ORDINANCE NO. ORD 2022-1

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

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

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

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

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

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

by Government Code Section 65867, the City Council held a public hearing on adoption of the development agreement, and introduction and first reading of this ordinance; and,

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

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

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

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

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

   i. up to 250,000 square feet of space within Retail Buildings;
   ii. up to 465,000 square feet of space within Office Buildings;
   iii. two Parking Structures to serve the office uses;
   iv. a Hotel containing between 100 to 150 rooms;
   v. up to five (5) Residential Buildings containing up to 1,500 multiple family residential units, 200 of which will be Affordable Units;
   vi. the construction of park and open space improvements within the Village Park; and
   vii. the construction of associated pubic improvements, parking facilities, streets, pedestrian pathways, and other infrastructure.

B. The development agreement and the Project are consistent and compatible with the densities and uses authorized for the Project site specified in the Laguna Hills General Plan, the Urban Village Specific Plan, and the Zoning and Development Code of the City.

C. The development agreement provides for the orderly development of the Project property. The development agreement identifies the different phases and timing for construction of the Project and public improvements.

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

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2022.

_____
DAVID WHEELER, MAYOR

ATTEST:

_____
MELISSA AU-YEUNG, CITY CLERK

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

_____
MELISSA AU-YEUNG, CITY CLERK

EXHIBIT “A”

DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Laguna Hills
c/o City Clerk
24035 El Toro Road
Laguna Hills, California 92653

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

DEVELOPMENT AGREEMENT
(Village at Laguna Hills Mixed Use Project)

BY AND BETWEEN

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

AND

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

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

TABLE OF CONTENTS

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

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

RECITALS

This Development Agreement is predicated upon the following facts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 1 DEFINITIONS

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

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

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

1.3 Authorizing Ordinance. The "Authorizing Ordinance" means Ordinance No. ORD 2022-_ approving and authorizing this Development Agreement.

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

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

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

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

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

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

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

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

1.11 Covenant Agreement. "Covenant Agreement" means the covenant agreement with the City as required by the existing Development Approvals.

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

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

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

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

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

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

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

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

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

1.20 Excusable Delay. "Excusable Delay" is defined in Section 22.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2 TERM

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

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

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

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

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

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

SECTION 3 BINDING COVENANTS

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

SECTION 4 EFFECT OF AGREEMENT

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

SECTION 5 DEVELOPMENT OF PROJECT

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

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

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

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

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

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

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

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

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

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

(i) The Village Park.

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

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

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

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

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

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

(E) Concurrent Development of Residential Building I and Associated Retail Buildings. If Owner elects to Develop Residential Building I as part of Phase One, Owner must concurrently Develop the associated Retail Buildings that are contemplated by the Development Plan to be integrated with Residential Building I. For avoidance of doubt, these Retail Buildings are those identified on the Site Plan attached as **Exhibit C** as "Shops 2 $\pm$ 17,500

SF," "Retail ± 14,500 SF," "Retail ± 13,500 SF," and "Retail ± 12,000 SF." Owner shall not be entitled to issuance of a Certificate of Occupancy for Residential Building I unless it has also Completed Construction of these associated Retail Buildings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6 ENFORCEMENT

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

SECTION 7 PUBLIC BENEFITS

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

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

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

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

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

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

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

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

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

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

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

SECTION 8 PUBLIC IMPROVEMENTS AND SERVICES

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

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

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

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

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

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

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

SECTION 9 DEDICATIONS AND EXACTIONS

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

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

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

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

SECTION 10 FEES

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

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

(a) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; and

(b) The annual Development Agreement administration fee required to be paid pursuant to Section 10.7, below.

(c) Any fees and charges required to be paid by Owner pursuant to the AHIP.

(d) Fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; and

(e) Community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, and new water meter fees.

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

10.3 Public Park In-lieu Fees.

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

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

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

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

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

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

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

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

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

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars ($5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars ($15,636) per unit for each of the next 358 residential units[2] prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Eight). This payment shall be subject to Subsection 10.3.2, above, and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

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

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

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

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

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

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

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

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

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

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

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

(C) Owner shall pay City Two Million Five Hundred Thousand Dollars ($2,500,000) in five (5) installments of Five Hundred Thousand Dollars ($500,000) each to be paid to City on the first, second, third, fourth, and fifth anniversaries of the Development Agreement Date.

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

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

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

10.5.5 Community Benefit Fees with respect to Retail. In addition to any other Community Benefit Fees payable pursuant to the other provisions of this Section 10.5, in the event less than sixty thousand (60,000) square feet of New Retail is leased by operating tenants by the date Owner Completes Construction of the third Residential Building, Owner shall pay City an additional Community Benefit Fee in the amount of One Hundred Twenty Dollars ($120) per year, increased at the rate of three percent (3%) per year, compounded annually, commencing on the first anniversary date of the Development Agreement Date and annually thereafter, for each Residential Unit in the fourth and fifth Residential Buildings for which Owner has received Certificates of Occupancy. For purposes of this Subsection 10.5.5, Owner's execution of a lease with an operating tenant to fill a vacancy that arises after the Development Agreement Date and before Completion of Construction of the third Residential Building in the approximately 10,126 square foot building identified on Exhibit C as "(E) Restaurant" or the approximately 12,970 square foot building identified on Exhibit C as "(E) Building" shall count towards the calculation of the sixty thousand (60,000) square feet of New Retail leashing threshold. Owner's obligation to pay this additional Community Benefit Fee shall commence upon issuance of a Certificate of Occupancy for the third Residential Building containing and shall terminate on the earlier to occur of the following: (i) the date that at least 60,000 square feet of New Retail becomes leased; or (ii) the later to occur of either (x) the end of the Twenty Year Period or (y) expiration of the Term of this Development Agreement.

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

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

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

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

10.7 Annual Development Agreement Administration Fee. Commencing July 1, 2022, and annually, on or before July 1st of every year thereafter through and including July 1, 2030, Owner shall pay City a fixed fee to partially offset the costs incurred by the City to administer this Development Agreement (the "DA Administration Fee"). The initial amount of the DA

Administration Fee shall be Twenty Thousand Dollars ($20,000). Commencing July 1, 2022, and on each subsequent July 1st through and including July 1, 2031, the amount of the DA Administration Fee to be paid by Owner to City shall increase by three percent (3.0%).

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

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

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

SECTION 12 FUTURE APPROVALS

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

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

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

SECTION 13 AMENDMENT

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

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

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

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

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

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

SECTION 14 NON-CANCELLATION OF RIGHTS

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

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

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

SECTION 16 RESERVED AUTHORITY

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

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

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

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

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

SECTION 17 CANCELLATION

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

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

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

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

SECTION 18 PERIODIC REVIEW

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 19 DEFAULTS AND REMEDIES

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

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

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

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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

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

SECTION 20 [INTENTIONALLY OMITTED]

SECTION 21 ASSIGNMENT

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

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

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

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

SECTION 22 GENERAL

22.1 Excusable Delay.

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

(A) Economic Delay. A recession, as defined by the National Bureau of Economic Research, excluding the period from the Development Agreement Date through December 31, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.12 Notice.

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

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

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

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

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

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

With copies to: Gregory E. Simonian

City Attorney - City of Laguna Hills
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626

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

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

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

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

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

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

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

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

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

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

22.22 Disaffirmance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signatures appear on the following page]

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

"CITY"

CITY OF LAGUNA HILLS, a California municipal corporation

By: _____
KENNETH H. ROSENFIELD,
Interim City Manager

ATTEST:

_____
MELISSA AU-YEUNG,
City Clerk

APPROVED AS TO FORM:

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

"OWNER"

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

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

All signatures to be acknowledged by a Public Notary

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

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

WITNESS my hand and official seal.

_____
Notary Public

(seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

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

WITNESS my hand and official seal.

_____
Notary Public

(seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

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

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

WITNESS my hand and official seal.

_____
Notary Public

(seal)

EXHIBIT A

PROPERTY DESCRIPTION AND DEPICTION

LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

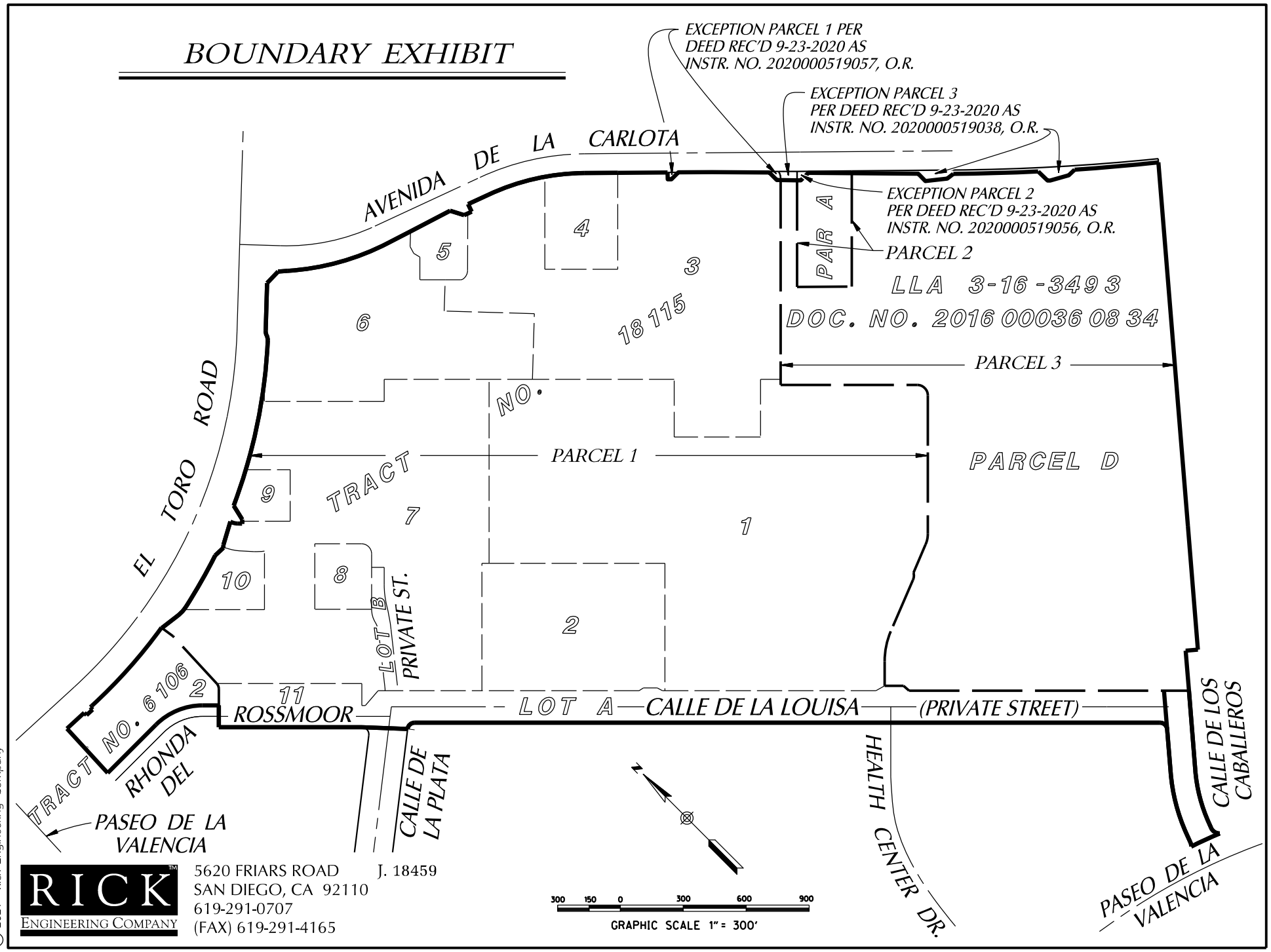
ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF LAGUNA HILLS, A CALIFORNIA MUNICIPAL CORPORATION, MORE PARTICULARLY DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED AUGUST 18, 2006 AS INSTRUMENT NO. 2006000554765 OF OFFICIAL RECORDS.

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

_____ __3-16-2021_____

PATRICK A. MCMICHAEL, L.S. 6187 DATE

BOUNDARY EXHIBIT



RICK ENGINEERING COMPANY
5620 FRIARS ROAD
SAN DIEGO, CA 92110
619-291-0707
(FAX) 619-291-4165

J. 18459

300 150 0 300 600 900

GRAPHIC SCALE 1" = 300'

\\cp.rickeng.com\projects\C_SD_M\18459_5Laguna\Survey\EXHIBITS\18459_LagunaBndryExb.dgn
\\cp.rickeng.com\projects\C_SD_M\18459_5Laguna\Survey\EXHIBITS\SD CorpStds 2005.dscript
19-MAR-2021 15:03

EXHIBIT B

DEVELOPMENT FEES

Public Park In-lieu Fees

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

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

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

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

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

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

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

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

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

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

(E) Owner shall pay City Five Million Five Hundred Ninety-Seven Thousand Six Hundred Eighty Eight Dollars ($5,597,688) in increments at the following times: (i) Fifteen Thousand Six Hundred Thirty Six Dollars ($15,636) per for each of the next 358 units[2] residential units prior to the issuance of a vertical building permit for the Residential Building containing the residential unit; and (ii) the remaining balance, if any, on or before the date that is fifteen (15) years after the Development Agreement Date (**Exhibit D**, Milestone Nine). This payment shall be subject to Section 10.3.2 of this Development Agreement and Owner's obligation to make this payment by the date set forth herein shall not be subject to extension pursuant to the provisions of Section 22.1 (Excusable Delay) of this Development Agreement.

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

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

Public Art / Public Art In-Lieu Fees

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

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

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

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

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

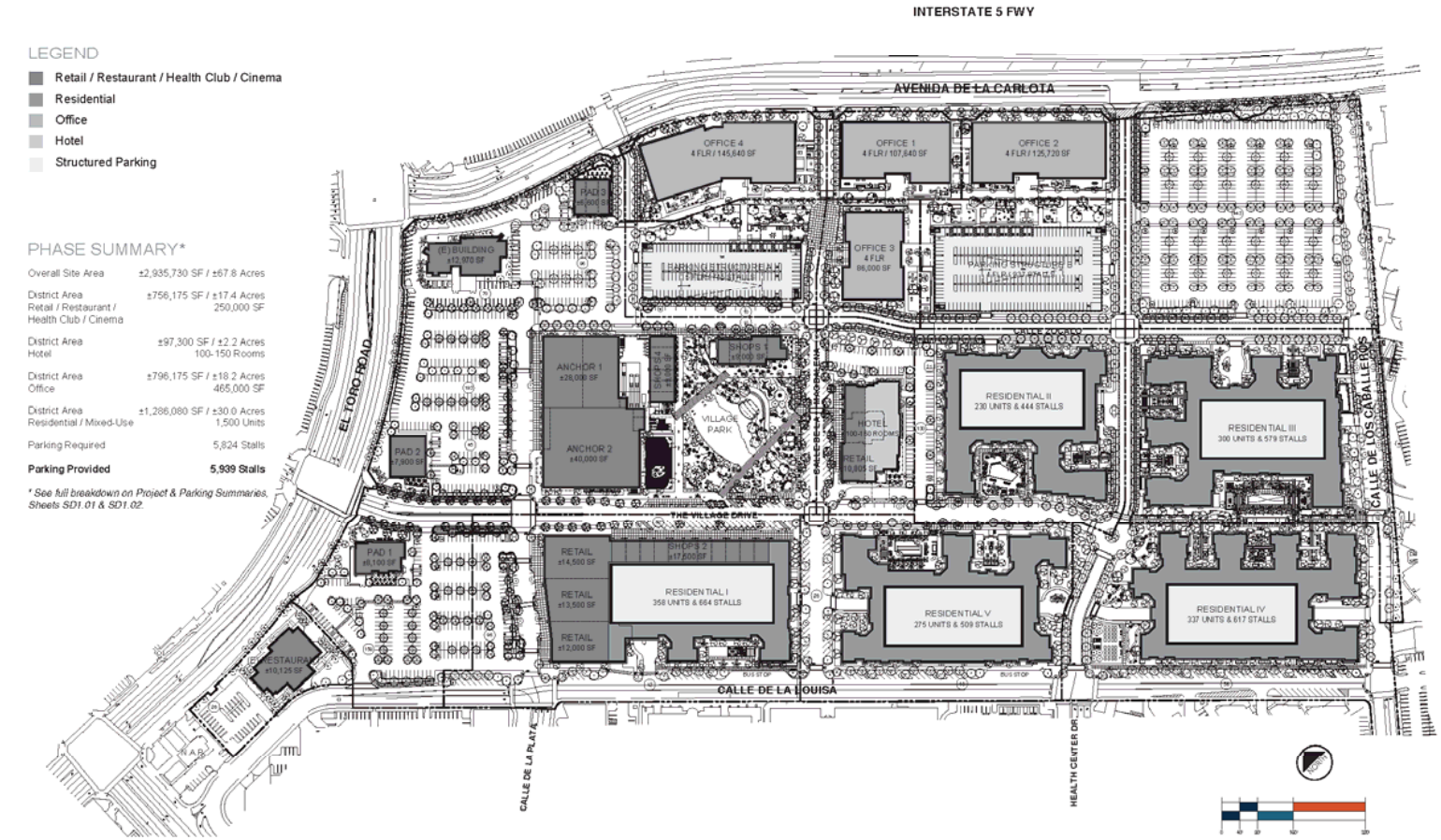
Traffic Impact Mitigation Fees

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

EXHIBIT C

PROJECT SITE PLAN (AT FULL BUILD-OUT)

SITE PLAN
GROUND LEVEL



THE VILLAGE AT LAGUNA HILLS

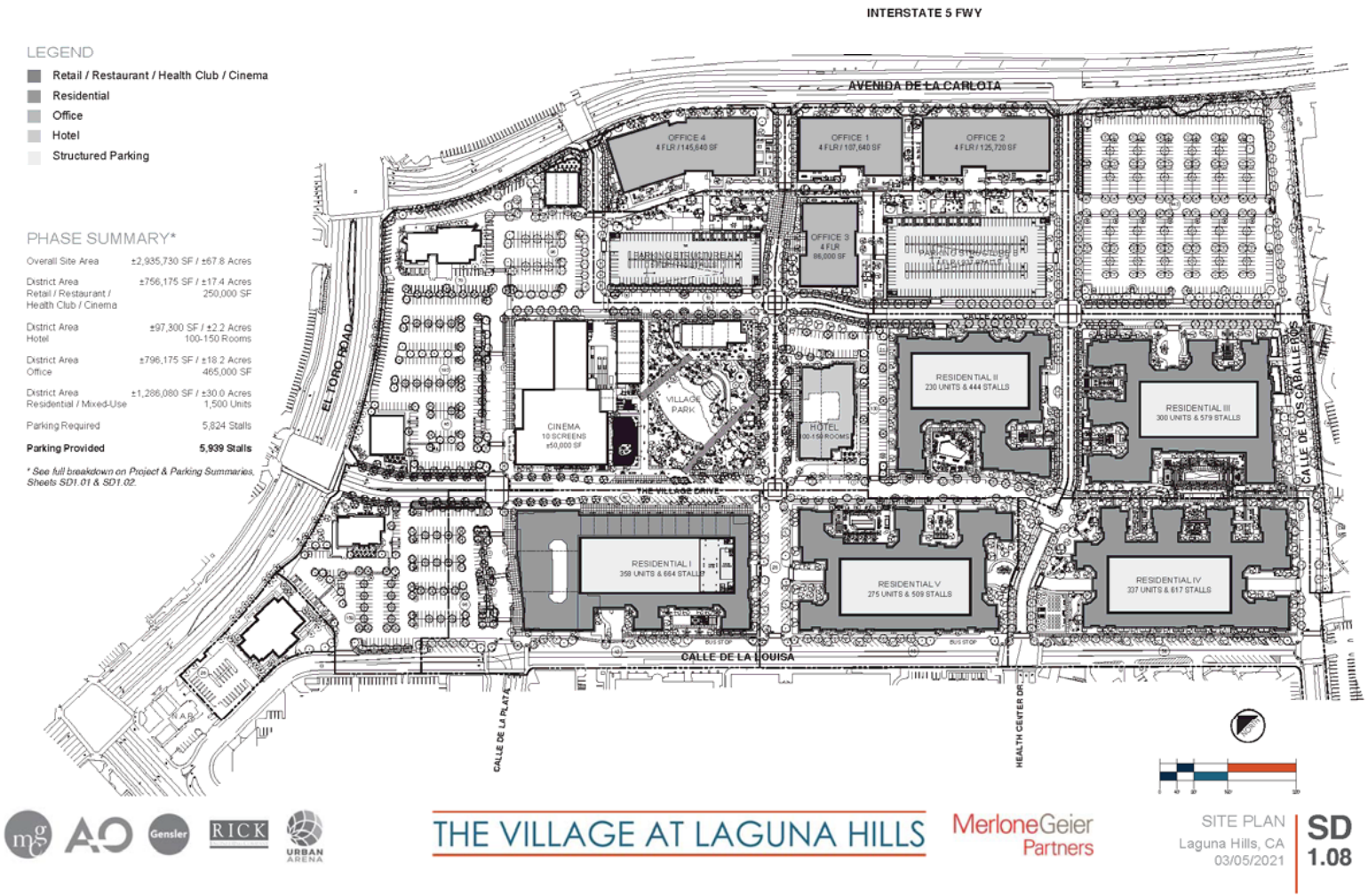
MerloneGeier Partners

SITE PLAN
Laguna Hills, CA
03/05/2021

SD 1.07

Exhibit C

SITE PLAN
UPPER FLOOR(S)



THE VILLAGE AT LAGUNA HILLS

MerloneGeier Partners

SITE PLAN
Laguna Hills, CA
03/05/2021

SD 1.08

Exhibit C

EXHIBIT D

DEVELOPMENT AGREEMENT MILESTONES

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

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

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

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

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

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

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

EXHIBIT E

ALL REQUIRED PUBLIC IMPROVEMENTS

1. Provision of Bus Stops on Calle de la Louisa. Prior to the construction of street improvements on Calle de la Louisa, Owner shall work with the Orange County Transportation Authority (OCTA) and provide bus stops along Calle de la Louisa, as requested by OCTA or City. Bus stop locations for OCTA facilities shall be constructed in accordance with the OCTA standards. Owner shall provide bus stop furniture to the reasonable satisfaction of the City's Community Development Director and Public Services Director to include, but not be limited to, benches, trash receptacles and shade opportunities that shall be maintained by the Owner.

2. Construction of Perimeter Entrance Feature at Southwest Corner of El Toro Road and Avenida de la Carlota. Prior to the issuance of the first building shell final or certificate of occupancy for new buildings in the El Toro Pad District, the Owner shall design and construct a Perimeter Entry Feature for the southwest corner of El Toro Road and Avenida de la Carlota and on the second entry drive southbound on Avenida de la Carlota as shown on Figures 21 and 25 of the Specific Plan. Ledgestone used for the project shall be Bear Canyon ledgestone, or equivalent. Ledgestone shall be installed in a dry-stack application (no visible mortar joints). Construction plans shall denote the approved material. Plans are subject to the review and reasonable approval of the City's Community Development Director and Public Services Director.

3. Alignment of Intersection of Health Center Drive at Calle de la Louisa. The intersection of Health Center Drive at Calle de la Louisa shall be modified to directly align the centerline of Health Center Drive on either side of Calle de la Louisa, taking into account the existing median island on the westerly side of the intersection, and include one westerly bound left turn lane and one westerly bound through/right turn lane, each with a minimum 100' lane length, not including transitions, to the reasonable satisfaction of the City's Public Services Director.

4. Payment for Debris Gates and Full Trash Capture Devices. Prior to the issuance of the first grading permit, Owner shall pay the City the full cost to purchase and install new debris gates and full capture trash screens to fit into existing catch basins, for all existing catch basin inlets serving Avenida de la Carlota and El Toro Road along the frontage of the Project, as determined by the reasonable discretion of the City's Public Services Director, to include the following:

    a. Catch Basin #97 located on the southerly side of El Toro Road approximately 152' westerly of the centerline of Avenida de la Carlota.
    b. Catch Basin #61 located on the westerly side of Avenida de la Carlota approximately 709' southerly of the centerline of Plaza Lane / Project Driveway (private street intersection).
    c. Catch Basin #178 located on the westerly side of Avenida de la Carlota approximately 448' northerly of the centerline of Oakbrook Village (private street intersection).

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

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

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

7. Payment for Vehicular Video Detection Equipment for Retrofit of Avenida de la Carlota. As reasonably determined by the City's Public Services Director, Owner shall be responsible for funding, in advance, the full cost of the purchase and installation by City of specified vehicular video detection equipment for retrofit of the Avenida de la Carlota at Plaza Lane / Project Driveway traffic signal in accordance with City standards. Owner shall provide the City the full cost to purchase and install the equipment, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.

8. Payment for Replacement of Existing Illuminated Street Name Signs. As reasonably determined by the City's Public Services Director, Owner shall fund, in advance, the full cost of the replacement of the existing illuminated street name signs on existing traffic signals to match the new street name designations serving access to the Property. Such illuminated street name signs shall be replaced with LED illuminated street name signs as selected by City. Owner shall provide the City the full cost to purchase and install the signs, as determined in the reasonable discretion of the City's Public Services Director, prior to the issuance of the first certificate of occupancy for any building within the El Toro Pad District.

9. Payment for Replacement of City Wayfinding Signage. Owner shall be responsible for funding, in advance, the full cost of replacement of any City Wayfinding signage to be modified from "Laguna Hills Mall" to "Village at Laguna Hills", or any other City approved Project name, at any location at which the name change is required. Owner shall deposit with the City an amount equal to the full cost to manufacture and install all such signs, as reasonably determined by the City's Public Services Director. In the event the full documented cost to manufacture and install said signs exceeds the amount of the deposit, Owner shall pay City the difference within thirty (30) days of a written request by City. In the event the full documented cost to manufacture and install said signs is less than the amount of the deposit, City shall refund Owner the difference within thirty (30) days after installation of the last such sign. Owner's deposit shall be made prior to the issuance of the first certificate of occupancy for any building located within the El Toro Pad District.

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

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

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

12. Construction / Reconstruction of Project Entrances Along Avenida de la Carlotta. All of the existing and new Project entrances to the Property along Avenida De La Carlota shall be reconstructed/constructed such that they are at 90 degrees to the centerline of Avenida de la Carlota and shall be brought up to current ADA ramp and sidewalk standards to the reasonable satisfaction of the City's Public Services Director, utilizing Armor Tile blue cast-in-place detectable warning surfaces at ramps.

13. Construction of Asphalt Concrete Overlay on Avenida de la Carlota, From El Toro Road to Southerly Project Boundary. Within one-year of the completion of the Avenida de la Carlota enhanced parkway improvements described in Paragraphs 10 and 11, above, Owner shall design and construct a 0.15 foot asphalt concrete overlay over the entire width of Avenida de la Carlota, from El Toro Road to the southerly Property boundary. Said design shall include removal and replacement of deteriorated pavement, crack sealing, cold-planing, the pavement overlay, striping and advance traffic signal loop detector replacements as designed by a State of California registered / licensed civil engineer to the reasonable satisfaction of the City's Public Services Director. Owner may, at its option, fund the full cost necessary for the City to perform this work. The terms for payment to City for performance of the work shall be within the reasonable discretion of the City's Public Services Director. Upon completion of the asphalt concrete overlay described herein, no further utility excavations or storm drain modifications shall be allowed within Avenida de la Carlota for a period of five years. Notwithstanding this five-year limitation on excavations, if there is no alternative to a critically necessary excavation as reasonably determined by the City's Director of Public Services, Owner shall construct and implement enhanced pavement repairs to restore the like new condition of the pavement following completion of the excavation. The enhanced pavement repairs shall, at a minimum, consist of the cold plane of 0.17 foot asphalt concrete for a total distance of 100 feet, 50 feet beyond either side of the excavation location, from curb to the closest full lane width of the excavation location to the reasonable satisfaction of the City's Director of Public Services.

14. Upgrade of Adjacent Public Sidewalks, Ramps, and Related Facilities to Current ADA Standards. For every grading permit requested, prior to the issuance of said permit, Owner shall provide an Americans with Disabilities Act (ADA) accessibility review for compliance with all applicable state and federal accessibility statutes, regulations and standards to the reasonable satisfaction of the City's Public Services Director. In addition, the accessibility review shall depict compliance with California Disabled Accessibility requirements as

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

15. Reconstruction of El Toro Road Bus Stop. Prior to the issuance of the first certificate of occupancy for the third Residential Building or the first certificate of occupancy for the first Office Building, Owner shall reconstruct the OCTA El Toro Road Bus Stop, on the southerly side of El Toro Road easterly of Paseo de Valencia, to accommodate future projected ridership needs based on full Project buildout, to the reasonable satisfaction of the Public Services Director and OCTA, inclusive of street furniture, benches, waste receptacles, bicycle racks, shade structure, lighting and landscaping.

16. Funding and/or Construction of Other Public Improvements Required by Existing Land Use Regulations and Existing Development Approvals. Owner shall fund and/or construct any and all other public improvements required to be funded or constructed pursuant to the Existing Land Use Regulations and the conditions of approval to the Existing Development Approvals.

EXHIBIT F

VILLAGE AT LAGUNA HILLS

AFFORDABLE HOUSING IMPLEMENTATION PLAN

VILLAGE AT LAGUNA HILLS
AFFORDABLE HOUSING IMPLEMENTATION PLAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Planning Principles for Affordable Units.

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

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

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

TABLE 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Reporting and Monitoring of Compliance.

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

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

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

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

EXHIBIT G

REASONABLE APPROVAL PROCESSING TIMES

[Pursuant to Subsection 22.1.1(C) (Administrative Delay]

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

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

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

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

EXHIBIT H

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

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

I. Owner's Public Art Obligation

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

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

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

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

II. Conceptual Project Art Program

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

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

1. Goals and Objectives. A description of the goals and objectives of the Conceptual Project Art Program.

2. Theme. A description of the proposed theme of the Public Art to be installed on the Property.

3. Standards. Standards governing type, media, materials, size, scope, and content of Public Art to be installed on the Property. All standards should be consistent with the Specific Plan provisions for Public Art. Owner shall consider the following when developing proposed standards for Public Art installations:

a. Relevance of the artwork to the City, its values, culture, and people;

b. Suitability of the artwork for outdoor display, including its maintenance and conservation requirements.

c. Relationship of the artwork to the site, especially how it serves to activate or enhance public space.

d. Appropriateness of the scale of the artwork.

e. Community standards of decency;

f. Construction and material standards for Public Art set forth in the "Public Art" provisions of Section V of the Specific Plan. Pursuant to the Specific Plan, permissible types of Public Art include, but are not limited to, sculptures,

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

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

5. Criteria for Selection of Artists. A description of how artists commissioned to create or fabricate original art for the Project shall be selected and the criteria that shall be used to select artists. Pursuant to the Specific Plan, artists selected must have experience in design concepts, fabrication, installation and long-term durability of large-scale outdoor artworks, and be approved by the City's Planning Agency prior to selection. Owner may, but is not required, to include a list of proposed artists and their qualifications as part of the Conceptual Project Art Program.

6. Drawings and Illustrations. Owner is encouraged to include concept drawings, illustrations, and/or visual examples depicting the type, nature, size, scale, and location of the types of Public Art envisioned by the Conceptual Project Art Program. At Owner's option, Owner may include illustrations of specific proposed Public Art installations.

7. Phasing Plan. A phasing plan for the funding and installation of Public Art.

a. The phasing plan shall provide for the funding and installation of Public Art on the Property within timeframes consistent with the anticipated phasing of the Project components and infrastructure and shall establish outside dates within the Term of the Development Agreement by which Public Art installations at specified locations or areas of the Property shall be completed. At a minimum, the phasing plan shall ensure that Public Art with a minimum value equal to or exceeding the amount of Owner's Accrued Actual Art Obligation attributable to the Project components Owner is required to Develop in Phase One shall be installed prior to the date Owner is required to Complete Construction of such required Phase One components pursuant to Subsection 5.4.1 of the Development Agreement.

b. If the phasing plan contemplates that funds will be accumulated within a Public Art Fund established pursuant to Section V to facilitate the

financing and planning of larger, Project-serving Pubic Art installations, it shall address the anticipated amounts needed to fund such Public Art installations, the anticipated timing of completion of such Public Art installations, and any applicable requirements or limitations with respect to deposits to or withdrawals from the Public Art Fund for such Public Art installations.

c. The phasing plan shall address how Owner's In-Lieu Payment Contribution shall be applied to satisfy Owner's Public Art Obligation in relation to the sequence of issuance of building permits for construction of Project components. Unless otherwise proposed by Owner and included as a requirement within the approved Conceptual Project Art Program, Owner is not required to install any Public Art until the estimated total aggregate construction cost of Project components exceeds One Hundred Thirty Million Dollars ($130,000,000). Notwithstanding the foregoing, at Owner's option, the phasing plan may require the installation of Public Art in conjunction with the construction of Project components before the estimated total aggregate construction cost of the Project components exceeds One Hundred Thirty Million Dollars ($130,000,000).

d. At Owner's option, the phasing plan may include requirements for the funding and/or installation of Public Art in conjunction with the development of specific parcels of the Property and/or components of the Project, which shall be binding on and enforceable against future transferees, assignees, and developers.

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

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

C. Review and Approval by Planning Agency. The Conceptual Project Art Program shall be subject to review by the City's Planning Agency for conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of Owner's submitted Conceptual Project Art Program is subject to the discretionary approval of the City's Planning Agency, subject to applicable limits of state and federal law.

D. Amendments. The Conceptual Project Art Program may be amended from time to time with the approval of the City's Planning Agency.

III. Final Art Submittals

A. Final Art Submittal Required. Before fabricating and installing any piece of Public Art, Owner must prepare, submit, and obtain City approval of final plans and specifications for such Public Art ("**Final Art Submittal**").

B. Required Content of Final Art Submittals. Each Final Art Submittal shall describe and demonstrate how the proposed Public Art is consistent with the approved Conceptual Project Art Program and the Specific Plan and shall include, without limitation, detailed plans and specifications, schematics, and descriptions of the type, size, medium/material, location, content, and value of the proposed Public Art, a description of the proposed artist(s), a proposed timeline for installation of the Public Art, and a complete application for any Subsequent Development Approvals required for installation of the Public Art. More than one Public Art installation may be combined in a single Final Art Submittal.

C. Review and Approval by Planning Agency. The design, artist, type, size, medium, location, content, estimated value, and timeline for installation of each Public Art installation shall be subject to review the City's Planning Agency for consistency with the Conceptual Project Art Program and conformance with the requirements and goals of the Specific Plan's Public Art provisions. Owner understands and agrees that approval of each Final Art Submittal is subject to the discretionary approval of the City's Planning Agency, subject to the applicable limits of state and federal law; provided, however, that Planning Agency may not deny or impose conditions on a proposed Final Art Submittal based on aspects of the proposed Public Art that conform to the Conceptual Project Art Program approved by the Planning Agency.

IV. Installation of Approved Public Art

A. Obligation. Owner shall install approved Public Art within the timeframes set forth in the Conceptual Project Art Program phasing plan and each Final Art Submittal approved by the City's Planning Agency.

B. Time Extensions. Time extensions not exceeding six (6) months may be approved by the City Manager, in his or her reasonable discretion. Time extensions exceeding six (6) months shall require approval of the Planning Agency, in its reasonable discretion.

C. Excusable Delay. The timeframes in which Owner is required to install Public Art shall be subject to extension for periods equal to the duration of any excusable delay pursuant to Section 22.1 of the Development Agreement.

D. Withholding of Permits for Noncompliance. In addition to any other remedies available to City, Owner's failure to complete installation of Public Art within required timeframes shall entitle City to withhold future building permits or certificates of occupancy for the Project until Public Art of a value equal or exceeding the amount of Owner's Accrued Actual Art Obligation has been installed.

V. Public Art Fund

A. Establishment of Public Art Fund. Rather than installing a separate Public Art installation in conjunction with the construction of each building to satisfy Owner's Actual Art Obligation, Owner may accumulate funds in a fund held in trust by the City (the "**Public Art**

Fund") to facilitate the financing and planning of larger, Project-serving Public Art installations as provided in the approved Conceptual Project Art Program.

B. Effect of Deposits into Public Art Fund. Subject to any applicable requirements or limitations set forth in the approved Conceptual Project Art Program, deposits by Owner into the Public Art Fund in an amount equal to one-half percent (0.5%) of the estimated construction cost of any discreet Project component, as determined by City, shall permit Owner to obtain building permits and/or certificates of occupancy for such Project component prior to approval of Final Art Submittals for, and/or installation of, specified Public Art installations. Such deposits into the Public Art Fund shall not be deemed to satisfy or excuse Owner's obligation under the Development Agreement to install actual Public Art.

C. Withdrawals from Public Art Fund. Following approval by the City's Planning Agency of a Final Art Submittal for a Public Art installation intended to be financed with funds held in the Public Art Fund, Owner may withdraw funds from the Public Art Fund in an amount up to the estimated value of the Public Art installation, as determined by the Planning Agency in conjunction with approval of the Final Art Submittal. Consistent with the Specific Plan, allowable expenses attributable to the value of a Public Art installation include the artist fee for design and fabrication, mountings and bases for installation of the artwork, and lighting that is integral to the artwork, but do not include landscaping surrounding the art, delivery expenses, or installation costs.

D. Forfeiture in the Event of Expiration, Termination, or Cancellation of Development Agreement. In the event the Development Agreement expires or is terminated or cancelled pursuant to the terms of the Development Agreement, and Owner's Accrued Actual Art Obligation has not been satisfied by the date of such expiration, termination or cancellation, that portion of the funds, if any, held in the Public Art Fund equal to the difference between Owner's Accrued Actual Art Obligation and the value of Public Art that has actually been installed shall be forfeited to the City and deposited into City's Public Art In-Lieu Fund.

VI. Project Building and Occupancy Permits

A. Building Permits. In order to be entitled to issuance of a building permit for any discreet Project component, Owner must demonstrate that the combination of (1) the value of specific Public Art installations already approved by the City's Planning Agency, and (2) the amount deposited by Owner into a Public Art Fund to fund larger, Project-serving Public Art installations pursuant to the approved Conceptual Project Art Program, equals or exceeds the amount of Owner's Accrued Public Art Obligation.

B. Certificates of Occupancy. In order to be entitled to issuance of a final certificate of occupancy for any building, Owner must demonstrate that it is in compliance with the timeframes for installation of Public Art set forth in the Conceptual Project Art Program phasing plan and all approved Final Art Submittals.