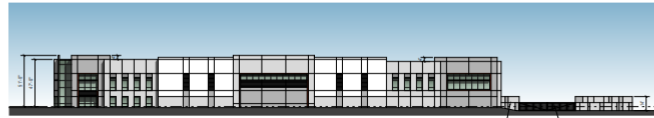
SCHEMATIC SITE PLAN

NO. OF AUTO STALLS	200
NO. OF TRUCK POSITIONS	200
NO. OF TRAILER STALLS	200
NO. OF OFFICE STALLS	0
NO. OF STORAGE STALLS	0
NO. OF LOADING DOCK STALLS	0
NO. OF TRUCK POSITIONS	200
NO. OF TRAILER STALLS	200
NO. OF OFFICE STALLS	0
NO. OF STORAGE STALLS	0
NO. OF LOADING DOCK STALLS	0

A1-P



NORTH ELEVATION

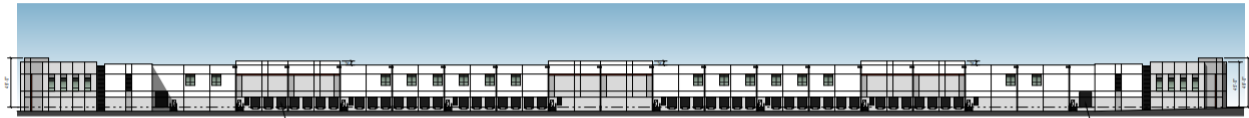


WEST ELEVATION

NOTES:
1. ALL ROOF TOP MECH. EQUIPMENT
SHALL BE SCREENED FROM VIEW.

FINISH LEGEND

P-1	SCREEN WALLS
P-2	SCREEN WALLS
P-3	SCREEN WALLS
P-4	SCREEN WALLS
P-5	SCREEN WALLS
P-6	SCREEN WALLS
P-7	SCREEN WALLS
P-8	SCREEN WALLS
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P-95	SCREEN WALLS
P-96	SCREEN WALLS
P-97	SCREEN WALLS
P-98	SCREEN WALLS
P-99	SCREEN WALLS
P-100	SCREEN WALLS



SOUTH ELEVATION



EAST ELEVATION

SOUTH EAST NORTH
FIRE PUMP
ELEVATIONS



SOUTH RETAINING WALL / SCREENWALL ELEVATION

RGA
REAL ESTATE GROUP
10000 West Pacesuite, Suite 100
Dallas, TX 75240
P: 214.635.1000
F: 214.635.1001
www.rga.com

SEEFRIED
INDUSTRIAL PROPERTIES
Senior Vice President - Southwest California
10000 West Pacesuite, Suite 100
Dallas, TX 75240
P: 214.635.1000
F: 214.635.1001
www.seefried.com

POPLAR SOUTH DISTRIBUTION CENTER

FONTANA, CA

SCHEMATIC ELEVATIONS

SCALE: 1" = 32'-0"

NO.	DESCRIPTION	DATE
1	SCHEMATIC ELEVATIONS	10/10/2017
2	SCHEMATIC ELEVATIONS	10/10/2017
3	SCHEMATIC ELEVATIONS	10/10/2017
4	SCHEMATIC ELEVATIONS	10/10/2017
5	SCHEMATIC ELEVATIONS	10/10/2017
6	SCHEMATIC ELEVATIONS	10/10/2017
7	SCHEMATIC ELEVATIONS	10/10/2017
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100	SCHEMATIC ELEVATIONS	10/10/2017

A3-1P



