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DEVELOPMENT AGREEMENT

between

THE CITY OF HIGHLAND

("City")

and

LCD GREENSPOT, LLC

A Delaware limited liability company

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into on \_\_\_\_\_, 2015, between the CITY OF HIGHLAND (the “City”), a municipal corporation, and LCD GREENSPOT, LLC, a Delaware limited liability company, pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, §§ 65864 through 65869.5 of the Government Code. The City and the Developer (defined below) shall be referred to within this Agreement jointly as the “Parties” and individually as a “Party.”

### RECITALS

A. Capitalized Terms. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Section 1. Any capitalized terms not defined in Section 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Development of the Property. Concurrent with the approval of this Agreement, the City has approved a General Plan Amendment (GPA-011-003), the Harmony Specific Plan (Case No. SPR 011-01), a Zone Change (Ordinance No. ZC-011-03), and has certified a Final Environmental Impact Report (State Clearinghouse No. 2012071065) for the area described in Exhibit “A” (the “Property”), which permit the development of the Property with low, medium and high density residential development, commercial/retail development, schools, parks and supporting infrastructure, subject to the City’s normal review and permitting processes. The Developer currently has an equitable interest in the Property pursuant to an option to acquire all or a portion of the Property from the legal owner of the Property, the Orange County Flood Control District (“OCFCD”), and OCFCD has consented to Developer’s execution of this Agreement.

C. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, authorizing the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

D. Intent of the Parties. The Developer and the City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of the Developer, or its successors and assigns, for infrastructure and public improvements and facilities will be met and to provide for the orderly

development of the Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to the City and the public benefits of the Project, the Developer will receive assurances that the City shall grant all permits and approvals required for total Development of the Property and will provide for the assistance called for in this Agreement in accordance with the terms of this Agreement.

E. Public Benefits of the Project. This Agreement provides assurances that the public benefits identified below in this Recital E will be achieved in accordance with the terms of this Agreement. The Project will provide local and regional public benefits to the City, including, without limitation, the following:

1. Increased Tax Revenues. The Project will result in increased real property and sales taxes and other revenues to the City.

2. Pedestrian Mobility. The Project encourages pedestrian mobility through the provision of walking paths, through signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that will encourage walking.

3. Pedestrian Connection. The Project will include a series of public pedestrian trails throughout the Property.

4. Implement Circulation Element. The Project will include improvements and contribute fees to improvements that will implement the Circulation Element of the General Plan.

5. Natural Open Space. Approximately 582 acres of natural open space will be preserved in perpetuity.

6. Parks and Recreation. Park and recreation shall be provided, including:

(a) Approximately 104 acres of community and neighborhood parks

(b) Approximately 4 acres devoted to a private recreation center.

(c) Approximately 11 acres of Community Greenway

7. Public Benefit Payments. The Project will provide \$18.75 million in public benefit payments to the City that are in addition to the development impact fees to be paid by the Project.

F. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, *et seq.* ("CEQA")), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The City Council, after making appropriate findings, certified, by Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2015 a Final Environmental

Impact Report for the Project, more specifically identified as the Final Environmental Impact Report for the Harmony Specific Plan, State Clearinghouse No. 2012071065, as having been prepared in compliance with CEQA. On \_\_\_\_\_, 2015, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement and, upon the conclusion of the hearing, found on the basis of substantial evidence \_\_\_\_\_. On \_\_\_\_\_, 2015, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement and, upon the conclusion of the public hearing found on the basis of substantial evidence that this Agreement is consistent with the General Plan, Specific Plan and all other applicable policy plans of the City.

G. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, Developer and City desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

1. DEFINITIONS. The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 Actual Cost. "Actual Cost" shall have the meaning set forth in the Financing Plan.

1.2 Anniversary Date. "Anniversary Date" means the date of the anniversary of each year following the Effective Date established in Section 3.1.

1.3 Annual Review. "Annual Review" means the annual review of the Developer's performance of the Agreement in accordance with Section 12.1 of the Agreement and Government Code § 65865.1.

1.4 Application(s). "Application(s)" means a complete application for the applicable land use approvals meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the application shall apply only to the extent permitted by this Agreement.

1.5 Appraisal of Land Value. "Appraisal of Land Value" when referred to herein shall mean the determination by an experienced and independent MAI appraiser retained by City (Developer may veto any appraiser selected by City for good cause), in a written appraisal at fair market value based upon comparable sales of unimproved land, and serviced by the existing infrastructure, and with the development restrictions of the Specific Plan.

1.6 Authorizing Ordinance. "Authorizing Ordinance" means Ordinance No. \_\_\_\_\_ approving this Agreement.

1.7 Building Permit. “Building Permit,” with respect to any building or structure to be constructed on the Property, means a building permit for not less than the shell and core of such building or structure issued by the City’s Building and Safety Department.

1.8 Certificate of Occupancy. “Certificate of Occupancy,” with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

1.9 CFD. “CFD” means a community facilities district allowed to be formed pursuant to the CFD Act by a Local Agency.

1.10 CFD Act. “CFD Act” means the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 *et seq.*), as it may be amended from time to time, authorizing the imposition of special taxes to fund capital facilities and services.

1.11 CFD Agreement. “CFD Agreement” shall have the meaning set forth in Section 5.2 below.

1.12 City. “City” means the City of Highland, California.

1.13 City Council. “City Council” means the governing body of the City.

1.14 City Development Agreement Ordinance. “City Development Agreement Ordinance” means Section 16.08.080 of the Municipal Code which establishes a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

1.15 City Manager. “City Manager” means the City Manager of City.

1.16 Claim or Litigation. “Claim or Litigation” means any challenge by any third party (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals or other actions of the City pertaining to the Project, (ii) seeking damages against the City as a consequence of the foregoing actions, for the taking or diminution in value of their property or for any other reason, or (iii) seeking injunctive or declarative relief against the City as a consequence of the foregoing actions, or due to the action or inaction of the Developer.

1.17 Commencement of Construction. “Commencement of Construction” means that a building or grading permit for any construction on the Property has been issued by the City and the permitted activity has commenced pursuant to the permit.

1.18 Dedicate or Dedication. “Dedicate” or “Dedication” means to offer fee title or other equitable interest to the subject land to the City, other governmental agency or a public utility.

1.19 Default. “Default” refers to any material default, breach, or violation of a provision of this Development Agreement as defined in Section 13 below. “City Default” refers to a Default by the City, while “Developer Default” refers to a Default by the Developer.

1.20 Developer. “Developer” shall mean (a) LCD Greenspot, LLC or such other private entity to whom OCFCD has conveyed a Legal or Equitable Interest in the Property, or a portion thereof, and any successor or assignee of the same who acquires the requisite Legal or Equitable Interest in all or a portion of the Property in accordance with this Agreement; and/or (b) OCFCD with respect to all or a portion of the Property if OCFCD has delivered the written instrument provided for in Section 16.2 hereof for the same. The Parties recognize that a Developer, as that term is used in this Agreement, may not exist for some period of time for the Property (or a portion thereof) and that Section 16.3 will dictate the applicability of this Agreement under such circumstances.

1.21 Development or Develop. “Development” or “Develop” means the improvement of the Property for purposes of effecting the structures, improvements and facilities required or permitted by the Development Plan, including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement.

1.22 Development Agreement Statute. “Development Agreement Statute” means §§ 65864 through 65869.5 of the Government Code as it exists on the Effective Date.

1.23 Development Approvals. “Development Approvals” means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, specific plans, site plans, tentative and final Subdivision Maps, vesting Tentative Subdivision Maps, variances, zoning designations, conditional use permits, grading, building and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.24 Development Impact Fees. “Development Impact Fees” or “DIF” means all manner of monetary consideration, other than a tax or assessment, charged by the City in connection with mitigating the Project’s specific impacts and the development of the public facilities related to the Project, including those fees, calculated on the basis of the number of residential units, equivalent dwelling units or square footage of non-residential development to be constructed. Development Impact Fees do not include Processing Fees.

1.25 Development Plan. “Development Plan” means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

1.26 Director. “Director” means the City’s Director of Community Development or equivalent official.

1.27 Effective Date. “Effective Date” means the date this Agreement becomes effective as set forth in Section 3.1.

1.28 Eligible Facilities. “Eligible Facilities” means the Proposed Project Facilities and other public facilities, fees and contributions for public facilities, as described in the Financing Plan.

1.29 Estoppel Certificate. “Estoppel Certificate” means an executed certificate in the form attached hereto as Exhibit “C.”

1.30 Exaction. “Exaction” means a Dedication, payment of Development Impact Fees or other monetary contribution and/or construction of public infrastructure required by the City to serve the Property. Processing Fees are not an Exaction.

1.31 Existing Development Approvals. “Existing Development Approvals” means only the Development Approvals listed on Exhibit “B.”

1.32 Existing Land Use Regulations. “Existing Land Use Regulations” means those Land Use Regulations applicable to the Property in effect on the Effective Date.

1.33 Financing and Conveyancing Map. “Financing and Conveyancing Map” means a map within the meaning of the Subdivision Map Act, as further defined in Section 9.5 hereof.

1.34 Financing Plan. “Financing Plan” means Exhibit “G” attached hereto.

1.35 Force Majeure. “Force Majeure” shall have the meaning set forth in Section 19.2 below.

1.36 Future Development Approvals. “Future Development Approvals” means those Development Approvals applicable to the Property that are consistent with this Agreement and approved by the City after the Effective Date such as Subdivision Maps, subdivision improvement agreements and other more detailed planning, engineering or construction approvals.

1.37 General Plan. “General Plan” means the City’s General Plan as it exists on the Effective Date, and as expressly amended by future amendments applicable to the Property, if permitted, by Section 11 below.

1.38 Goals and Policies for Financing. “Goals and Policies for Financing” or “Goals and Policies” means the City’s Goals and Policies for “CFD Financing” in effect as of the Effective Date.

1.39 Grading Permit. “Grading Permit” means a permit issued by the City’s Building and Safety Department, and/or Engineering Department, as applicable, which allows the excavation or filling, or any combination thereof, of earth on the Property.

1.40 Improvement Area. “Improvement Area” shall have the meaning set forth in Section 5.2 below.

1.41 Innocent Owner. “Innocent Owner” shall have the meaning set forth in Section 13.8 below.

1.42 Land Use Regulations. “Land Use Regulations” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City and each department of the City which affect, govern, or apply to the Property or the implementation of the Development Plan or this Agreement. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Property, including, but not limited to, the General Plan, the Specific Plan, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters.

1.43 Legal or Equitable Interest. “Legal or Equitable Interest” means (i) an option or purchase agreement or (ii) fee title evidenced by appropriate title insurance issued in favor of the Developer.

1.44 Local Agency. “Local Agency” means any public agency authorized to levy, create or issue any form of land secured financing over all or any part of the Property, including, but not limited to, the City.

1.45 Lot. “Lot” means any of the parcels legally created within the Project as a result of any approved final subdivision, parcel or tract map, pursuant to the Subdivision Map Act or recordation of a condominium plan pursuant to Civil Code § 1352 .

1.46 Master Tract Map. “Master Tract Map” (or “A Map”) means Tract Map No. 18871 and any other large scale tract map covering all Planning Areas which may include all infrastructure necessary to Develop the tract and a phasing plan as to the development of the infrastructure and the subsidiary subdivisions within the tract. The Master Tract Map is a subdivision map within the meaning of the Subdivision Map Act and shall meet the requirements of the Act and of this Agreement.

1.47 MCFD. “MCFD” means a CFD authorized to fund as described in Section 5.6.1 below.

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

1.49 Mortgagee. “Mortgagee” refers to the holder of a beneficial interest under a Mortgage.

1.50 Municipal Code. “Municipal Code” means the City’s Municipal Code as it existed on the Effective Date and as it may be amended from time to time consistent with the terms of this Agreement.

1.51 Non-Defaulting Party. “Non-Defaulting Party” shall have the meaning set forth in Section 13.1 below.

1.52 Owner. “Owner” means OCFCD, the Developer and/or any successors during the period of time that each such person or entity owns fee title to any portion of the Property and subject to the terms of this Agreement.

1.53 Park Fees. “Park Fees” means Development Impact Fees levied by the City for open space and park land acquisition and development pursuant to Chapter 16.40 of the Municipal Code.

1.54 Planning Area. “Planning Area” or “PA” means each of the 66 planning areas described in the Specific Plan.

1.55 Planning Commission. “Planning Commission” means the City’s Planning Commission.

1.56 Property. “Property” means the 1,650 acres of land, more or less, described in Exhibit “A” hereto.

1.57 Homeowner’s Association or HOA. “Homeowner’s Association” or “HOA” means one or more associations formed among the owners of real estate located within the Property (as the same may be subdivided from time to time), including, but not limited to, one or more associations of homeowners and/or other associations of owners of industrial, commercial, educational and retail property.

1.58 Processing Fees. “Processing Fees” means the City’s normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City’s costs associated with processing, review and inspection of applications, plans, specifications, and construction, etc.

1.59 Project. “Project” means the Development of the Property pursuant to this Agreement and Development Plan.

1.60 Proposed Project Facilities. “Proposed Project Facilities” means those public improvements required for the Development of the Property pursuant to the Existing Development Approvals.

1.61 Public Benefit Payment. “Public Benefit Payment” means each of the incremental payments and per dwelling unit payments to be made by Developer to City at the times and in the amounts set forth in Section 5.7 below.

1.62 Reimburse or Reimbursement. “Reimburse” or “Reimbursement” means the provision by the City of cash or credit in return for land, improvements, goods or services provided by Developer.

1.63 Reservations of Authority. “Reservation of Authority” shall have the meaning set forth in Section 11 below.

1.64 Specific Plan. “Specific Plan” means the Harmony Specific Plan approved by the City Council by Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2015.

1.65 Subdivision Map. “Subdivision Map” (or “B Map”) means the subsidiary subdivision maps for the Development of any Planning Area or portion thereof which shall be consistent with the conditions of the Master Tract Map and shall contain its own phasing plan for the installation of the infrastructure and other improvements within the subdivision. All Subdivision Maps shall meet the applicable requirements of the Subdivision Map Act.

1.66 Subdivision Map Act. “Subdivision Map Act” means Government Code § 66412 et seq. as implemented by Title 16, Chapter 16.68 of the Municipal Code.

1.67 Taxes. “Taxes” means general or special taxes, including but not limited to CFD special taxes, MCFD special taxes, special assessments, ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business taxes of general applicability citywide which do not burden the Property disproportionately to similar types of development in the City and which are not imposed as a condition of approval of a development project. Taxes do not include Development Impact Fees or Processing Fees.

1.68 Term. “Term” means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Section 3 below.

1.69 Zoning Code. “Zoning Code” means Title 16 of the Municipal Code as it existed on the Effective Date except (i) as amended by any zone change relating to the Property approved concurrently with the approval of this Agreement, and (ii) as the same may be further amended from time to time consistent with this Agreement.

2. EXHIBITS.

The following are the Exhibits to this Agreement:

Exhibit "A": Map and Legal Description of the Property

Exhibit "B": Existing Development Approvals

Exhibit "C": Estoppel Certificate

Exhibit "D": Development Impact Fees

Exhibit "E": Additional Agreements Concerning Development

Exhibit "F": Description of Public Works Facility and Police Substation

Exhibit "G": Financing Plan

Exhibit "H": Form of Assignment and Assumption Agreement

3. EFFECTIVE DATE AND TERM.

3.1 Effective Date. The Agreement shall become effective upon the date the Authorizing Ordinance takes effect.

3.2 Term. The term of this Development Agreement (the "Term") shall commence on the Effective Date and shall continue for a period of not less than twenty (20) years from the Effective Date.

3.3 Termination for Default. This Agreement may be terminated due to the occurrence of any Default in accordance with the procedures in Article 13.

3.4 Extension of the Term: The Term shall be subject to one or more extensions of any duration with the approval of the City Council. If a Claim or Litigation has been filed with respect to this Agreement or the Project that actually causes a delay of more than sixty (60) days in the commencement or completion of the Project, then the Term of this Agreement shall be extended by the period of time from such filing until the date that the Claim or Litigation has been settled or successfully resolved in the Parties' favor, and the time for any further judicial review has run.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Right to Develop. During the Term, the Developer shall have vested rights to Develop the Property (subject to Section 11 below) to the full extent permitted by the Development Plan and this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the Development of the Property (including the uses of the Property, the density or intensity of use, 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 Project). The number of residential units authorized to be constructed hereunder and the approximate acreage of commercial development, without regard to any density bonus or incentive or concession for child care pursuant to Government Code §§ 65915 through 65918 or other similar legislation or regulation, is 3632 units and approximately 22 acres of commercial development. In furtherance of the foregoing, the Developer retains the right to apportion the uses, intensities and densities, between itself and any subsequent Owners, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement. Nothing in this Agreement is intended to diminish any Owner's vested rights as may be established under other applicable laws.

4.2 Right To Future Approvals. Subject to the City's exercise of its police power authority as specified in Section 11 below, the Developer shall have vested rights: (i) to receive from the City all Future Development Approvals for the Property that are consistent with, and implement, the Existing Land Use Regulations and this Agreement; (ii) not to have such approvals be conditioned or delayed for reasons which are inconsistent with the Existing Land Use Regulations or this Agreement; and (iii) to Develop the Property in a manner consistent with such approvals in accordance with the Existing Land Use Regulations and this Agreement. All Future Development Approvals for the Property including, without limitation, Financing and Conveyancing Maps, Master Tract Maps and Subdivision Maps, shall upon approval by the City, be vested in the same manner as provided in this Agreement for the Existing Development Approvals, for the Term of this Agreement.

4.3 Existing Development Approvals. Only those items specifically set forth on Exhibit "B" hereto are deemed Existing Development Approvals for purposes of this Agreement. Any approvals not included within Exhibit "B" shall not apply to the Project with the exception of those reservations set forth in Section 11 below.

4.4 Specific Plan. Notwithstanding any other provision of this Agreement, the Developer shall have the right, but not the obligation, to Develop the Property for the uses, in the manner and at the locations specified in the Specific Plan.

4.5 Priority Of Specific Plan. The City has determined that the Specific Plan is consistent with the General Plan, as amended through GPA-011-03, and the Zoning Code, as amended through ZC-011-03. As such, the Specific Plan shall be the primary document governing the Development of the Property and, in the event of a conflict, shall prevail over any other of the Existing Land Use Regulations except for this Agreement, which prevails over the Specific Plan.

4.6 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Section 11. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of all necessary Future Development Approvals or permits for the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project.

5. FINANCING AND THE CITY'S OBLIGATIONS.

5.1 Formation of CFD(s) and MCFD(s). Subject to the provisions of this Article 5, some or all of the Eligible Facilities may be funded through the City's formation of one or more CFDs and the levy of a special tax of the CFD(s) (the "Special Tax") and issuance of bonds secured by the Special Tax (the "Bonds") in accordance with the Financing Plan. Each CFD shall include a separate special tax for police and fire services (the "Services Special Tax"), as further described in the Financing Plan. Additionally, one or more MCFDs shall be formed and special taxes levied solely for the purpose of maintenance of public improvements, which are to be maintained or have a potential to be maintained by the City, as described in Section 5.6.

5.2 Procedures for Formation. The City and the Developer shall cooperate in good faith to form one or more (i) CFDs and/or designate improvement areas therein (the "Improvement Areas") and (ii) CFDs and designate benefit zones therein ("Benefit Zones") (collectively referred to herein as the "Financing Districts"), which are consistent with the Financing Plan and which in the aggregate will encompass and encumber the Property. Final terms and conditions regarding the formation of the Financing Districts, their boundaries, Improvement Area and Benefit Zone boundaries, the rate and method of apportionment of the Special Taxes and Services Special Tax to be levied in any CFD, any acquisition or construction agreements related thereto, and the terms of one or more series of Bonds to be issued in conjunction therewith shall be determined jointly by City and the Developer in accordance with the Financing Plan and the City's Goals and Policies for Financing. In conjunction with the formation of any Financing District, the Developer and the City shall cooperate in good faith to negotiate and finalize any acquisition and funding agreement prior to the formation of the first Financing District addressing the terms of construction, acquisition and financing of any of the Eligible Facilities to be funded by the Financing District (such agreement to be referred to herein as the "CFD Agreement").

The City and the Developer shall also cooperate in good faith to form one or more MCFDs as described in Section 5.6.1 below.

5.3 Timing of Formation. After Developer has initiated formation of each CFD, City shall form the CFD consistent with the City's Goals and Policies and applicable law. City shall complete formation proceedings within 180 days after Developer makes the necessary complete submission.

5.4 Failure to Form CFDs. If any of the contemplated CFDs are not formed after Developer's written application, or are formed but not in accordance with the terms of this Agreement, Developer shall have the right, but not the obligation, to terminate this Agreement upon providing 30 days written notice to the City prior to the actual termination date.

5.5 Reimbursement Agreements for Fire Station, Fire Engines & Related Equipment. Developer is required to provide fire protection infrastructure which is identified within "Chapter 4 – Fire Suppression Facilities, Vehicles, and Equipment" category in the City's *2006-07 Development Impact Fee (DIF) Calculation and Nexus Report Update* Study, which allocates one hundred percent (100%) of the costs for certain items to all new development

throughout the City as may be updated in the future (see current DIFs in Exhibit D). The impact of these requirements will result in the Developer pre-funding costs in excess of Developer's obligation for a portion of the items identified as:

“FD-02 Construct Station #4 (Greenspot Road)”

“FD-03 Acquire Additional Response Vehicles for Station #4”

“FD-04 Acquire Additional Fire Fighter Equipment”

In recognition of Developer's requirement to pre-fund these costs, the City shall enter into an agreement to Reimburse the Developer for the amount of pre-funded costs incurred by the Developer which exceed the Project's actual Fire Suppression Facilities, Vehicles, and Equipment DIF costs. If necessary in order to fully reimburse Developer for such excess costs as described above, the City shall adopt ordinances, including but not limited to those authorized by Government Code § 66485 et seq., as may be required in order to impose a reimbursement obligation on other properties which may be served or benefited by the pre-funded Fire Suppression Facilities, Vehicles, and Equipment, to the extent of Developer's funding of such excess costs as determined in the reasonable judgment of the City. The terms of the Reimbursement Agreement with the Developer shall otherwise be consistent with the City's forms generally used with all other development projects. Such Reimbursement shall be paid to the Developer as future DIFs are collected by the City from other benefited developments. Repayment shall extend beyond the Term of this Agreement if necessary to Reimburse Developer as provided herein.

To the extent that CFD proceeds are used to fund the excess portion pre-funded by Developer for the cost of the design, construction, installation, or acquisition of any of the identified Fire Suppression Facilities, Vehicles, and Equipment, the DIFs collected from benefited developments will be paid to the CFD.

## 5.6 Public Improvements Maintenance.

5.6.1 MCFD. The public neighborhood parks and the community park and sports complex shall be owned by the City, available for use by all residents of the City, but maintained by a HOA pursuant to the terms of a landscape maintenance easement to be granted by the City to the HOA. In addition, all landscaping, hardscaping and streetscaping within parkways, roundabouts and medians within the public road right-of-way and other City easements will also be maintained by a HOA pursuant to the terms of a landscape maintenance easement to be granted by the City to the HOA. Trails, fuel modification zones, bicycle/walking paths, storm drains, drainage basins and access roads to such facilities, where deemed by the City to be appropriate for HOA maintenance, will also be maintained by a HOA. Prior to recordation of the first Subdivision Map, a MCFD that includes the entire area of the Subdivision Map shall be formed. Prior to the recordation of each subsequent Subdivision Map, the land subject to the Subdivision Map shall be included in or annexed into the MCFD.

The MCFD will be authorized to levy an annual special tax “A” for the purpose of funding the City's actual costs of maintenance of street lighting, drainage basins, storm drain facilities and

appurtenant structures owned, operated or maintained by the City as well as bicycle/walking paths, emergency access and services roads that are not a part of the standard roadway system maintained by the City. The MCFD will also be authorized to levy an annual special tax "B" for the purpose of paying the City's actual costs for the maintenance of the improvements described in the first paragraph of this Section 5.6.1 that are intended to be maintained by the HOA. Special tax "B" shall only be authorized to be levied in the event the HOA defaults on its obligation to maintain such improvements. The HOA shall be deemed to be in default of its maintenance obligation in each of the following circumstances:

- (i) it files for bankruptcy;
- (ii) it is dissolved;
- (iii) it ceases to levy annual assessments for the maintenance of the improvements described above; or
- (iv) it fails to maintain such improvements at the same level as the City maintains similar improvements throughout the City and within ninety (90) days after written notice from the City, or such longer period permitted by the City Manager, fails to remedy such maintenance deficiency to the reasonable satisfaction of the City Council.

In addition, the HOA's conditions, covenants and restrictions ("CC&Rs") shall permit the City to enforce the provisions of the CC&Rs regarding the levy of assessments for, and maintenance of, the improvements described above.

5.7 Public Benefit Payments. The Project shall be responsible for a total of \$18,750,000 in Public Benefit Payments. An initial \$3,000,000 in incremental Public Benefit Payments shall be made according to the following schedule:

- (i) \$500,000 upon submittal to the City of the first grading plans for any portion of the Property;
- (ii) \$500,000 upon issuance of the first Grading Permit;
- (iii) \$1,000,000 twelve months following the date of issuance of the first Grading Permit; and
- (iv) \$1,000,000 twenty-four months following the date of issuance of the first Grading Permit.

An additional Public Benefit Payment of \$6,800 per dwelling unit shall be required at the time of issuance of a Building Permit for each of the first 2,316 dwelling units within the Property. The City shall expend the Public Benefit Payments on any public improvements at the City's discretion constructed by or on behalf of the City on any portion of Greenspot Road east of Santa Paula Street and in any other areas located east of the Project's western boundary and south of the San Bernardino National Forest. As provided in the Financing Plan, at least ten percent

(10%) of the net proceeds of Bonds of each CFD shall be earmarked to fund Public Benefit Payments that have not previously been funded until the total of \$18,750,000 has been fully funded. In addition, all or any portion of the Public Benefit Payments paid previously may, at Developer's election, be reimbursed through one or more CFDs. The 10% net bond proceeds earmarked for Public Benefit Payments shall not be used as reimbursement to the Developer.

6. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.

6.1 Timing of Development. The Parties acknowledge that the substantial public benefits to be provided by the Developer to the City pursuant to this Agreement are in consideration for, and in reliance upon, assurances that the City will permit Development of the Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict, limit or otherwise dictate the Development of the Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that the Developer cannot at this time predict the timing or rate at which the Property will be Developed. The timing and rate of Development depend on numerous factors such as market demand, interest rates, absorption, completion schedules and other factors, which are not within the control of the Developer or the City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that the Developer shall have the vested right to Develop the Property in such order and at such rate and at such time as the Developer deems appropriate. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Property to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, the Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations relating to the phasing of Development of the Property; or (ii) restricting the City from exercising the powers described in Section 11 of this Agreement to regulate Development of the Property. Nothing in this Section 6.1 is intended to excuse or release the Developer from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not one or more Owners proceeds with any portion of the Project.

6.2 Public Improvements. The City shall retain the right, in accordance with applicable law, to condition any Future Development Approvals to require Developer to Dedicate necessary land or other equitable interests, pay the Development Impact Fees specified in Section 7, and/or to construct the required public infrastructure ("Exactions"), at such time as City shall determine in accordance with the process described in Section 6.3 below and subject to the following conditions:

A. Each Exaction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

B. The timing of each Exaction should be reasonably related to the phasing of the Development of the Property and required public improvements shall be phased to be commensurate with the logical progression of Development of the Property.

When the Developer is required by this Agreement and/or the Development Plan to construct any public improvements that will be dedicated to the City or any other Local Agency, upon completion, and if required by applicable laws to do so, the Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other Local Agency should it have undertaken such construction work. The Developer shall pay prevailing wages with respect to any public improvements it constructs if and to the extent required by law.

6.3 Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all public improvements shall generally be in accordance with the Development Approvals and applicable provisions of this Agreement. Although the overall timing of Project Development remains subject to the Developer's discretion based on market conditions and other factors in accordance with Section 6.1, there is a logical sequence to the Development and certain improvements that are required to serve the Development approved for the specific subdivision may need to be completed before phases of the Project can be considered complete and ready for occupancy. That phasing of required public improvements will be developed over time in accordance with the following process:

6.3.1 Financing and Conveyance Map. Because of their nature, no public improvements, Exactions or Development Impact Fees shall be required as a condition of approval of a tentative or approval and recordation of a final Financing and Conveyance Map.

6.3.2 Master Tract Map. For each Development phase, as determined by Developer, Developer shall submit one or more Master Tract Maps. Each approved Master Tract Map shall establish phasing for public improvements and conditions of approval that are consistent with the terms of this Agreement. Phasing shall be required only to the extent that the need for Development of public infrastructure dictates the logical progression of subdivision Development. Concurrently with processing of the Master Tract Map, Developer may (but is not required to) secure approvals for tentative Subdivision Maps for the tracts within the Master Tract Map in accordance with this Agreement.

6.3.3 Subdivision Maps. Each Subdivision Map shall show all infrastructure necessary for the Development of that subdivision. Each Subdivision Map will have a written phasing plan approved by the Director and the City Engineer prior to commencement of Development of the subdivision specifying phases in which the Lots within that subdivision will be Developed and the relative order in which all public infrastructure required to serve the subdivision will be constructed. All conditions which require the provision of Proposed Project Facilities and subdivision improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the

provisions of a subdivision improvement agreement, prior to the approval and recordation of the applicable phase of the final Subdivision Map.

6.3.4 Proposed Project Facilities. The phasing of construction of Proposed Project Facilities will be determined in accordance with the procedures established in Sections 6.3, 6.3.1, 6.3.2 and 6.3.3 above.

6.4 Additional Development Conditions. The Parties further agree to and accept the conditions of Development of the Property set forth in Exhibit "E."

6.5 Sewer Service. The Property is within the water and sewer service area of the East Valley Water District. The possible sewer treatment options for the Project are described in the final Environmental Impact Report. East Valley Water District has completed a feasibility study related to its proposal to provide sewer treatment and water reclamation for the entire District boundaries (inclusive of the Property). That study describes alternatives that may require the approval of the San Bernardino Local Agency Formation Commission ("LAFCO") and alternatives that do not require LAFCO approval. Until such alternatives are implemented, sewer treatment service will be provided by the City of San Bernardino Municipal Water Department, and the letter received from East Valley Water District dated April 14, 2015 will justify EVWD's ability to provide water and sewer capacity and conveyance for the project (A copy of the April 14, 2015 letter is on file with the City's Planning Division).

## 7. FEES, TAXES AND ASSESSMENTS.

7.1 Processing Fees. During the Term of this Agreement, the City may require the Developer to pay all Processing Fees applicable to the Project at the rates in effect on the applicable Application date or as described in this Agreement unless a specific amount is stated herein.

### 7.2 Development Impact Fees.

7.2.1 Limit on Exactions, Mitigation Measures, Conditions and Development Fees. The City shall charge and impose only those Exactions, mitigation measures and conditions, including, without limitation, dedications as are set forth in the Existing Land Use Regulations, those DIFs as are expressly set forth in Exhibit "D" attached hereto, the Public Benefits Payments and no others. Per Section 7.3 below, Park Fees shall not be imposed during the life of this Agreement.

7.2.2 Development Impact Fees to be Reviewed and Adjusted. The City may review and adjust the amounts of DIFs each year following the Effective Date consistent with one or more construction cost indices deemed applicable to the City. Unless added to the DIF program prior to the Effective Date, certain of the Proposed Project Facilities are to be added to the DIF program in the first review and adjustment of the DIF program to occur following the Effective Date consisting of (i) "A" Street (Greenspot Road extension from the western Specific Plan boundary to Newport Road); (ii) "B" Street (extension of Newport Road from "A" Street to eastern Specific Plan boundary); and (iii) "C" Street (loop road connecting "A" Street and "B" Street). Nothing shall preclude the City from adding additional

facilities to the DIF program at that or any other time as well, provided that such additional facilities do not result in an increase in the Project's total DIF obligation, determined as of the Effective Date but subject to adjustment as provided herein.

7.2.3 Payment of Development Impact Fees. Subject to available credits, the Development Impact Fees set forth on Exhibit "D" attached hereto, as periodically adjusted by the City pursuant to Section 7.2.2 of this Agreement, shall be paid at the issuance of the Certificate of Occupancy for each building in the amount in effect at the time of issuance of the Building Permit for such building. The Developer may also elect to pay Development Impact Fees earlier under any of the following circumstances:

- (i) the payment is made with respect to a building or lot for which rough grading has been certified as complete, building plans have been approved and all conditions of approval for the issuance of a Building Permit have been satisfied;
- (ii) the DIFs are financed through a CFD; or
- (iii) the early payment is approved by the City Manager.

Unless otherwise specified herein, all other Development Impact Fees, shall be paid when required by the Municipal Code.

### 7.3 Park Fees.

7.3.1 Construction of Facilities. The Developer will be dedicating land and constructing, installing and improving the park and recreation facilities listed below, which are deemed to be park, recreation and/or open space for the purpose of complying with the Municipal Code's requirements relating to Development Impact Fees to finance parks and open space. All public parks shall be maintained by a HOA. Except as set forth below in Section 7.3.2 and provided that all required parks and recreation facilities are constructed and installed in accordance with the Specific Plan and this Agreement, the Project shall not be subject to the imposition by the City of any Park Fees or other Development Impact Fees relating to parks, recreation or open space. The City acknowledges that the value of the land and improvements for the park, recreation and open space land and facilities exceeds the aggregate of all such Development Impact Fees that may be charged by the City pursuant to the Municipal Code in connection with the entire Project. The Developer shall construct and install within the Project's boundaries the following public and private park and recreation facilities:

14 publicly accessible parks (each ranging in size from approximately less than 1 acre to over 83 acres) and trails as set forth in the Specific Plan, equipped by Developer with typical neighborhood park facilities, which may include picnic facilities, shade structures, playgrounds, turf areas, restrooms, and related facilities as further defined in the Specific Plan and in accordance with the plans developed in Section 8.1;

One private recreation center in PA 18, totaling approximately 4 acres, which will be gated and accessible only to the residents of the Project. This center may, but is

not required to, include clubhouse facilities, restrooms, and other amenities as further defined in the Specific Plan; and acres of additional natural open space as described in the Specific Plan.

7.3.2 Existing Park Deficit Payments. In order to assist the City in filling an existing Park Fee deficit relating to the City's existing Community Park complex and Aurantia Park, the Project shall contribute a total of \$160,000 to the City through a payment of \$69.08 per dwelling unit to be made upon the issuance of a Building Permit for each of the first 2,316 dwelling units constructed within the Property.

7.4 Other DIF Credits. As a result of the requirements of the Development Approvals to construct improvements included in the Development Impact Fee program, all development within the Property shall be entitled to a credit against the DIFs described below, in the amount that corresponds to the number of constructed dwelling units specified below:

DIF	Applicable Credit Amount or Percentage of Credit Per Dwelling Units ("DU")
Regional Circulation First 909 DUs Next 949 DUs Next 1,738 DUs	\$4,519/DU \$2,259/DU \$1,130/DU
Local Circulation First 909 DUs Next 949 DUs Next 1,738 DUs	\$1,403/DU \$701/DU \$351/DU
Park All DUs	100%/DU

The fixed amount or percentage of credit in each DIF category described above shall apply for the term of this Agreement and to DIF categories of a similar type if the City renames, combines or splits DIF categories after the Effective Date. The maximum amount of DIF credits for Regional Circulation and Local Circulation shall not exceed \$8,207,005 and \$2,547,235 respectively for the entire term and build-out of the Project. The financing of any Eligible Facilities through a CFD that are included in a City DIF program and required by the Project conditions of approval shall not preclude the Developer's receipt of corresponding DIF credits.

## 8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS.

### 8.1 Park Improvements.

8.1.1 PA 19B Neighborhood Park. Prior to the construction of the neighborhood park in PA 19B, Developer shall meet with the Director to review the provisions set forth in the Specific Plan outlining the facilities to be provided in the park and discuss the Developer's plans for near term construction of the park. Developer shall then prepare a detailed site plan for the neighborhood park consistent with the Specific Plan, which plan shall be

approved by the City Council. The Developer shall complete the construction of the neighborhood park no later than the issuance of a Building Permit for the 450<sup>th</sup> dwelling unit within the Project. Upon completion of the park, the City shall, within 20 working days, develop a final punch list of items to be corrected prior to acceptance by the City. Upon correction of the final punch list items to the reasonable satisfaction of the Director, the City shall accept the park as complete within 60 days of the date of the final inspection. Should any dispute arise between the Developer and the Director regarding the contents of the final punch list or the completion thereof, the dispute shall be resolved by the City Manager after considering the position of each party.

8.1.2 PA 44 Community Park. Prior to construction of the approximately 12-acre community park to be located in PA 44, Developer shall meet with the Director, the City's Landscape Architect and the City's Public Works Director/City Engineer to review the provisions set forth in the Specific Plan outlining the facilities to be provided at the community park and discuss the Developer's plans for the construction of the park. Developer shall then prepare a detailed site plan for the community park consistent with the Specific Plan, which plan shall be approved by the City Council. Developer shall complete the construction of the community park no later than the issuance of a Certificate of Occupancy for the 1,800<sup>th</sup> dwelling unit within the Project. Upon the completion of the community park, the City shall, within 21 working days, develop a final punch list of items to be corrected prior to acceptance by the City. Upon correction of the final punch list items to the reasonable satisfaction of the Director, the City shall accept the community park as complete within sixty (60) days of the date of the final inspection. Should any dispute arise between the Developer and the Director regarding the contents of the final punch list or the completion thereof, the dispute shall be resolved by the City Manager after considering the position of each party.

8.2 Drainage Facilities. Planning Areas 60, 61, 62, 64, 65 and 66 are required areas of detention, recharge and conveyance of Project-created and natural storm flows through the Property. These Planning Areas will consist of water quality basins, habitat restoration and flood storage and conveyance facilities and be ultimately transferred to the Homeowner's Association or to the City for maintenance, as determined by the City. Subject to the approval of the City or the Homeowner's Association, as appropriate, the Developer may utilize these facilities for erosion control purposes until such time as Development has fully or partially occurred, provided the Developer is responsible for the cleanup, repairs and maintenance of these facilities that are related to the use of these facilities for erosion control purposes.

8.3 Fire Station Site and Facilities. The Specific Plan has identified a site for a City fire station as PA PF-H adjacent to the PA 44 community park.

8.3.1 Interim Fire Station Facility. Prior to the issuance of a Building Permit for the 1,000<sup>th</sup> dwelling unit within the Project, the Developer shall provide an interim, fully functional, fire station facility inclusive of necessary furniture, fixtures, and equipment, at a location which may be different from the final Specific Plan location (subject to the approval of the City), consisting of approximately 2,500 square feet of living/office space, including the space for the police and public works, plus approximately 800 square feet of apparatus garage space (20'X40') with minimum 12'X12' door openings, and approximately 5,000 square feet of

improved surface for public works material and equipment storage that shall include solid fencing, lighting and security cameras. The facility may be a modular or portable structure but shall comply with the Essential Services Buildings Seismic Safety Act (California Health and Safety Code Sections 12000-16022) and the Americans With Disabilities Act of 1990, Title 42 United States Code, Section 12101 *et seq.* The City's use of the facilities shall terminate at time of occupancy of the permanent City fire station, police and public works facilities. Developer may elect instead to construct the permanent fire station facility in PA PF-H adjacent to the proposed community park prior to the issuance of a Building Permit for the 1,000<sup>th</sup> dwelling unit, provided it meets the requirements of Section 8.3.4 below.

8.3.2 ICS Type I Fire Engines. Subject to reimbursement by the Developer as provided below, the City shall acquire the first of two ICS Type I Fire Engines, inclusive of all necessary equipment, for delivery in time for occupancy of the interim fire station facility. City shall present a statement to Developer with the complete, itemized cost of the first Fire Engine and necessary equipment paid by the City, and Developer shall pay City the full amount in the statement within thirty (30) days following the City's issuance of a Certificate of Occupancy for the interim fire station.

8.3.3 Second ICS Type I Fire Engine. The City will acquire the second ICS Type I Fire Engine, inclusive of necessary equipment, to serve the Project at some future time determined by factors including, but not necessarily limited to, having adequate space to securely park the vehicle and having sufficient number of personnel, including reserve personnel, who are properly trained, licensed and qualified to operate the vehicle. Although it is not possible to identify a specific date this will occur, it is anticipated to occur near the time a Certificate of Occupancy is issued for the permanent fire station facility.

For purposes of this Agreement, the Project's fair share of such cost shall be equal to fifty percent (50%) of the full cost of the second ICS Type I Fire Engine and equipment.

Upon issuance of the Certificate of Occupancy for the permanent fire station, City shall present a statement to Developer with the amount due for the Project's share of the cost of the second ICS Type I Fire Engine and equipment. Within thirty (30) days following issuance of such statement, Developer shall notify the City that to the extent Developer is owed money pursuant to a Reimbursement Agreement referenced in Section 5.5 above, it will waive payment of some or all of such amount owed in lieu of an equal amount of cash payment for the second ICS Type I Fire Engine.

8.3.4 Wildland Fire Protection Agreement Costs. Prior to the issuance of a grading permit, the Developer shall enter into a Reimbursement Agreement with the City for reimbursement of the annual costs of a Wildland Fire Protection Agreement that the City would enter into with CalFire to provide wildland fire protection to the undeveloped portion of the Property. The number of acres subject to such agreement and Developer's reimbursement obligation shall decrease commensurate with the number of acres Developed within the Project. Ultimately, Developer's obligation shall terminate upon the completion of grading of the final area proposed for Development within the Project. Following such date, the City shall be fully

responsible for the costs of the Wildland Fire Protection Agreement for the natural open space within the Property.

8.3.5 Permanent Fire Station Facility (Planning Area PF-H). A permanent Fire Station Facility, inclusive of necessary furniture, fixtures and equipment, generally equivalent to the City's existing Fire Station Number 3 (with a minimum of 2 acres of flat land inclusive of the area needed for the police substation and public works office and storage yard), shall be constructed by the Developer as approved by the City and made available for City occupancy before the issuance of the 2,000<sup>th</sup> residential Certificate of Occupancy, or prior to end of the 3<sup>rd</sup> year following the issuance of the Building Permit for the 1,000<sup>th</sup> dwelling unit within the Project (as stated in Section 8.3.1 above), whichever occurs first. In the event an interim Fire Station is constructed in accordance with Section 8.3.1, the necessary furniture, fixtures, and equipment purchased for the interim facility may be transferred to the permanent facilities once the City issues a Certificate of Occupancy for the permanent Fire Station Facility. Title to the site shall be dedicated to the City upon issuance of a Certificate of Occupancy by the City.

8.3.6 Permanent Police and Public Works Substation Facilities. The permanent fire station facility shall be designed to accommodate separate parking and separate office space for a small police substation and public works satellite office as further described in Exhibit "F" hereto and additional public works storage yard area that shall be approximately 5,000 square feet in size, and shall include solid fencing, improved surface, lighting, and security cameras. Any required tenant improvements and permit fees required to construct such facilities shall be incurred by the Developer. The City's use of the temporary facilities, fixtures shall terminate at time of occupancy of the permanent City fire station public works facility.

8.3.7 Development Impact Fee Credits. The City shall grant a credit to Developer against the Fire Facilities and Police Facilities DIFs as applicable equal only to the Actual Costs of the permanent Fire Station Facility and police substation and the cost of the first ICS Type I Fire Engine and the furniture, fixtures and equipment funded pursuant to Sections 8.3.2, 8.3.5, and 8.3.6, above. Because it is expected that such Actual Costs will exceed the Project's total obligation for Fire Facilities and Police Facilities DIFs, in lieu of the Developer's payment of such DIFs prior to the Developer's pre-funding of such Actual Costs, Developer may post a payment or other surety bond in a form acceptable to the City Attorney with the City as security for the payment, and in the amount of all Fire Facilities and Police Facilities DIFs that would otherwise be payable prior to Developer's pre-funding of the Actual Costs. The bond shall be released when Developer has paid to the City all Actual Costs of the permanent Fire Station Facility and police substation and the cost of the first ICS Type I Fire Engine required by this Agreement.

8.4 Natural Open Space (PA 41, 67, 68, 69, 70 and 71). The approximate 582 acres of "natural open space", which may be adjusted as part of the final subdivision map process (inclusive of the proposed wildlife corridor), contiguous to the northerly and easterly Harmony Specific Plan boundary shall be dedicated open space in perpetuity (i.e., open space conservation easement) acceptable to the City.

Prior to the issuance of the first Building Permit for residential construction within Phase 1, an appropriate legal mechanism to ensure the natural open space area remains protected as natural open space shall be agreed upon by the Developer and the City. Such legal mechanism may be in the form of a conservation easement, deed restriction or transfer to an appropriate public agency, a non-profit land conservancy, or a combination thereof.

Non-motorized public access (excluding small maintenance vehicles) to existing trails shall be included in all future property deeds and/or easement documents with respect to the natural open space.

The approved legal mechanism may be terminable by the City upon final acceptance of all the property by a mutually agreeable entity charged with preserving open space that will hold the open space property in perpetuity.

The boundaries of the natural open space and wildlife corridor shall be established in the Financing and Conveyancing Map for the entire Property submitted to the City for review and approval.

## 9. PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS.

9.1 Processing. In reviewing any discretionary Future Development Approvals, the City may impose only those conditions, exactions, and restrictions that are allowed by the Development Plan and this Agreement, except otherwise specified in Section 11. Upon satisfactory completion by the Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate Processing Fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the Project in accordance with this Agreement and the Existing Land Use Regulations. In this regard, the Developer, in a timely manner, will provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for the Project in accordance with the Development Plan and those items set forth in Exhibit "E.", subject to Section 11.

9.2 Additional Inspectors and Plan Checkers. In the event that the Developer requests it, the City shall permit overtime, including both additional days and hours, for inspections and plan checking at the Developer's expense. The Developer shall pay overtime based on the City's fully-burdened hourly rate established for the appropriate staff position. In the event that the City is unable to provide inspectors or plan checkers capable of meeting the demand for inspections or plan checks required for the Project in a timely fashion, the City shall, if requested to do so by the Developer and at the Developer's expense, employ additional private entities or persons to perform such services.

9.3 Development Approvals. The City shall extend through at least the Term hereof (pursuant to Government Code §§ 66452.6 and 65863.9) all Master Tract Maps, all tentative and vesting tentative Subdivision Maps and all other Development Approvals applied for by the Developer during the Term of this Agreement and approved by the City in the future in accordance with the Subdivision Map Act.

9.4 Multiple Final Maps. The Developer may file as many final Subdivision Maps and final Master Tract Maps as it deems appropriate in its sole and absolute discretion.

9.5 Financing and Conveyance Maps: The Developer may have a Financing and Conveyancing Map approved for the purpose of conveying portions of the Property to others and/or for the purpose of creating legal lots that may be used as security for loans to develop the Property. Other than this Development Agreement, any such Financing and Conveyancing Map shall not authorize any Development and shall not be subject to any additional conditions, Exactions or restrictions, other than monumentation and conditions that do not require the payment of money, other than Processing Fees, or the installation or construction of improvements, other than those contained in the Development Approvals.

9.6 Water Availability. When applicable, any Subdivision Maps prepared for the Property, or any portion of the Property, shall comply with the provisions of Government Code § 66473.7.

9.7 Other Governmental Permits. The City shall cooperate with the Developer in Developer's efforts to obtain other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the Development of, or provision of services to, the Project.

9.8 Public Agency Coordination. The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Project with other public agencies, if any, having jurisdiction over the Property or the Project.

## 10. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

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

10.2 Procedure. Except as set forth in Section 10.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

10.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of San Bernardino County. In the event that such amendment affects only a portion of the Property, such amendment shall only require the agreement of the City, the Developer of that portion of the Property and the Owner of that portion of the Property.

#### 10.4 Minor Modifications.

10.4.1 Flexibility Necessary. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. Implementation of the Project may require minor modifications of the details of the Development Plan and affect the performance of the Parties under this Agreement. The anticipated refinements to the Project may demonstrate that clarifications to this Agreement and the Development Plan are appropriate with respect to the details of performance of the City and the Developer. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Development Plan pursuant to this Section 10.4 shall not require modification of this Agreement and may be approved by the appropriate City Council Subcommittee as determined by the City Manager .

10.4.2 Non-Substantive Changes. A modification will be deemed non-substantive and/or procedural if it does not:

10.4.2.1 Alter the permitted uses of the Property as a whole;

10.4.2.2 Increase the density or intensity of use of the Property as a whole; or

10.4.2.3 Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole and in a manner that will result in significant public health and safety impacts.

10.4.3 Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Agreement consistent with state law and will hold public hearings thereon if so required by state law and the Parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

10.5 Effect of Amendment to Development Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

#### 11. RESERVATIONS OF AUTHORITY.

11.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Project (“Reservation of Authority”):

11.1.1 Future Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, (ii) would be applicable under the Development Agreement Statute (§ 65866); or (iii) are in conflict with the Existing Land Use Regulations but the application of which to the Project has been consented to in writing by Developer.

11.1.2 State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement the Parties shall meet and confer in order to mutually determine and implement modifications to, or the suspension of, those provisions of the Agreement as may be necessary to comply with such state or federal laws and regulations in the manner that has the least negative impact on the Development Plan and Developer's rights and benefits under this Agreement.

11.1.3 Public Health and Safety/Uniform Codes.

11.1.3.1 Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting future Land Use Regulations or amending Existing Land Use Regulations which are uniform codes and are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

11.1.3.2 Adoption Regarding Public Health and Safety. This Development Agreement shall not prevent the City from adopting future Land Use Regulations respecting public health and safety to be applicable throughout the City, including the Property, which directly result from findings by the City that failure to adopt such future Land Use Regulations would result in an imminent significant and unanticipated condition injurious or detrimental to the public health and safety and that the application of such future Land Use Regulations to the Property are the only reasonable means to correct or avoid such condition.

11.1.4 Amendments to Codes for Local Conditions. Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by the City to make it substantially more restrictive than the provisions of the Uniform Construction Codes with changes for local climactic, geological or topographical conditions that previously applied to the Project, notwithstanding the fact that the City has the authority to adopt such more restrictive provision pursuant to the California Building Standards Law, including, but not limited to, Health and Safety Code § 18941.5, unless such modifications are applicable citywide.

11.1.5 Public Works Policy and Standards. The public improvements constructed as a part of the Project shall be governed by the "City of Highland Public Works Policies, Standards and Procedures" as initially approved and periodically amended by the City Council and periodically amended by the City Engineer and approved by the City Council Public Works Subcommittee as of the Effective Date. This document establishes policies, standards and procedures regarding public improvements that are applicable city-wide to all new development projects and City capital projects. Revisions to the "City of Highland Public Works Policies, Standards and Procedures" approved by the City Council after the Effective Date shall be applicable to the Project, provided (i) the City and Developer have met and conferred with respect to all such revisions prior to their consideration by the City Council; (ii) such revisions shall apply to all new development projects within the City and all capital projects to be

constructed by the City, if applicable, and (iii) such revisions will not reduce the intensity or density of development within the Project.

11.2 Fees, Taxes and Assessments. Notwithstanding any other provision herein to the contrary, the City retains the right (i) to impose or modify Processing Fees and Development Impact Fees as provided in Section 7, (ii) to impose or modify business licensing or other fees pertaining to the operation of businesses, (iii) to impose or modify Taxes that apply Citywide such as utility taxes, sales taxes and transient occupancy taxes and (iv) to impose or modify user fees and charges for City services such as electrical utility charges, and storm water quality fees that are required in order for the City to fund facilities, activities or services necessary to comply with state, federal or regional laws and regulations, and that do not duplicate facilities, activities or services funded with HOA assessments or MCFD special taxes.

## 12. PERIODIC REVIEW.

12.1 City Process. The City shall periodically review this Agreement in accordance with Section G of the City Development Agreement Ordinance that is incorporated into the Existing Land Use Regulations.

12.2 Estoppel Certificate. If at the conclusion of the periodic review, the City finds that the Developer is in substantial compliance with this Agreement, the City shall upon the Developer's request, issue an Estoppel Certificate to the Developer in a form satisfactory to the City Attorney.

12.3 Failure to Conduct Periodic Review. The failure of the City to conduct its periodic review shall not be a Developer Default unless Developer fails to cooperate in providing necessary information.

## 13. DEFAULT, REMEDIES AND TERMINATION.

13.1 Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 13.2 below. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Section 13.

13.2 No Recovery for Monetary Damages. The nature of a development agreement under the Development Agreement Statute is a very unusual contract involving promoting a very large development project facing many complex issues including geologic, environmental, finance, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to the Developer. However, the original persons representing the parties and approving the transaction are only likely to be involved with the Project for a limited time in comparison to the over-all life of the Project.

It is highly likely that misunderstandings will develop over time. Moreover, municipal budgets are extremely constrained, and a threat of recovery of damages against a municipal entity may pressure a municipality with limited resources to settle in a manner adverse to its interests and those of its citizens. Finally, the municipal entity represents the public welfare of the entire community, a community who cannot directly represent themselves. The City Council has come to believe that entering into a development agreement with the Developer vesting the extraordinary rights with respect to the Project provided herein is in the best interests of the community through the Developer's active engagement with the community and open communications over several years. It is critical to the success of this Project that as inevitable obstacles are met, and the specific persons implementing the Project change over the Term, close working relationships be maintained. Accordingly, in this Agreement, the rights of enforcement are limited as follows (i) the remedy of monetary damages is not available to either Party except as provided in subsections 13.3 and 13.3.2 below, and (ii) there is no shortcut to a mediation or arbitration procedure where a nonelected representative can arbitrarily determine land use development issues.

For purposes of enforcement, stated positively, the Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that the City has exceeded its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The Parties shall have the right to recover their attorney fees and costs pursuant to Section 19.9 in such action. Moreover, the Developer shall have the right to a public hearing before the City Council before any default can be established under this Agreement, as provided in Section 13.6.

### 13.3 Recovery of Monies Other Than Damages.

#### 13.3.1 Restitution of Improper Exactions and Withheld Reimbursement.

In the event any Exactions, whether monetary or through the provision of land, good or services, are imposed on the Project other than those authorized pursuant to this Agreement, or if any Reimbursement is improperly denied, withheld or reduced by the City, the Developer shall be entitled to recover from City restitution of all such improperly assessed Exactions or improperly denied, withheld or reduced Reimbursement, either in kind or the value in lieu of the Exaction or Reimbursement, together with interest thereon at the rate of the maximum rate provided by law per year from the date such exactions were provided to City to the date of restitution.

13.3.2 Monetary Default. In the event the Developer fails to perform any monetary obligation under this Agreement, City may sue for the payment of such sums to the extent due and payable. The Developer shall pay interest thereon at the lesser of: (i) five percent (5%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the City.

13.4 Compliance with the Claims Act. Compliance with this Article 13 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 *et seq.*, pursuant to Government Code § 930.2 in any action brought by the Developer.

13.5 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party (“Defaulting Party”) to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary Default cannot be cured within such thirty (30) day period, and if and, as long as the Defaulting Party does each of the following:

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
2. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed cause of action to cure the default;
3. Promptly commences to cure the default within the thirty (30) day period;
4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure;
5. Diligently prosecutes such cure to timely completion then

The Defaulting Party shall not be deemed in breach of this Agreement once the breach has been cured.

Notwithstanding the foregoing, the Defaulting Party shall be deemed in default under this Agreement if the breach or failure involves the payment of money but the Defaulting Party has failed to completely cure the monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

### 13.6 Dispute Resolution.

13.6.1 Meet and Confer. Prior to any Party issuing a Default Notice hereunder, the Non-Defaulting Party shall inform the Defaulting Party either orally or in writing of the Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) days of the request therefore. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and proceed with the formal Default Notice.

13.6.2 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party

with a written notice of intent to terminate this Agreement and other agreements (“Termination Notice”). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate the Agreement and such other agreements as the Non-Defaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party’s election to terminate any agreements will only be waived or resolved (i) if the Defaulting Party fully and completely cures all defaults prior to the date of termination, (ii) pursuant to Section 13.6.3 below or (iii) if the Non-Defaulting Party elects to revoke the Termination Notice.

13.6.3 Hearing Opportunity Prior to Termination. Prior to any termination by the City, a termination hearing shall be conducted as provided herein (“Termination Hearing”). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within forty-five (45) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, the Defaulting Party shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

- A. Decide to terminate this Agreement.
- B Determine that the alleged Defaulting Party is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
- C. Impose conditions on a finding of default and a time for cure, such that Defaulting Party’s fulfillment of said conditions will waive or cure any default.

Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to exist without timely cure, (ii) that the Non-Defaulting Party’s performance has not excused the default; and (iii) that such default has, or will, cause a material breach of this Agreement and a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Notwithstanding the foregoing, nothing herein shall vest authority in the City Council to unilaterally change any material provision of the Agreement.

Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Section 13.

13.7 Waiver of Breach. By not filing a challenge to the City’s action to enact any Development Approval within the period established by applicable law, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final Subdivision Map on any portion of the Property, the Developer shall be deemed to have waived

any claim that any condition of approval of such final Subdivision Map is improper or that the condition of approval constitutes a breach of the provisions of this Agreement.

13.8 Limitations on Defaults. Notwithstanding any provision in this Agreement to the contrary, a Default by one Owner shall not constitute a Default by an Owner of a portion of the Property, which is not the owner of the portion of the Property that is the subject of the Default (an "Innocent Owner"). Likewise, a Default by an Owner with respect to a Lot (or group of Lots) it owns or leases shall not constitute a Default by an Innocent Owner, nor shall the Default by another Owner of a portion of the Property not owned by an Innocent Owner constitute a Default of the Innocent Owner. Therefore, (i) no Innocent Owner shall have any liability to the City for, or with respect to, any Default by another Owner or any Default of any other Owner, (ii) an Innocent Owner shall have no liability to the City for, or with respect to, any Default by any other Owner, and (iii) the City's election to terminate this Agreement as a result of a Default by an Owner shall not result in a termination of this Agreement with respect to either (x) any portion of the Property not owned by such Owner or (y) those Lots owned or leased by an Innocent Owner until such time that this Agreement would otherwise terminate in accordance with its terms.

13.9 Venue. In the event of any judicial action, venue shall be in the Superior Court of San Bernardino County.

#### 14. ASSIGNMENT.

14.1 General. The Developer shall not transfer this Agreement or any of the Developer's rights and obligations hereunder, directly or indirectly, voluntarily or by operation of law, unless and until a successor party with the necessary financial capacity and experience and Developer sign and deliver to the City an assignment and assumption agreement, in the form attached hereto as Exhibit "H," pursuant to which the successor party shall assume such obligations. The transferee's and Developer's execution of the assignment and assumption agreement shall be deemed to release the Developer of liability for performance under this Agreement of the obligations transferred and specified in such assignment and assumption agreement and the City shall thereafter look solely to that transferee for compliance with this Agreement with respect to such obligations and the portion of the Property so transferred.

Notwithstanding any provision of this Agreement to the contrary, City approval shall not be required for the transfer of any portion of the Property under this Agreement to a subsequent Owner or Developer, provided no such transfer shall relieve Developer of its obligations hereunder (unless the transferee executes an assignment and assumption agreement).

In addition, notwithstanding Section 1.20 or any other provision of this Agreement to the contrary, LCD Greenspot LLC ("LCD") shall not have any rights, obligations or liability as a Developer, Owner, or otherwise under this Agreement unless and until (i) LCD acquires fee title to all or any portion of the Property and (ii) OCFCD has delivered to City the written notice required under Section 16.3 that LCD is a Developer, as defined in Section 1.20, for the Property (or that portion thereof acquired by LCD).

14.2 Subject to Terms of Agreement. Following any such transfer or assignment of any of the rights and interests of the Developer under this Agreement, in accordance with Section 14.1 above, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer.

14.3 Termination of Agreement With Respect to Individual Lots. Notwithstanding any provisions of this Agreement to the contrary, as to any single-family residential Lot which (i) has been finally subdivided, (ii) has had its Certificate of Occupancy issued, and (iii) is individually (and not in "bulk") sold or otherwise conveyed to an owner-user, this Agreement shall terminate as of the date of occurrence of the last of such three items and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement. In addition, as to any Lot or other portion of the Property that is sold or otherwise conveyed to a public agency, public utility or the HOA, this Agreement shall terminate on the date of conveyance and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement. As to any other Lot not covered by the prior two sentences of this subsection, including, without limitation, commercial and multi-family residential projects, which (i) has been finally subdivided; and (ii) has had its Certificate(s) of Occupancy issued, this Agreement shall terminate on the date the last of the above items happens and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement; provided, however, the benefits of Section 4 hereof as they relate to those Lot(s) shall continue to run with the land for the Term of this Agreement.

## 15. RELEASES AND INDEMNITIES.

### 15.1 Third-Party Litigation.

15.1.1 Non-liability of City. As set forth above, the City has determined that this Agreement is consistent with the General Plan and that the General Plan and Development Approvals meets all of the legal requirements of State law. The Parties acknowledge that:

A. In the future there may be challenges to legality, validity and adequacy of the General Plan, the Development Approvals and/or this Agreement; and

B. If successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 15, neither Party shall have liability under this Agreement for any failure of the City to perform under this Agreement or the inability of the Developer to Develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination resulting from a Claim or Litigation that on the Effective

Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

15.1.2 Revision of Land Use Restrictions. If, for any reason, the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary and as agreed by the Parties, in order to comply with such judicial decision.

15.1.3 Participation in Litigation: Indemnity. To the full extent permitted by law, the Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees (each, an "Agent") and will hold and save them and each of them harmless from any and all Claims or Litigation (including but not limited to attorneys' fees and costs) against the City and/or Agent for any such Claims or Litigation and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City including, without limitation, reasonable costs incurred by the City Attorney to monitor activities of counsel chosen by the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment is entered and completely satisfied. The Developer shall have the right, in its sole and absolute discretion, to determine that it does not want to defend any litigation, or appeal any judgment, attacking this Agreement or the Development Approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. The Developer shall be liable for any costs incurred by the City up to the date of settlement and any necessary costs of implementing or enforcing the settlement, but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed.

15.2 Hold Harmless: Developer's Construction and Other Activities. The Developer shall indemnify, defend, save and hold the City and its Agents harmless from any and all Claims and Litigation which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein is intended to make the Developer liable for the acts of the City's officers, employees, agents, contractors of subcontractors.

15.3 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than the City's Default.

16. EFFECT OF AGREEMENT ON TITLE.

16.1 Covenant Run with the Land. Subject to the provisions of Sections 14 and 18 and pursuant to the Development Agreement Statute (§ 65868.5):

A. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

B. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

C. Each covenant to do or refrain from doing some act on the Property hereunder (i) is for the benefit of and is a burden upon every portion of the Property, (ii) runs with such lands, and (iii) is binding upon each Party and each successive Owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any Owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

16.2 OCFCD as Developer. Notwithstanding anything to the contrary in this Agreement or otherwise, or OCFCD's ownership of the Property (or a portion thereof), OCFCD shall not bear the obligations or burdens of a Developer or Owner under this Agreement or otherwise unless and until OCFCD delivers a separate, fully executed, recordable instrument to the City which has OCFCD assuming this Agreement's obligations and burdens with respect to the portion of the Property described in that written instrument.

16.3 Property Without a Developer. If OCFCD has not delivered written notice to the City that a Developer, as defined in Section 1.20, exists for the Property (or a portion thereof), the following shall apply to the Property (or the applicable portions thereof) until the City receives the above notice from OCFCD: (i) except as described in subsection (ii) below, the benefits of the Agreement shall still accrue to the Owner and the applicable portion(s) of the Property; and (ii) neither the obligations nor burdens imposed by this Agreement, nor the right to engage in physical construction of private Development pursuant to City construction permits issued in accordance with this Agreement, shall accrue to the Owner and the applicable portion(s) of the Property.

17. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.

17.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

17.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

18. MORTGAGEE PROTECTION.

18.1 Developer's Breach Not Defeat Mortgage Lien. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render void the lien of any Mortgage made in good faith and for value but, unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such Mortgage whose interest is acquired by foreclosure, trustee's sale or otherwise.

18.2 Holder Not Obligated to Construct or Complete Improvements. The holder of any Mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

18.3 Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer hereunder, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any Mortgage who has previously made a written request to the City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

18.4 Right to Cure. Each holder of a Mortgage (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, one hundred twenty (120) days after the Developer's cure rights have expired, or ninety (90) days after it has acquired possession of the Property, whichever is later, to:

A. Obtain possession, if necessary, and to commence and diligently pursue the cure until the same is completed, and

B. Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that, in the case of a Default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 18.4, such holder shall have additional time as reasonably necessary to remedy or cure such Default.

In the event there is more than one such Mortgage holder, the right to cure or remedy a breach or Default of the Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or Default of the Developer under this Section.

No Mortgage holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to City with respect to the Project or any portion thereof in which the holder has an interest. The Mortgage holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

## 19. MISCELLANEOUS.

19.1 Estoppel Certificates. Either Party (or a Mortgagee under Section 18) may at any time deliver written notice to the other Party requesting an Estoppel Certificate addressing:

- A. whether the Agreement is in full force and effect and is a binding obligation of the Parties;
- B. whether the Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments;
- C. whether there are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate; and
- D. such other matters as may reasonably be requested.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit "C."

19.2 Force Majeure. The time within which the Developer or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental

agencies other than the City, unusually severe weather, third party litigation as described in Section 15.1 above, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

### 19.3 Interpretation.

19.3.1 Construction of Development Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute an illegal surrender or abrogation of the City's governmental powers over the Property.

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

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

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

19.4 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the parties shall comply with the procedures set forth in Section 15.1.2 above.

19.5 No Third Party Beneficiaries. The only Parties to this Agreement are the Developer and the City and their successor and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

### 19.6 Notice.

19.6.1 To Developer and OCFCD. Any notice required or permitted to be given by the City to the Developer and OCFCD under this Agreement shall be in writing and delivered personally to the Developer or mailed, with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

LCD Greenspot, LLC  
c/o Lewis Management Corp.  
1156 N. Mountain Avenue  
Upland, CA 91786  
Attention: Bryan Goodman

With a copy to:

John P. Yeager, Esq.  
O'Neil LLP  
19900 MacArthur Blvd., Suite 1050  
Irvine, CA 92612

And:

Orange County Flood Control District  
300 North Flower Street, 7th Floor  
Santa Ana, CA 92703-5000  
Attention: Manager, OC Public Works Programs/Santa Ana River  
Project

Orange County Flood Control District  
333 W. Santa Ana Boulevard, Suite 407  
Santa Ana, CA 92701  
Attention: Supervising Deputy County Counsel

County of Orange  
333 W. Santa Ana Boulevard, Suite 144  
Santa Ana, CA 92701  
Attention: CEO Real Estate/Land Development

or such other address as the Developer or OCFCD, respectively, may designate in writing to the City.

19.6.2 To the City. Any notice required or permitted to be given by the Developer to the City under this Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

City of Highland  
27215 Baseline Avenue  
Highland, CA 92346  
Attention: City Manager

With a copy to:

Craig A. Steele  
Richards, Watson & Gershon  
355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071

or such other address as the City may designate in writing to the Developer.

Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service receipt.

19.7 Relationship of Parties. It is specifically understood and acknowledged by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and the Developer is that of a government entity regulating the development of private property and the owner of such private property.

19.8 Attorney's Fees. If either Party to this Agreement is required to initiate or defend litigation against the other Party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and, in addition, a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

19.9 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement 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 to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

19.10 Time of Essence. Time is of the essence in:

A. the performance of the provisions of this Agreement as to which time is an element; and

B. the resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement.

19.11 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 with the terms of this Agreement thereafter.

19.12 Execution.

19.12.1 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.

19.12.2 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of San Bernardino County no later than ten (10) days after the Effective Date (Government Code § 65868.5). The recording of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

19.12.3 Authority to Execute. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other agreement to which the Party is bound and (v) there is no litigation or legal proceeding which would prevent the Parties from entering into this Agreement.

19.13 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and Developer. The anticipated refinements to the Project may demonstrate that clarifications to this Agreement and the Development Approvals are appropriate with respect to the implementation of this Agreement and the Development Approvals. If, when, and as it becomes necessary or appropriate to take implementing actions or make such changes, adjustments or clarifications the Parties may effectuate such actions, changes, adjustments or clarifications through an operating memorandum ("Operating Memorandum") approved by the Parties in writing which references this Section 19.13. Such Operating Memorandum shall not require public notices and hearings or an amendment to this Agreement unless it is required by Section 10 above. The Director shall be authorized, after consultation with and approval of Developer, to determine whether a requested adjustment, clarification or implementing action (i) may be effectuated pursuant to this Section 19.13 and is consistent with the intent and purpose of this Agreement and the Development Approvals or (ii) is of the type that would constitute an amendment to this Agreement and thus would require compliance with the provisions of Section 10 above. The authority to enter into such Operating Memorandum is hereby delegated to the Director and the Director is hereby authorized to execute any Operating Memorandum hereunder without further City Council action.

***[SIGNATURES ON THE NEXT PAGE]***

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the date first above written.

**CITY OF HIGHLAND**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney

**“DEVELOPER”**

LCD Greenspot, LLC, a Delaware limited liability company

By: Lewis Management Corp., a Delaware corporation,  
Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 )  
 ) Ss  
COUNTY OF )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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 )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

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

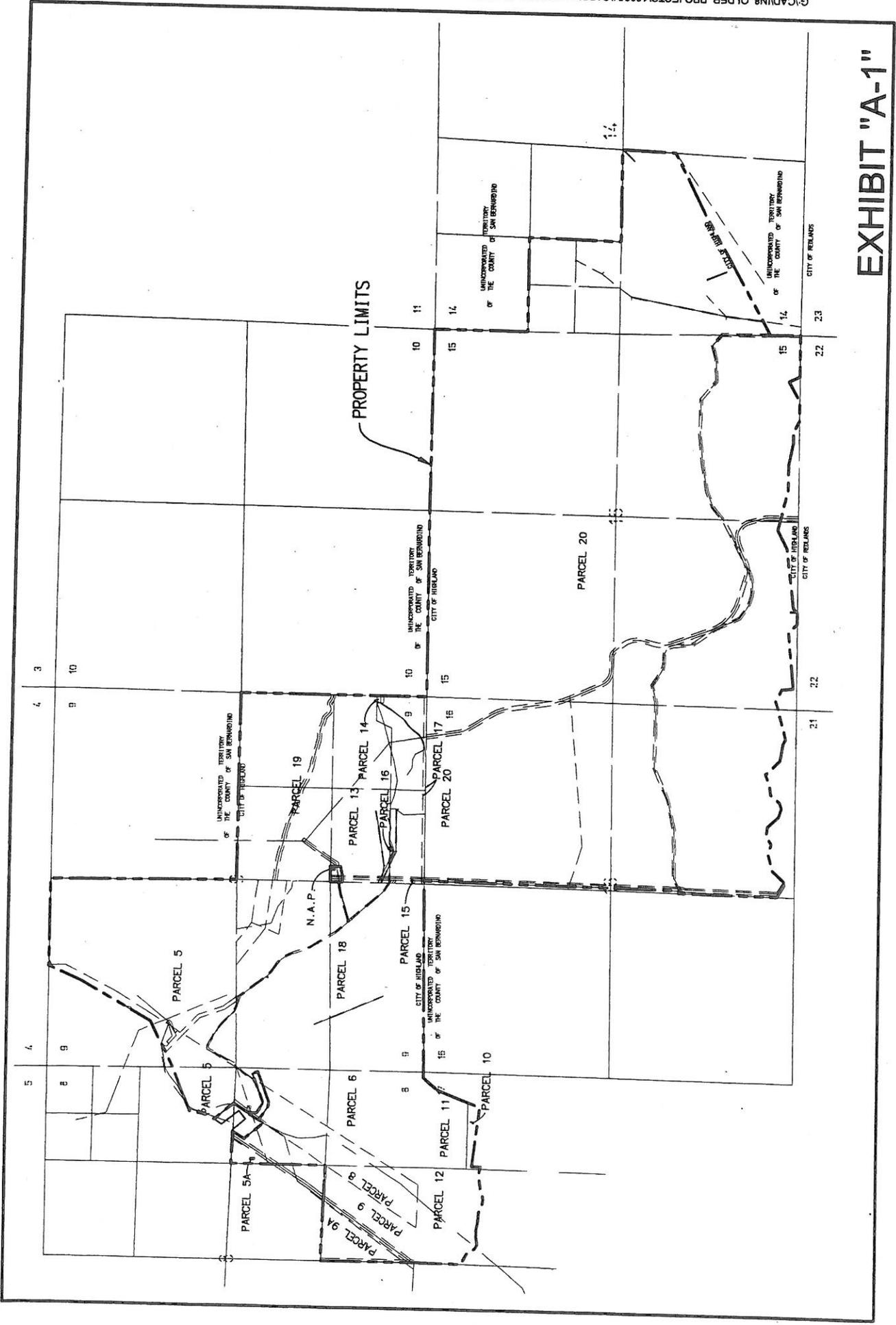
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**MAP AND LEGAL DESCRIPTION OF PROPERTY**



# EXHIBIT "A-1"

## LEGAL DESCRIPTION

Real property in the City of Highland, County of San Bernardino, State of California, described as follows:

PARCELS 1 THROUGH 4: INTENTIONALLY DELETED.

PARCEL 5: APN 297-101-23 (PORTION); 297-061-31; 297-091-08 (PORTION); AND 297-091-12 (PORTION)

THOSE PORTIONS OF THE NORTHWEST ONE QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLATS OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE AUGUST 2, 1882 AND FEBRUARY 10, 1902; THENCE SOUTHEAST ONE QUARTER OF THE NORTHEAST ONE QUARTER AND EAST ONE HALF THE SOUTHEAST ONE QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE SEPTEMBER 4, 1858, ALL IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF THE EAST ONE HALF OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 8 WITH THE NORTHWEST LINE OF THE LAND DESCRIBED IN Y-1 PARCEL 2 OF A CORPORATION GRANT DEED TO CAERNARVON CORPORATION, RECORDED DECEMBER 21, 1972 IN BOOK 8086, PAGE 901; THENCE, ALONG LAST SAID NORTHWEST LINE, NORTH 33° 29' 05" EAST, 191.32 FEET TO THE NORTHWEST CORNER OF THE PROPERTY DESCRIBED IN A CORPORATION GRANT DEED RECORDED SEPTEMBER 14, 1984 AS DOCUMENT NUMBER 84-220641, OFFICIAL RECORDS OF SAID COUNTY; THENCE, ALONG THE NORTH LINE OF LAST SAID PROPERTY, SOUTH 87° 42' 55" EAST, 543.90 FEET TO THE SOUTHEASTERLY LINE OF THE PROPERTY DESCRIBED IN THE ABOVE DEED TO CAERNARVON; THENCE, ALONG THE LAST SAID SOUTHEASTERLY LINE, NORTH 31° 52' 07" EAST, 1330.45 FEET TO THE EAST ONE QUARTER CORNER OF SAID SECTION 8; THENCE, ALONG THE SOUTH LINE OF THE NORTHWEST ONE QUARTER OF ABOVE DESCRIBED SECTION 9, NORTH 89° 35' 15" EAST, 2654.37 FEET TO THE SOUTHEAST CORNER OF SAID ONE QUARTER; THENCE, ALONG THE EAST LINE OF SAID ONE QUARTER, NORTH 0° 43' 10" WEST, 2604.95 FEET TO THE NORTH ONE QUARTER CORNER OF SAID SECTION 9; THENCE, ALONG THE NORTH LINE OF SAID SECTION, NORTH 89° 33' 07" WEST, 1224.007 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF THE PROPERTY CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT BY GRANT DEED RECORDED AS INSTRUMENT NUMBER 56 ON DECEMBER 17, 1975 IN BOOK 8826, PAGE 115, OFFICIAL RECORDS OF SAID COUNTY; THENCE, ALONG SAID SOUTHEASTERLY LINE, THE FOLLOWING COURSES, SOUTH 23° 35' 31" WEST, 528.32 FEET; SOUTH 29° 25' 31" WEST, 1110.03 FEET; SOUTH 64° 00' 31" WEST, 720.02 FEET, AND SOUTH 68° 41' 57" WEST, 654.41 FEET TO A POINT ON THE EASTERLY LINE OF GREENSPOT ROAD AS DESCRIBED IN A GRANT DEED TO THE COUNTY OF SAN BERNARDINO RECORDED JUNE 9, 1981 AS DOCUMENT NUMBER 81-125689, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING IN A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 681.28 FEET, A RADIAL OF SAID CURVE TO SAID POINT BEARS SOUTH 87° 02' 10" EAST; THENCE, SOUTHERLY ALONG SAID CURVE AND SAID EAST LINE, AN ARC DISTANCE OF 361.53 FEET THROUGH A CENTRAL ANGLE OF 30° 24' 17"; THENCE, TANGENT TO SAID CURVE AND CONTINUING ALONG SAID EASTERLY LINE OF GREENSPOT ROAD, SOUTH 33° 22' 07" WEST, 127.07 FEET TO THE NORTHEASTERLY LINE OF THE PROPERTY DESCRIBED IN AN INDIVIDUAL GRANT DEED TO SAN

BERNARDINO VALLEY MUNICIPAL WATER DISTRICT RECORDED SEPTEMBER 14, 1984, AS DOCUMENT NUMBER 84-220643, OFFICIAL RECORDS OF SAID COUNTY; THENCE, ALONG SAID LINE, AND THE NORTHEASTERLY LINE OF THE PROPERTY DESCRIBED IN AN INDIVIDUAL GRANT DEED TO SAN BERNARDINO COUNTY VALLEY MUNICIPAL WATER DISTRICT RECORDED SEPTEMBER 14, 1984 AS DOCUMENT NUMBER 84-220644, OFFICIAL RECORDS OF SAID COUNTY, SOUTH 39° 59' 33" EAST, 299.67 FEET TO THE EAST CORNER OF LAST SAID PROPERTY; THENCE, ALONG THE SOUTHEAST LINE OF SAID PROPERTY, SOUTH 50° 00' 27" WEST 150.00 FEET TO THE SOUTH CORNER OF SAID PROPERTY; THENCE, ALONG THE SOUTHWEST LINE OF SAID PROPERTY, NORTH 39° 59' 33" WEST, 231.29 FEET TO THE NORTH LINE OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 8; THENCE, ALONG SAID NORTH LINE, NORTH 87° 42' 36" WEST, 77.73 FEET TO THE CENTERLINE OF GREENSPOT ROAD AS DESCRIBED IN A ROAD DEED TO THE COUNTY OF SAN BERNARDINO RECORDED APRIL 9, 1932 IN BOOK 810, PAGE 43, OFFICIAL RECORDS OF SAID COUNTY; THENCE, ALONG SAID CENTERLINE, SOUTH 33° 22' 07" WEST, 730.54 FEET TO THE WEST LINE OF THE EAST ONE HALF OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 8; THENCE, ALONG SAID LINE SOUTH 0° 17' 47" WEST, 695.52 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO VALLEY MUNICIPAL WATER BY DEED RECORDED NOVEMBER 19, 2001 AS INSTRUMENT NO. 2001- 0525936 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL URANIUM, THORIUM AND OTHER FISSIONABLE MATERIALS, ALL OIL, GAS, PETROLEUM, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES, AND OTHER MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER, WHETHER SIMILAR TO THESE HEREIN SPECIFIED OR NOT, WITHIN OR UNDERLYING, OR WHICH MAY BE PRODUCED FROM THE HEREINBEFORE DESCRIBED LAND; TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID LAND WHICH UNDERLIES A PLANE PARALLEL TO AND 500 FEET BELOW THE PRESENT SURFACE OF SAID LAND, FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID URANIUM THORIUM AND OTHER FISSIONABLE MATERIALS, OIL, GAS, PETROLEUM, ASPHALTUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES, AS RESERVED IN THE DEED FROM SOUTHERN CALIFORNIA EDISON COMPANY TO VAL BAN CORP., RECORDED AUGUST 17, 1982, INSTRUMENT NO. 82-160816, OFFICIAL RECORDS.

**PARCEL 5A: APN 0297-091-12 (PORTION)**

THAT PORTION OF THE NORTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE SEPTEMBER 4, 1858, LYING NORTHWESTERLY OF THE CENTERLINE OF GREENSPOT ROAD AS DESCRIBED IN A ROAD DEED TO THE COUNTY OF SAN BERNARDINO RECORDED APRIL 9, 1932 IN BOOK 810, PAGE 43, OFFICIAL RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL URANIUM, THORIUM AND OTHER FISSIONABLE MATERIALS, ALL OIL, GAS, PETROLEUM, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES, AND OTHER MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER, WHETHER SIMILAR TO THESE HEREIN SPECIFIED OR NOT, WITHIN OR UNDERLYING, OR WHICH MAY BE PRODUCED FROM THE HEREINBEFORE DESCRIBED LAND; TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID LAND WHICH UNDERLIES A

PLANE PARALLEL TO AND 500 FEET BELOW THE PRESENT SURFACE OF SAID LAND, FOR THE PURPOSE OF PROSPECTING FOR DEVELOPING AND/OR EXTRACTING SAID URANIUM THORIUM AND OTHER FISSIONABLE MATERIALS, OIL, GAS, PETROLEUM, ASPHALTUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES, AS RESERVED IN THE DEED FROM SOUTHERN CALIFORNIA EDISON COMPANY TO VAL BAN CORP., RECORDED AUGUST 17, 1982, INSTRUMENT NO. 82-160816, OFFICIAL RECORDS.

**PARCEL 6: APN 0297-091-05 (PORTION)**

THAT PORTION OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTHWESTERLY TO A POINT IN THE SOUTH LINE OF SAID 1/4 SECTION, 1100 FEET EAST OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE EAST TO THE SOUTHEAST CORNER OF SAID 1/4 SECTION; THENCE NORTH ALONG THE EAST LINE TO THE POINT OF BEGINNING. SAID SOUTHEAST 1/4 OF SECTION 8 IS SHOWN AS A PORTION OF BLOCK 15 OF MAP OF MENTONE, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT BY DEED RECORDED NOVEMBER 19, 2001 AS INSTRUMENT NO. 2001-0525936 OF OFFICIAL RECORDS.

**PARCEL 7, 7A AND 7B: INTENTIONALLY DELETED.**

**PARCEL 8: (APN 297-091-07)**

ALL THAT PORTION OF BLOCK 15 OF THE MAP OF MENTONE, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A 2-1/2 INCH IRON PIPE WITH A UNITED STATES GENERAL LAND OFFICE BRASS CAP MAKING THE EAST 1/4 CORNER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN; IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF; THENCE SOUTH 30° 53' 15" WEST, 1330.45 FEET ALONG THE EASTERLY LINE OF THE PROPERTY DEEDED TO THE CAERNARVON CORP., IN DEED RECORDED DECEMBER 21, 1972, IN BOOK 8086, PAGE 901, EXHIBIT "A", SECTION Y-1, PARCEL NO. 2, OFFICIAL RECORDS OF SAN BERNARDINO COUNTY TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 30° 53' 15" WEST, 1703.08 FEET ALONG THE EASTERLY LINE OF SAID PROPERTY TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE NORTH 88° 41' 10" WEST, 600.00 FEET ALONG SAID SOUTH LINE; THENCE NORTH 32° 30' 13" EAST, 1731.48 FEET ALONG THE WESTERLY LINE OF SAID PROPERTY; THENCE SOUTH 88° 41' 10" EAST, 543.85 FEET TO THE TRUE POINT OF BEGINNING.

**PARCEL 9: APN 0297-091-06 (PORTION)**

THAT PORTION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE

OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING WESTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 500 FEET WEST OF THE NORTHEAST CORNER OF SAID SOUTHEAST ¼ OF SAID SECTION 8; THENCE SOUTHWESTERLY TO A POINT 500 FEET EAST OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4 OF SAID SECTIONS.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING NORTHWESTERLY FROM THE CENTERLINE OF GREENSPOT ROAD AS DESCRIBED IN DOCUMENT RECORDED APRIL 9, 1932 IN BOOK 810, PAGE 43, OFFICIAL RECORDS OF SAID COUNTY.

SAID LAND ALSO SHOWN AS A PORTION OF BLOCK 15 OF THE MAP OF MENTONE, RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY.

**PARCEL 9A: APN 0297-091-06 (PORTION)**

THAT PORTION OF THE SOUTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE SEPTEMBER 4, 1858, LYING NORTHWESTERLY OF THE CENTERLINE OF GREENSPOT ROAD AS DESCRIBED IN A ROAD DEED TO THE COUNTY OF SAN BERNARDINO RECORDED APRIL 9, 1932 IN BOOK 810, PAGE 43, OFFICIAL RECORDS OF SAID COUNTY.

**PARCEL 10: APN: 297-141-33**

THAT PORTION OF LOT 20, BLOCK 14, ACCORDING TO STRETCH MAP OF MENTONE IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY, LYING NORTH OF THE RAVINE, AND TOGETHER WITH THE SOUTH 1/2 OF EMS AVENUE, NOW VACATED ADJACENT TO LOT 20, BLOCK 14, ON THE NORTH, BY DOCUMENT RECORDED MARCH 26, 1976, IN BOOK 8892, PAGE 624, OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN PARCEL MAP NO. 4922, RECORDED NOVEMBER 14, 1979, IN BOOK 51 OF PARCEL MAPS, PAGE 42, RECORDS OF SAID COUNTY.

**PARCEL 11: (0297-141-11)**

LOT 1, BLOCK 15, ACCORDING TO STRETCH MAP OF MENTONE, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY AND TOGETHER WITH THE NORTH 1/2 OF EMS AVENUE, NOW VACATED ADJACENT TO LOT 1, BLOCK 15, ON THE SOUTH, BY DOCUMENT RECORDED MARCH 26, 1976, IN BOOK 8892, PAGE 624, OFFICIAL RECORDS.

**PARCEL 12: (APN 0297-141-10)**

THAT PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF LYING NORTH OF THE RAVINE RUNNING EAST AND WEST THROUGH SAID NORTHWEST 1/4 OF THE NORTHEAST OF SAID SECTION.

**PARCEL 13: APN: 0297-101-16; 0297-101-24; 0297-101-25; 0297-101-26 (PORTION) AND 0297-101-30 (PORTION)**

THOSE PORTIONS OF THE SOUTH ONE HALF OF THE SOUTHEAST ONE QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE AUGUST 22, 1882, CONVEYED BY A GRANT DEED RECORDED AUGUST 4, 1989 AS PARCELS A, AND B OF DOCUMENT NUMBER 89-285258, AND BY GRANT DEED RECORDED AUGUST 4, 1989 AS DOCUMENT NUMBER 89-285259, BOTH OFFICIAL RECORDS OF SAID COUNTY.

EXCEPT THAT PROPERTY DESCRIBED AS PARCEL NUMBER 4 IN A GRANT DEED RECORDED FEBRUARY 8, 1984 AS DOCUMENT NUMBER 84-029670, OFFICIAL RECORDS OF SAID COUNTY.

**PARCEL 14: 0297-101-26 (PORTION)**

THOSE PORTIONS OF THE SOUTH ONE HALF OF THE SOUTHEAST ONE QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE AUGUST 22, 1882, DESCRIBED AS PARCEL NUMBER 4 IN A GRANT DEED RECORDED FEBRUARY 8, 1984 AS DOCUMENT NUMBER 84-029670, OFFICIAL RECORDS OF SAID COUNTY.

**PARCEL 15: (APN 0297-101-08)**

THAT PORTION OF THE SOUTH ONE-HALF OF THE SOUTHEAST ONE QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE AUGUST 22, 1882, DESCRIBED AS FOLLOWS:

AN UNDIVIDED  $\frac{3}{5}$  INTEREST IN AND TO A WELL AND PUMPING PLAT ON LAND WHICH SAME IS LOCATED, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 130 FEET NORTH AND 10 FEET EAST OF THE SOUTHWEST CORNER ON THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 9; THENCE, EAST 40 FEET; THENCE, NORTH 40 FEET; THENCE, WEST 40 FEET; THENCE, SOUTH 40 FEET TO THE POINT OF BEGINNING.

**PARCEL 16: APN 0297-101-30 (PORTION)**

ALL THAT PORTION OF THE SOUTH 480 FEET OF THE SOUTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST ONE-QUARTER OF SECTION 9; THENCE AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SOUTHEAST ONE-QUARTER, NORTH 480.00 FEET; THENCE AT RIGHT ANGLES EAST 335.43 FEET ON A LINE PARALLEL TO AND 480 FEET NORTH OF THE SAID SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 9 TO THE TRUE POINT OF

BEGINNING; THENCE FROM THE TRUE POINT OF BEGINNING CONTINUING EAST 220.00 FEET; THENCE SOUTH 63° 26' 06" WEST 122.98 FEET; THENCE NORTH 63° 26' 06" WEST 122.98 FEET TO THE TRUE POINT OF BEGINNING.

**PARCEL 17: (NO APN)**

SOUTHERLY 40 FEET OF PARCEL MAP 4592 AS PER MAP RECORDED IN BOOK 44 OF PARCEL MAPS PAGES 34 AND 35 RECORDS OF SAN BERNARDINO COUNTY, BEING MORE COMMONLY KNOWN ON SAID MAP AS VILLERS STREET.

**PARCEL 18: APN: 0297-101-27 AND 0297-101-28**

THE SOUTHWEST ONE-QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

**PARCEL B: APN: 0297-141-33**

THAT PORTION OF LOT 20, BLOCK 14, ACCORDING TO STRETCH MAP OF MENTONE IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY, LYING NORTH OF THE RAVINE, AND TOGETHER WITH THE SOUTH 1/2 OF EMS AVENUE, NOW VACATED ADJACENT TO LOT 20, BLOCK 14, ON THE NORTH, BY DOCUMENT RECORDED MARCH 26, 1976, IN BOOK 8892, PAGE 624, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN PARCEL MAP NO. 4922, RECORDED NOVEMBER 14, 1979, IN BOOK 51 OF PARCEL MAPS, PAGE 42, RECORDS OF SAID COUNTY.

**PARCEL C: APN: 0297-141-11**

LOT 1, BLOCK 15, ACCORDING TO STRETCH MAP OF MENTONE, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY AND TOGETHER WITH THE NORTH 1/2 OF EMS AVENUE, NOW VACATED ADJACENT TO LOT 1, BLOCK 15, ON THE SOUTH, BY DOCUMENT RECORDED MARCH 26, 1976, IN BOOK 8892, PAGE 624, OF OFFICIAL RECORDS.

**PARCEL D: APN: 0297-091-05 (PORTION)**

THAT PORTION OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 2 EAST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTHWESTERLY TO A POINT IN THE SOUTH LINE OF SAID 1/4 SECTION, 1100 FEET OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE EAST TO THE SOUTHEAST CORNER OF SAID 1/4 SECTION; THENCE NORTH ALONG THE EAST LINE TO THE POINT OF BEGINNING. SAID SOUTHEAST 1/4 OF SECTION 8 IS SHOWN AS A PORTION OF BLOCK 15 OF MAP OF MENTONE, AS PER PLAT RECORDED IN BOOK 8 OF MAPS, PAGE 81, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT BY DEED RECORDED NOVEMBER 19, 2001 AS INSTRUMENT NO. 2001-0525936 OF OFFICIAL RECORDS.

**PARCEL E: APN: 0297-141-10**

THAT PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF LYING NORTH OF THE RAVINE RUNNING EAST AND WEST THROUGH SAID NORTHWEST 1/4 OF THE NORTHEAST OF SAID SECTION.

**PARCEL 19: APN 0297-101-23 (PORTION)**

THE NORTH ONE HALF OF THE SOUTHEAST ONE QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTION IS SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE AUGUST 22, 1882.

**PARCEL 20: APN: 0297-181-01, 0302-071-04, 0302-071-05, 0302-091-11 AND 0302-101-01**

THOSE PORTIONS OF THE EAST ONE HALF OF SECTION 16, SECTION 15, AND THE WEST ONE- HALF OF SECTION 14, ALL IN TOWNSHIP 1 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SAID SECTIONS ARE SHOWN ON THE OFFICIAL PLAT OF SAID TOWNSHIP APPROVED BY THE SURVEYOR GENERAL'S OFFICE AUGUST 22, 1882, CONVEYED BY A CORPORATION GRANT DEED RECORDED MARCH 20, 1989 AS DOCUMENT NUMBER 89- 098583 AND RERECORDED JULY 5, 1989 AS DOCUMENT 89- 242115, BOTH OFFICIAL RECORDS OF SAID COUNTY.

Property limits are depicted on Exhibit "A-1" attached hereto. Described property contains approximately 1657.3 acres.

**EXHIBIT "B"**

**EXISTING DEVELOPMENT APPROVALS**

General Plan Amendment No. GPA-011-003	Res. No. _____
Zone Change No. ZC-011-03	Ord. No. _____
Harmony Specific Plan No. SPR-011-001	Ord. No. _____
Development Agreement No. DA-012-002	Ord. No. _____
Master Tentative Tract Map No. 18871	Res. No. _____
Finance/Conveyance Tentative Tract Map No. 18861	Res. No. _____
Final Environmental Impact Mitigation Monitoring Program	Res. No. _____

**EXHIBIT "C"**

**ESTOPPEL CERTIFICATE**

Date Requested: \_\_\_\_\_  
Date of Certificate: \_\_\_\_\_

On \_\_\_\_\_, 2015, the City of Highland approved the Development Agreement between LCD Greenspot, LLC, a Delaware limited liability company and the City of Highland (the "Development Agreement").

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

**[CHECK WHERE APPLICABLE]**

- \_\_\_ 1. The Development Agreement remains binding and effective.
- \_\_\_ 2. The Development has not been amended.
- \_\_\_ 3. The Development Agreement has been amended in the following aspects:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- \_\_\_ 4. To the best of our knowledge, neither Developer nor any of its successors is in default under the Development Agreement.
- \_\_\_ 5. The following defaults exist under the Development Agreement:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- \_\_\_ 6. The Development Agreement:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

This Estoppel Certificate may be relied upon by a transferee or mortgagee of any interest in the property which is the subject of the Development Agreement.

**CITY OF HIGHLAND**

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

Name: \_\_\_\_\_

City Manager

**EXHIBIT "D"**

**DEVELOPMENT IMPACT FEES**

**CITY OF HIGHLAND  
DEVELOPMENT IMPACT FEES  
(Applicable to development projects that are issued building permits starting 3/14/15)**

	<u>Detached Dwelling</u>	<u>Attached Dwelling</u>	<u>Mobile Home</u>	<u>Commercial Lodging</u>	<u>Commercial/Office</u>	<u>Industrial</u>
Law Enforcement Facilities	\$238.62	\$377.35	\$204.52	\$158.71	\$0.138	\$0.007
Fire Suppression Facilities, Vehicles & Equipment	\$847.54	\$275.07	\$888.67	\$1,347.12	\$0.206	\$0.061
Local Circulation System	\$3,339.17	\$2,228.87	\$1,748.14	\$1,756.39	\$3.135	\$2.182
Regional Circulation System	\$9,114.38	\$6,085.02	\$4,770.80	\$4,794.59	\$8.562	\$5.954
Regional Flood Control Facilities	\$778.39	\$333.09	\$274.02	\$127.58	\$0.172	\$0.205
General Facilities, Vehicles & Equipment	\$1,057.95	\$1,057.95	\$1,057.95	\$179.87	\$0.248	\$0.248
Library Facilities & Collection	\$973.30	\$936.86	\$670.03	N/A	N/A	N/A
Public Use (Community Center Facilities)	\$1,213.13	\$1,167.27	\$835.79	N/A	N/A	N/A
Park Land Acquisition & Park Facilities Development	<u>\$3,950.82</u>	<u>\$3,801.54</u>	<u>\$2,723.62</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<b>TOTAL:</b>	<b>\$21,513.30</b>	<b>\$16,263.02</b>	<b>\$13,173.54</b>	<b>\$8,364.26</b>	<b>\$12.460</b>	<b>\$8.657</b>

- Notes: 1. Fees applicable City-wide except for East Highlands Ranch. Certain properties fronting Greenspot Road, between Gold Buckle Road and Santa Paula Street, must also pay a Greenspot Impact Fee (Resolution No. 1994-037).
2. Fees are per dwelling unit for residential, per lodging unit for commercial lodging, and per gross square footage for commercial or industrial.

**IMPACT FEE FOR BUILDING EXPANSION  
(no charge for first 499 square feet of residential building expansion)**

DETACHED DWELLING.....	\$14.342 per square foot
ATTACHED DWELLING.....	\$10.842 per square foot
MOBILE HOME.....	\$ 8.782 per square foot
COMMERCIAL LODGING.....	\$ 5.576 per square foot
COMMERCIAL/OFFICE.....	\$12.460 per square foot
INDUSTRIAL.....	\$ 8.657 per square foot

HADIF Update\ADIF Fees Starting 031415 Handout.doc

## EXHIBIT "E"

### ADDITIONAL AGREEMENTS CONCERNING DEVELOPMENT

In addition to the other terms and conditions concerning the Project, the City shall accommodate and expedite the Project as follows:

#### 1.0 CONSTRUCTION CONDITIONS.

1.1 Provision of Utility Connections. Subject to the approval of the utility providers and City permit requirements, the City shall permit, at the Developer's expense, any necessary temporary and permanent utility connections requested by the Developer for power, water service and sewer service prior to recordation of each final Subdivision Map.

1.2 Allowance of Transformers. The City shall allow the setting of transformers without requiring adjacent streets to be fully paved, subject to the approval of the electrical utility provider and City permit requirements. It is anticipated that 6' feet of curb and gutter will be placed adjacent to the transformer to ensure correct elevation of the transformer pad. In the event that the location or elevation change, or the curb and gutter damaged, the Developer shall incur the full costs of relocation of both the curb and gutter and the transformer, and the full costs to repairs or reconstruction of the curb and gutter, if needed as determined by the City Engineer.

1.3 Temporary Water Pipes. Temporary above ground pipes for construction water and temporary fire hydrants, as approved by the Building Official and Fire Marshall, will be acceptable for model and production homes prior to the first certificate of occupancy in the construction phase being developed. No certificate of occupancy will be issued until said temporary facilities are removed and permanent facilities in place as approved by the Building Official and Fire Marshall.

#### 2.0 MAINTENANCE.

2.1 Maintenance of Construction Activities. The Developer shall contract directly for all work required for the maintenance of construction related activities, including but not limited to recycling of construction materials, erosion control, temporary fence installation, and temporary power installation. The selection and retention of the contractor, subcontractor or other person or entity to do such work shall be made by the Developer in its sole and absolute discretion. Trash removal will be coordinated directly with City franchisee. Contractor, subcontractor, person or entity conducting business within the City shall meet applicable state and City licensing requirements, and City permit requirements including bonding and insurance requirements.

#### 3.0 STREETS.

3.1 Timing of Street Paving. The Developer shall be allowed to begin construction of model and production homes without first paving streets unless the paved streets are needed to serve other functions such as providing access to critical public infrastructures or areas already developed, and providing an essential Best Management Practice for erosion and sediment control for large graded areas located upstream. Under general situation, paved streets shall be required as a condition for the issuance of the Certificate of Occupancy for the first

production home in each construction phase. The Developer shall install all-weather access for construction and emergency personnel.

4.0 License Plate Readers. As required by the Development Approvals, license plate readers shall be installed at not more than five (5) locations at the times set forth in the Development Approvals. At a minimum, it is expected such locations shall include the access point to the Specific Plan area on Greenspot Road, Newport Avenue, Fish Hatchery Road, Tres Lagos Street and Emerald Avenue. The final locations, type and installation specifications of the License Plate Readers shall be as specified by the City.

#### 5.0 DEVELOPMENT CONDITIONS.

5.1 Rear Residential Slopes. The Developer shall stabilize according to the City Grading and Landscape Ordinance and requirements of the City Engineer and the City Planner the rear slope of all residential Lots prior to issuance of a Certificate of Occupancy.

5.2 Use of Joint Trenches. If permitted by the applicable utility provider, the City shall allow the Developer, subject to City permit requirements, to utilize joint trenches if it deems it necessary for Internet capabilities and/or telecommunication purposes.

#### 6.0 PERMITTING AND ACCEPTANCE OF IMPROVEMENTS.

6.1 Fire Sprinkler Inspections. The City's Fire Marshall shall be responsible for enforcing the then applicable provisions of the California Fire Code, and the California Building Standards Codes.

6.2 Building Permit Refunds. If a Building Permit has expired without construction having started on the structure for which the Building Permit was issued, the Developer shall be entitled to a refund of the building permit fee less an administrative fee. No refund will be provided if the request for the refund has not been provided to the City within 180 days of the Building Permit's expiration.

## EXHIBIT "F"

### DESCRIPTION OF PUBLIC WORKS FACILITY AND POLICE SUBSTATION

#### Public Works Facility

1. A 160' by 100' or 16,000 sq. ft. site with asphalt and decomposed granite surface
2. A new building 30'x30' along with a 20'x20' enclosed parking for PW vehicles
3. A covered area for bulk sand and gravel with solid grouted masonry bays, storage area for supplies and yard wastes
4. A 12'x12' roll up doors for the building and a single hollow metal entry door with secure deadbolt for the enclosed parking area.
5. One 220V/50amp circuit for welder and 120V/20amp convenience receptacles at 42" AFF in shop area
6. Overhead lighting for a well-lit workshop
7. Exterior and perimeter lightings
8. Wall-mount shuttered variable speed exhaust fan mounted near roof with thermostat and override wall switch capable of 2,000-3,000 CFM
9. A 30x30 gravel wash down area with hose bib
10. A restroom inside of building
11. Small desk with telephone and internet access
12. Metal long stock racks for material such as fencing, PVC piping, etc.
13. Metal wall shelving for misc. supplies
14. Security cameras installed at exterior

#### Police Substation

1. Substantially similar to the substation at the City's existing Fire Station No. 3 consisting of one office with a separate entrance and adequate parking.

## EXHIBIT "G"

### FINANCING PLAN

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish one or more CFD(s) and MCFD(s) and designate Improvement Areas therein pursuant to the CFD Act to finance the Eligible Facilities and authorize a Public Safety Services Special Tax through each CFD and both an active (special tax "A") and dormant (special tax "B") Maintenance Services Special Tax through each MCFD in connection with the Project. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Development Agreement.

1. Goals and Policies for Financing. The principal objectives of this Financing Plan are to:

a. Provide City and Developer reasonable certainty that each CFD will be established in accordance with the Goals and Policies and this Financing Plan.

b. Provide basic parameters for the levy of the Special Tax (defined below) within each CFD or Improvement Area to pay directly for Eligible Facilities and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Special Tax in order to finance the Eligible Facilities ("Bonds").

c. Provide basic parameters for the issuance of Bonds by or for the CFD(s) and any Improvement Areas therein.

d. Provide basic parameters for the levy of a Services Special Tax in each CFD.

2. Formation. City shall initiate proceedings to establish a CFD, upon Developer's petition request pursuant to the CFD Act and submittal of City's standard application form and receipt of an advance from Developer in an amount determined by City to pay for City's estimated costs to be incurred in undertaking the proceedings to establish the CFD ("Formation Proceeding Costs"). City agrees that all such advances for Formation Proceedings Costs and the reasonable financial consultant, legal and engineering costs incurred by the Developer in connection with such proceeding shall be eligible for reimbursement out of the first available proceeds of Surplus Special Taxes (defined below) and Bonds of the CFD ("CFD Proceeds"). The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances shall be memorialized in a separate agreement between City and Developer. City agrees to use its best efforts to complete the proceedings to form each CFD and record the notice of special tax lien for the CFD and each Improvement Area therein within 210 days after City's receipt of Developer's complete application and deposit.

3. Boundaries. The CFD boundary, or the boundaries of all CFDs if more than one is formed, shall encompass the Project. Each CFD may contain multiple Improvement Areas based on phasing of the Project within the CFD.

4. Eligible Public Facilities and Discrete Components. Each CFD may be authorized to finance the Eligible Facilities specified by Developer in the applicable Acquisition Agreement, which may include the following:

- a. public streets and other related improvements within the public right of way
- b. water facilities
- c. storm drain facilities
- d. sewer facilities
- e. public parks, open space and landscaping
- f. gas, electrical, television and telephone facilities to the extent reasonable
- g. All or a portion of the \$18,750,000 Public Benefit Payments and applicable DIFs

Out of each series of Bonds issued until the Public Benefit Payments have been paid in full, a minimum amount of the net proceeds of the Bonds shall be earmarked to fund Public Benefit Payments that have not been paid previously in an amount equal to ten percent (10%) of the net proceeds of the Bonds. Developer may elect to fund a greater amount of future Public Benefit Payments, or be reimbursed for prior Public Benefit Payments, out of any particular series of Bonds as well. To the extent future Public Benefit Payments are funded out of any series of Bonds, Developer shall receive a dollar for dollar credit against such future payments.

The costs of any Eligible Facility to be constructed by Developer that are eligible to be financed with CFD Proceeds (“**Actual Costs**”) shall include the following:

- (i) The actual hard costs for the construction or the value of the Eligible Facility, including labor, materials and equipment costs;
- (ii) The costs of grading required for the Eligible Facility;
- (iii) The costs incurred in designing, engineering and preparing the plans and specifications for the Eligible Facility;
- (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Facility;
- (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Eligible Facility;
- (vi) Costs of construction administration and supervision;

(vii) Professional costs associated with the Eligible Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services; and

(viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Eligible Facility.

(ix) The actual cost or fair market value of interests in real property required for the fire station site described in Section 8.3 and for any other Eligible Facility that is located outside of the Project

(x) Any other costs permitted by law directly related to the Eligible Facility

The Eligible Facilities constructed by Developer, and for which Developer elects to submit payment requests, shall be bid, contracted for and constructed in accordance with the Acquisition Agreement to be entered into between City and Developer at the time of formation of the first CFD. The Acquisition Agreement shall provide additional detail, consistent with the provisions of the Goals and Policies and this Development Agreement, with respect to the financing of DIFs through the CFD and the acquisition and construction of the Eligible Facilities, including a more detailed description of the specific Eligible Facilities that will be eligible to be financed through the CFD and discrete components of each Eligible Facility that may be reimbursed prior to the completion of the entire Eligible Facility. The CFD financing of the acquisition of an Eligible Facility constructed by Developer that is included in a City DIF program and required by the Project conditions of approval, shall not preclude the Developer's receipt of corresponding DIF credits including, without limitation, those specifically described in Sections 7.3.1, 7.4, and 8.3.6.

5. Financing Parameters. Each CFD shall be authorized to levy Special Taxes of each Improvement Area and issue Bonds of each CFD or Improvement Area in one or more series to finance the Eligible Facilities in accordance with the basic parameters set forth below:

(a) A precondition to the issuance of Bonds shall be that the value of the real property subject to Special Taxes required to repay the Bonds shall be at least three times the amount of the Bonds and any other governmentally-imposed land-secured debt (excluding any proceeds of the Bonds to be deposited in an escrow fund) ("Minimum Value-to-Debt Ratio"). In circumstances where the principal amount of a series of Bonds proposed to be issued causes such series of Bonds to fail to meet the Minimum Value-to-Debt Ratio, a portion of such Bonds shall be deposited in an escrow fund such that the remaining amount of the Bonds will satisfy the maximum value to-debt ratio. Funds shall be eligible to be released from such escrow fund only if and to the extent that the value of the taxable property subject to the levy of Special Taxes securing the Bonds compared to the principal amount of the Bonds not included in the escrow fund following such release shall meet the Minimum Value-to-Debt Ratio.

(b) Each series of Bonds shall have a term of at least thirty (30) years.

(c) Each series of Bonds may include up to twenty-four (24) months of capitalized interest or such other lesser amount as may be requested by Developer.

(d) Each series of Bonds to be issued shall be sized based upon the estimated annual Special Tax revenues from the CFD or Improvement Area securing such Bonds at build-out being equal to one hundred ten percent (110%) of (i) annual debt service, plus (ii) priority annual administrative expenses. Priority annual administrative expenses to be funded from Special Taxes, as a first priority for use of such Special Taxes, shall not exceed \$25,000 for each Improvement Area (the "Priority Annual Administrative Expense Requirement").

(e) The City may fund from the proceeds of each series of Bonds issued for an Improvement Area an amount representing all administrative expenses reasonably expected to be incurred by the City during the first twelve (12) months following the date of issuance of such bonds (the "Administrative Expense Proceeds"). Inasmuch as the City and Developer anticipate that there may be more than one series of Bonds issued for each Improvement Area, the City may elect to establish and maintain a single administrative expense fund for each Improvement Area (the "Improvement Area Administrative Expense Fund") separate and apart from the funds and accounts established and held by the fiscal agent for each series of Bonds issued for such Improvement Area. The City shall deposit all Administrative Expense Proceeds and all Special Taxes revenues funding the administrative expenses for each Improvement Area in the applicable Improvement Area Administrative Expense Fund.

(f) The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities districts and any other community facilities districts under consideration and reasonably expected to be established (excluding Special Tax "B" of the MCFD), the annual assessments (including any administrative surcharge) of existing assessment districts and any other assessment districts under consideration and reasonably expected to be established (but excluding assessments for maintenance), and the Special Taxes, shall not exceed two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as estimated at the time of formation of the applicable CFD (in accordance with Section 5.2, Procedures for Formation).

(g) Special Taxes shall be levied on Developed Property within an Improvement Area prior to the issuance of Bonds at the maximum assigned special tax rate to finance the Eligible Facilities. For purposes of the CFDs, "Developed Property" means a parcel for which a building permit has been issued and "Undeveloped Property" shall mean all other taxable property. Special Taxes may be levied on Undeveloped Property within an Improvement Area only after the issuance of Bonds and only to the extent the annual debt service on the Bonds, administrative expenses and the reserve fund replenishment amount is not able to be paid in full from Developed Property Special Taxes levied and collected within the applicable Improvement Area. For the purposes of this Financing Plan "Surplus Special Taxes" shall mean (i) Special Taxes levied on Developed Property within an Improvement Area prior to the issuance of Bonds for such Improvement Area and collected by the CFD, less the amount required to pay annual CFD administrative expenses, and (ii) Special Taxes levied on

Developed Property within such Improvement Area at the maximum special tax rate after the issuance of Bonds for such Improvement Area and collected each fiscal year in excess of the amount required (w) to pay principal and interest on the Bonds issued for such Improvement Area, (x) to pay all administrative expenses related to such Improvement Area and such Bonds, (y) pay for reasonably anticipated delinquent special taxes within such Improvement Area and (z) to replenish the reserve fund for such Bonds to the applicable reserve requirement.

(h) Special Taxes on Developed Property shall be levied by the District in each Improvement Area in each fiscal year at the maximum assigned special tax rate until the earlier of (i) Developer's submittal of its final payment request for Eligible Facilities and payment in full for all amounts approved by the City for the Eligible Facilities or (ii) the payment in full of all Bonds of the Improvement Area. Surplus Special Taxes collected by the CFD shall be deemed CFD Proceeds and shall be disbursed to reimburse Developer any amounts approved pursuant to payment requests submitted for the Eligible Facilities.

(i) All commercial property, affordable housing units, age-qualified housing units and rental housing units may, at Developer's option, be exempted from the Special Taxes.

(j) Full or partial prepayment of the Special Taxes shall be permitted.

(k) At Developer's election at the time of submittal of its written request and City's standard application form pursuant to Section 2 above, the City shall allow the Special Taxes within an Improvement Area to escalate by two percent (2%) per year, in which case debt service on the Bonds of the Improvement Area shall escalate at the same average rate per year.

(l) The timing of the issuance and sale of each series of the Bonds, the terms and conditions upon which such Bonds shall be issued and sold, the method of sale of such Bonds and the pricing thereof shall be reasonably determined by the City and shall conform to the Goals and Policies, this Financing Plan and the Acquisition Agreement. The sale of each series of the Bonds shall be subject to receipt by the City of a competitively bid or negotiated bond purchase agreement which is acceptable to the City.

(m) The rate and method of apportionment of special taxes for each Improvement Area shall include provisions to allow for administrative reductions in the maximum Special Taxes, prior to the issuance of Bonds of the Improvement Area, with the consent of the Developer. The reductions permitted pursuant to this paragraph shall be reflected in an amended Notice of Special Tax Lien which the City shall cause to be recorded.

6. Modifications. In order to address economic circumstances, Project revisions, bond underwriting criteria or other factors consistent with the Project's development plan and City and Developer's objectives with respect to the Project, the CFD(s) and the Proposed Public Facilities; (i) the provisions of this Financing Plan may be modified at an administrative level with the consent of both the City Manager and Developer, and (ii) City shall cooperate with Developer to amend CFD boundaries, including boundaries of Improvement Areas thereof, special tax rates, and other relevant aspects of the CFD(s). City agrees and

acknowledges that in connection with any such amendment it shall not impose or otherwise require any additional infrastructure, development fee or other requirements or conditions with respect to the Project or CFD; provided, however, the City may require Developer to advance funds to pay all reasonable costs incurred or to be incurred by the City in considering any such amendment.

7. Public Safety Services Special Tax. Each CFD shall be authorized to levy a separate annual Public Safety Services Special Tax on residential Developed Property in an amount per dwelling unit to be established at the time of formation of the CFD, which amount shall not exceed one tenth of one percent (0.001) of the projected initial sales price of the dwelling unit at the time of formation of the CFD, subject to annual escalation of 2% per year. Each CFD shall be established prior to the issuance of a Building Permit for the area within the CFD.

8. Maintenance Services Special Tax. One or more MCFDs shall be formed and authorized to levy an annual special tax "A" solely for the purpose of maintenance of various public improvements as described in Section 5.6.1 of this Development Agreement and that have been constructed by Developer and accepted by the City for maintenance. The MCFDs shall also be authorized to levy an annual special tax "B" to maintain improvements that are expected to be maintained by the HOA but are subsequently taken over by the City for City maintenance in accordance with the conditions described in Section 5.6 above. Both special tax "A" and special tax "B" shall be authorized to be levied in perpetuity.

9. The Developer shall fund the City's costs of establishing the CFDs and MCFDs.

## EXHIBIT "H"

### FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to the Development Agreement between the CITY OF HIGHLAND ("City") and LCD GREENSPOT, LLC, a Delaware limited liability company ("Assignor"), dated \_\_\_\_\_, 2015 (the "Agreement"), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement ("Assignment") is made together with the sale, transfer or assignment of all or a part of the property subject to the Agreement. The property sold, transferred or assigned together with this Assignment is described in Attachment "1" attached hereto and incorporated herein by this reference (the "Subject Property").

2. Assignor hereby grants, sells, transfers, conveys, assigns and delegates to \_\_\_\_\_ ("Assignee"), all of Assignor's rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Subject Property except for the following:

(a) Assignor's right to amend the Agreement or enter into an Operating Memorandum as they apply to any real property other than the Subject Property; and

(b) **[INSERT OTHER RETAINED RIGHTS, IF ANY]**

3. Assignee hereby accepts the foregoing assignment and, except as otherwise provided herein, unconditionally assumes and agrees to perform all of the duties and obligations of Assignor arising under or from the Agreement as owner of the Subject Property and Assignor is hereby released from all such duties and obligations.

4. The sale, transfer or assignment of the Subject Property and the assignment and assumption provided for under this Assignment are the subject of additional agreements between Assignor and Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.

5. Assignor and Assignee execute this Assignment pursuant to Section 14 of the Agreement. This Assignment may be executed by the parties hereto in counterparts, each of which shall be deemed an original.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Assignment as of the dates set forth below.

Dated: \_\_\_\_\_

**ASSIGNOR:**

LCD GREENSPOT, LLC, a Delaware limited liability company

By: Lewis Management Corp., a Delaware corporation  
Its Manager

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 1**  
**TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

**DESCRIPTION OF SUBJECT PROPERTY**

**[ATTACH LEGAL DESCRIPTION]**

HOA

**EXHIBIT "I"**

**Fire Station No. 3 Site Plan/Floor Plan with Police Substation and Public Works Corporate  
Yard/Office Concept Plan**





PROJECT FOR:  
CITY OF  
HIGHLAND  
FIRE DEPT.

PROJECT NAME:  
HIGHLAND  
FIRE STATION  
7900 BERLAND AVE.  
HIGHLAND, CA

ISSUE INFORMATION:  
DATE: 1-25-04  
ISSUE: 1  
DRAWING NAME:  
SCALE:  
PROJECT NO.:  
DATE DATE: AUGUST 2004  
DRAWING NAME:  
SCALE:

SHEET TITLE:  
REFERENCE PLAN

SHEET NO.:  
A22

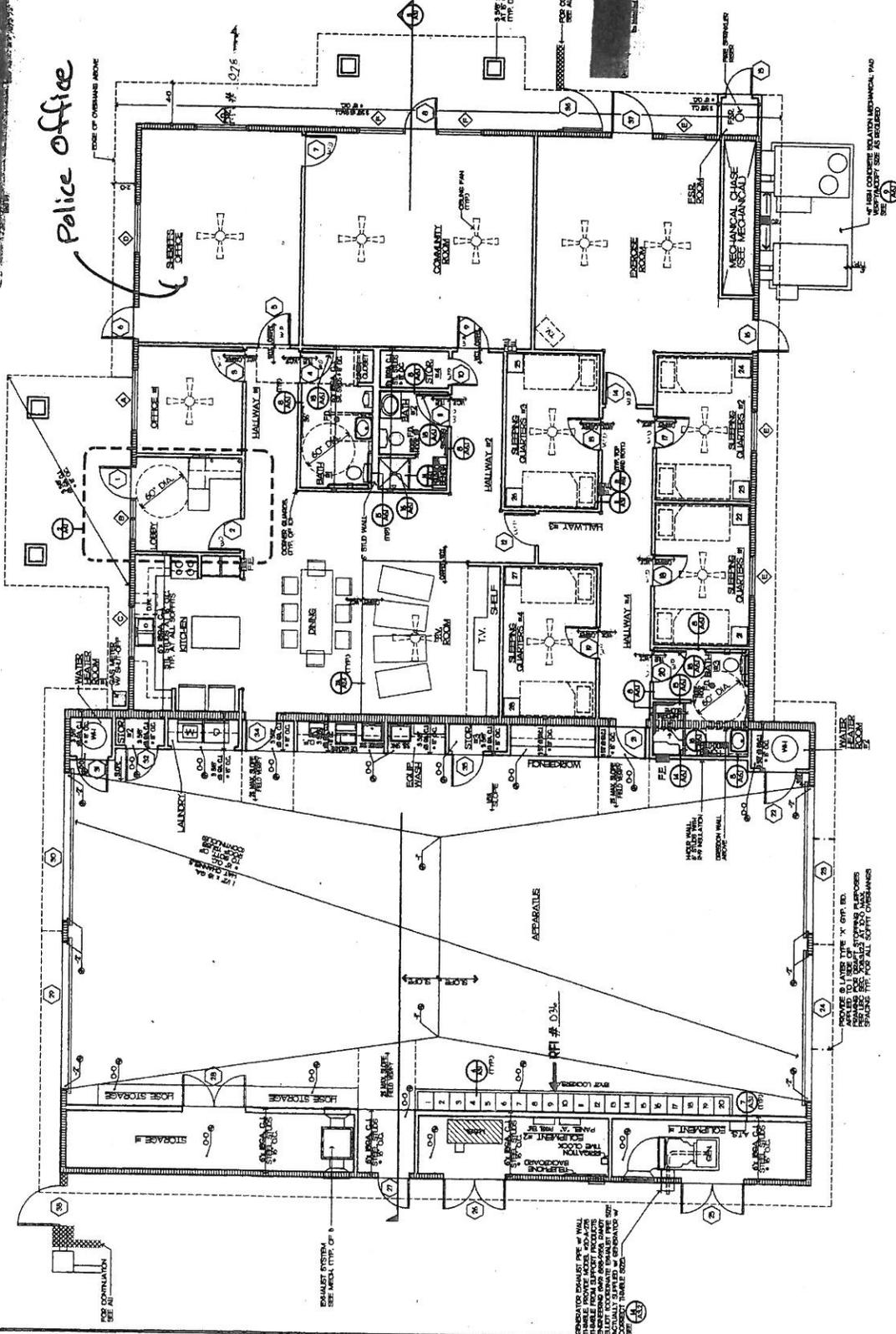
**WALL KEY**

CONCRETE BLOCK WALL, 8" CMU, TYPE "A"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "B"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "C"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "D"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "E"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "F"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "G"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "H"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "I"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "J"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "K"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "L"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "M"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "N"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "O"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "P"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "Q"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "R"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "S"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "T"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "U"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "V"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "W"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "X"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "Y"  
CONCRETE BLOCK WALL, 8" CMU, TYPE "Z"

**EQUIPMENT LIST**

NO.	DESCRIPTION	QUANTITY	REMARKS
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...
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22	...	...	...
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43	...	...	...
44	...	...	...
45	...	...	...
46	...	...	...
47	...	...	...
48	...	...	...
49	...	...	...
50	...	...	...

- 1.27 Add Item B.17: Provide and install all utilities as shown or specified.
- 1.28 Add Item B.18: Provide and install all ceiling and floor and other fixtures as a part of the construction with any part of the FFCA scope of work.
- 1.29 Add Item B.19: Provide and install all items to be shown on sheet as indicated in the Wall Key shown on sheet A22.
- 1.30 Add Item B.20: Provide framing and approval for walls shown above B.17 with columns on sheet A21 and detail.
- 1.31 Add Item B.21: Detail on sheet A21 on sheet A21. No Division Building System is required above the Appendix area.



SCALE: 1/4" = 1'-0"

1

REFERENCE PLAN

YARD LIGHTING

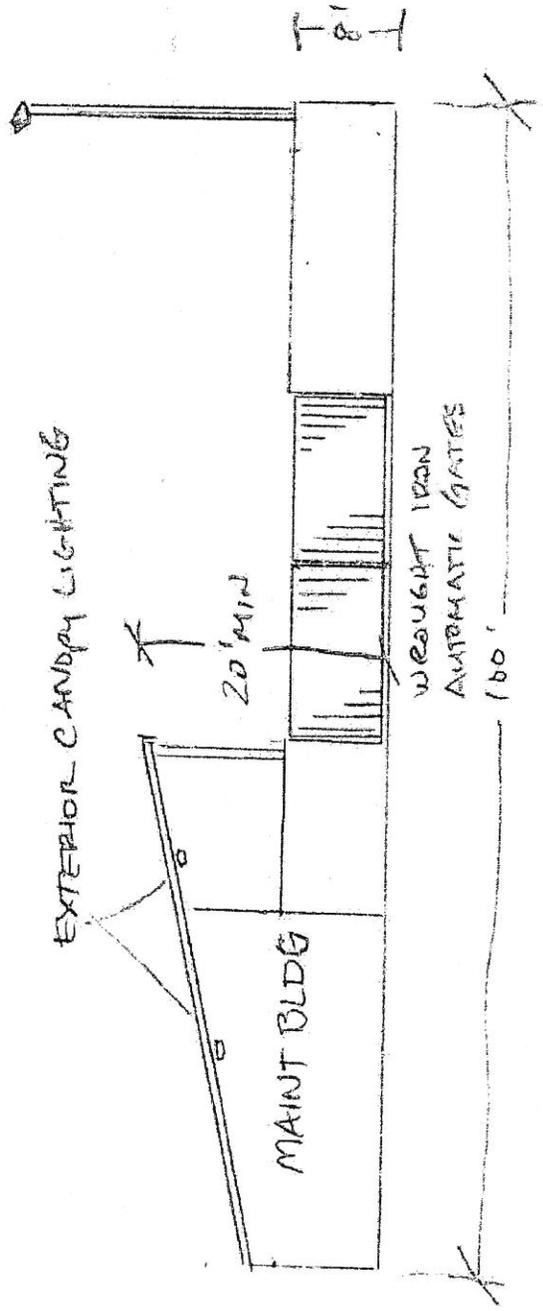
EXTERIOR CANDY LIGHTING

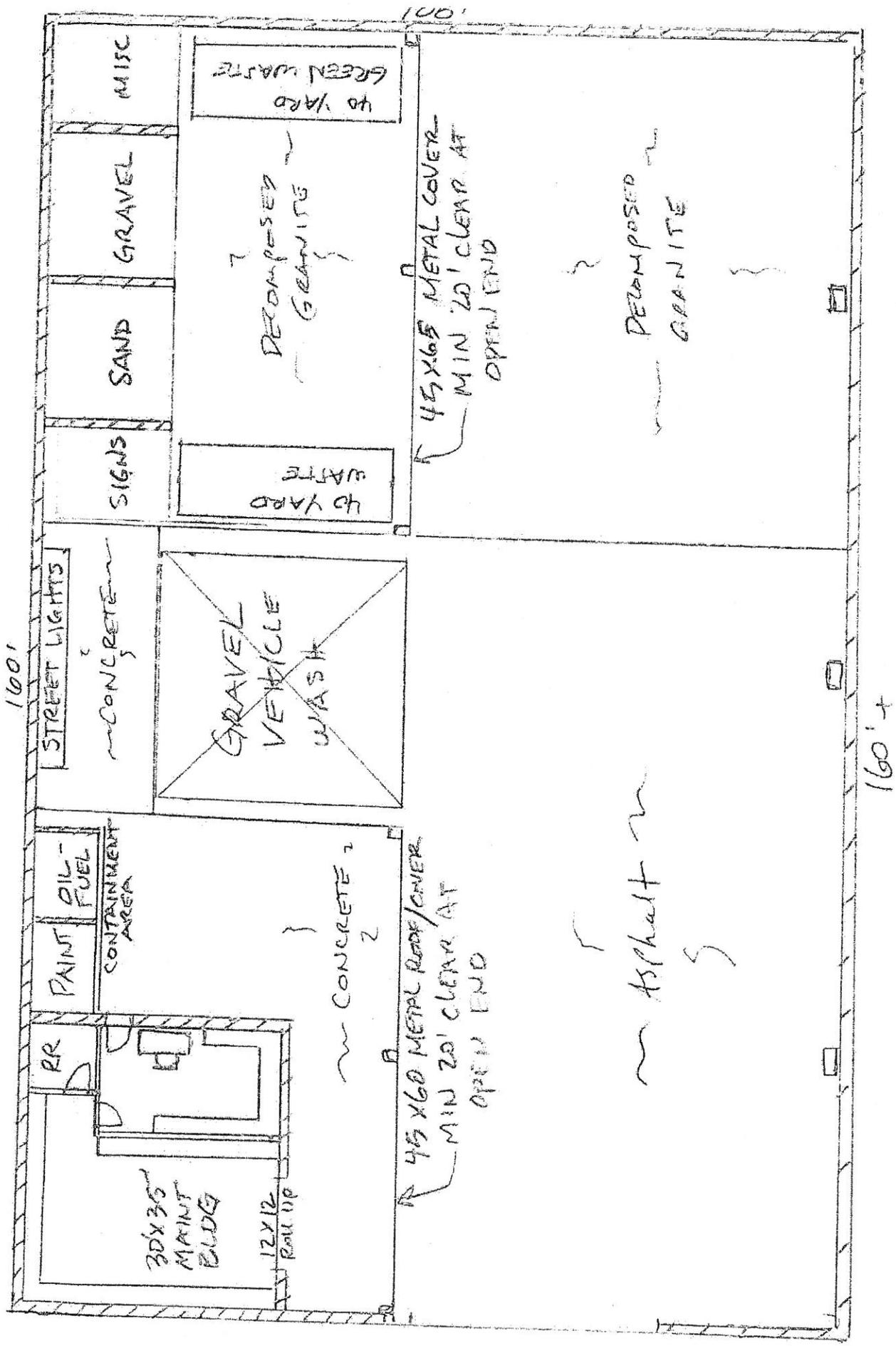
20' MIN

MAINT BLDG

WEIGHT IRON  
AUTOMATIC GATES

100'





100'

160'+

STREET LIGHTS

CONCRETE

GRAVEL  
VEHICLE  
WASH

PAINT  
OIL-FUEL  
CONTAINMENT  
AREA

CONCRETE

RR

30x35  
MAINT  
BLDG

12x12  
RAMP UP

CONCRETE

45x60 METAL ROOF/COVER  
MIN 20' CLEAR AT  
OPEN END

SIGNS

40 YARD  
WASTE

SAND

GRAVEL

MISC

40 YARD  
GREEN WASTE

DECOMPOSED  
GRANITE

45x65 METAL COVER  
MIN 20' CLEAR AT  
OPEN END

DECOMPOSED  
GRANITE

Asphalt