

EXHIBIT "G"
ORDINANCE NO. 16- XXXX

AN ORDINANCE OF THE CITY OF COVINA APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN MLC HOLDINGS, INC. AND THE CITY OF COVINA RELATED TO A PROPOSED DEVELOPMENT CONSISTING OF 117 FOR-SALE TOWNHOUSE UNITS ON APPROXIMATELY 6.12 ACRES, THE CONVEYANCE OF 1.11 ACRES TO THE CITY AND THE CONVEYANCE OF 0.351 ACRES TO THE CITY FOR PARKLAND, FOR PROPERTY GENERALLY LOCATED AT 1162 NORTH CITRUS AVENUE AND 117 EAST COVINA BOULEVARD – APN: 8406-019-019, 8406-019-020 AND 8406-019-17

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the Development Agreement Statute) which authorizes cities to enter into agreements for the development of real property in order to establish certain development rights in such property; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements; and

WHEREAS, MLC Holdings, Inc. (the "Applicant") proposes to construct 117 for-sale townhouse units with private drive aisles, recreation facilities and common open space areas on approximately 6.12 acres of land, to make an irrevocable offer to dedicate 1.11 acres to the City and to convey 0.351 for parkland, for property generally located at 1162 North Citrus Avenue and 117 East Covina Boulevard. The proposed development will require approvals from the City, potentially including, but not limited to, a general plan amendment, a zone change, a specific plan, vesting tentative tract map, final subdivision maps, site plan review, demolition permits, grading permits, encroachment permits, building permits and certificates of occupancy; and

WHEREAS, a copy of the proposed Development Agreement is attached hereto and incorporated herein as Exhibit "A" to this Ordinance; and

WHEREAS, as part of its consideration of the Project, the City prepared Draft Environmental Impact Report ("EIR") (SCH 2016051053) on the Project pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*, "CEQA"), the Guideline for Implementation of the California Environmental Quality Act (14 California Code of Regulations, Sections 15000 *et seq.*, the "State EIR Guidelines"); and

WHEREAS, pursuant to the Development Agreement Statute, the Planning Commission held a duly noticed public hearing on November 8, 2016, on the proposed Project and has found

that the proposed Development Agreement is consistent with objectives of the general plan, compatible with the uses authorized for the project area, in conformity with public convenience and beneficial to the public welfare, and will not adversely impact the orderly development of property; and

WHEREAS, the City Council, after published notice, held a public hearing on November 29, 2016 concerning the proposed Project, and has considered the reports and documents presented by City staff, the Planning Commission’s recommendation, and the written and oral comments presented at the public hearing.

WHEREAS, on November 29, 2016, the City Council of the City of Covina held a noticed public hearing to review the Project pursuant to the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.* (“CEQA”), and the State CEQA Guidelines, 14 C.C.R. § 15000 *et seq.* and considered the reports and documents presented by City staff, the Planning Commission’s recommendation, and the written and oral comments presented at the public hearing.

WHEREAS, upon the close of the public hearing, the City Council adopted Resolution No. 16-XXXX, adopting the Final EIR (SCH 2016051053), adopting the Findings of Facts and adopting a Mitigation Monitoring and Reporting Program for the Project. Resolution No. 16-XXXX and the findings therein are hereby incorporated by this reference as though set forth in full.

WHEREAS, on November 29, 2016, the City Council of the City of Covina considered the proposed Project including General Plan Amendment (GPA) 16-001, Covina Forward Specific Plan (SP) 16-001, Zone Change (ZCH) No. 16-002, Vesting Tentative Tract Map (TTM) 74512, Site Plan Review (SPR) No. 16-023, Site Plan Review (SPR) No. 16-033 and Final EIR, Findings of Facts and Mitigation Monitoring and Reporting Program at a duly noticed public hearing at which time all interested persons had an opportunity to and did testify either in support or in opposition to this matter. The City Council considered all the testimony and any comments received regarding the proposed Project, the Final EIR, the Findings of Facts and the Mitigation Monitoring and Reporting Program, prior to and at the public hearing.

WHEREAS, all legal prerequisites prior to adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA DOES ORDAIN AS FOLLOWS:

SECTION 1. Based on the full record of these proceedings, the City Council hereby finds the Development Agreement:

- 1) Is consistent with the General Plan and the City Council finds that the proposed project as conditioned, complies with all applicable provisions of the General Plan;
- 2) Is in conformity with public conveniences and good land use practices as the project approvals, mitigation monitoring program and development agreement

- will guarantee adequate infrastructure for the development and land uses that are compatible with their surroundings;
- 3) Will not be detrimental to the health, safety and general welfare as the project approvals, mitigation monitoring program and development agreement will guarantee adequate infrastructure, safety measures and public services such as police, fire, utilities and sanitation;
 - 4) Will not adversely affect the orderly development of property or the preservation of property values because the proposed development is conditioned so as to be consistent with the General Plan and compatible with surrounding land uses; and
 - 5) Is consistent with the provisions of Government Code 65864 through 65869.5.

SECTION 2. Based upon the aforementioned findings, the City Council hereby approves the Development Agreement between MLC Holdings, Inc. and the City of Covina attached hereto as **Exhibit "A"** and incorporated herein by reference.

SECTION 3. CEQA. The environmental effects of the proposed Development Agreement were analyzed in the Final EIR. The City Council reviewed the Final EIR and found that it reflects the independent judgment of the City Council and its staff, and is an adequate and extensive assessment of the environmental impacts of the Development Agreement. The City Council certified and approved the Final EIR as having been prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), made the necessary findings, and adopted a Mitigation Monitoring and Reporting Program through Resolution No. XXXX. Said Resolution is incorporated herein by this reference as though set forth in full. The City Council incorporates by this reference the findings and mitigation measures contained in the Final EIR, Findings of Facts and Mitigation Monitoring and Reporting Program as to the environmental effects of the Development Agreement. Those actions apply equally to this approval and are incorporated herein by this reference. The Director of Community Development shall file a Notice of Determination with the County Clerk under Title 14, California Code of Regulations Section 15075.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The Mayor is authorized to execute the Development Agreement on behalf of the City once this Ordinance is effective. The executed development agreement shall be recorded against the title to the property.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 125 E. College Street, Covina, CA 91723. The custodian of these records is the City Clerk.

SECTION 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the

City of Covina hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall become effective within thirty (30) days after its adoption.

SECTION 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the City Clerk shall cause to be published once the Ordinance, or a summary of thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Covina.

SECTION 9. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall enter the same in the Book of Original Ordinances.

SIGNED AND APPROVED this 5th day of January, 2017

KEVIN STAPLETON, MAYOR

ATTEST:

SHARON F. CLARK, Chief Deputy City Clerk

APPROVED AS TO FORM:

CANDICE K. LEE, City Attorney

CERTIFICATION

I, Sharon F. Clark, Chief Deputy City Clerk of the City of Covina, do hereby certify that Ordinance No. 16-XXXX was duly adopted by the City Council of the City of Covina at a specific meeting held on the 29th day of November 2016, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Dated:

SHARON F. CLARK, Chief Deputy City Clerk

EXHIBIT "A"

DEVELOPMENT AGREEMENT

PLEASE RECORD AND WHEN RECORDED

RETURN TO:

City Clerk

City of Covina

125 East College Street

Covina, California 91723

Space above this line for Recorder's use only
No recording fee under Government Code Sections 2783 and 6103

DEVELOPMENT AGREEMENT

PLEASE RECORD AND WHEN RECORDED

RETURN TO:

City Clerk
City of Covina
125 East College Street
Covina, California 91723

Space above this line for Recorder's use only
No recording fee under Government Code Section 27383

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is made and entered into on _____, 2016, by and between the CITY OF COVINA (hereinafter "CITY"), a municipal corporation, and MLC HOLDINGS, INC., a California corporation (hereinafter "OWNER").

RECITALS

A. OWNER has an equitable interest in all of the real property ("Property") described on Exhibit "A" and depicted on Exhibit "B." CITY adopted and approved the Initial Development Approvals (as that term is defined below) for the Property generally located at 1162 North Citrus Avenue and 177 East Covina Boulevard (Assessor's Parcel Numbers 8406-019-019, 8406-019-020 and 8406-019-017) allowing for development of the Property with a transit-oriented mixed use development with new public and civic uses, as well as residential and commercial uses and related improvements, including up to 120 residential dwelling units, as described more fully in the Covina Forward Specific Plan ("Specific Plan") (collectively, the "Project"). To facilitate the Project, it is anticipated that OWNER will work collaboratively with CITY as set forth herein. Also in order to implement the Project, it is anticipated that OWNER will work collaboratively with Foothill Transit in connection with the anticipated conveyance of a portion of the Property and potential related cost sharing arrangements with that public agency (as may be documented in a separate mutually acceptable agreement).

B. Government Code Section 65864 *et seq.* ("Development Agreement Law") authorizes CITY to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning, and reducing the economic costs of such development. OWNER has therefore asked, and CITY has agreed, that a Development Agreement should be approved and adopted for this Property in order to memorialize and secure the respective expectations of CITY and OWNER.

C. The City Council of the CITY (hereinafter "City Council") has found that this Agreement is in the best public interest of CITY and its residents, that approving this Agreement constitutes a present exercise of CITY's police power, and that the Project is consistent with the applicable goals and policies of CITY's General Plan and Specific Plan, and imposes appropriate standards and requirements with respect to the Development (as that term is defined below) of the Property in order to maintain the overall quality of life and of the environment within CITY. Prior to its approval of this Agreement, CITY considered the environmental impacts of the Project and completed its environmental review of the Project through the certification of the EIR (as that term is defined below) and adoption of a Mitigation Monitoring and Reporting Program ("MMRP").

D. On November 8, 2016, the Planning Commission of CITY held a duly-noticed public hearing on OWNER's application for approval of this Agreement (as well as the other Initial Development Approvals), made certain findings and determinations with respect thereto, and recommended to the City Council that this Agreement (and the other Initial Development Approvals) be approved. On November 29, 2016, the City Council also held a duly-noticed public hearing on OWNER'S application for approval of this Agreement (as well as the other Initial Development Approvals), considered the recommendations of the Planning Commission, and found that this Agreement (and the other Initial Development Approvals) are consistent with and helps to implement CITY's General Plan and the Specific Plan. On _____, 2016, the City Council adopted Ordinance No. ___, enacting this Agreement ("DA Ordinance"). This Agreement shall become effective thirty (30) days after the adoption of Ordinance No. ___ ("Effective Date").

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, or all letters capitalized, when used in the Agreement. Any terms not defined in this Section 1 below shall have the meaning assigned to them in this Agreement unless otherwise expressly indicated. The defined terms include the following:

1.1.1 "*Agreement*" means this Development Agreement.

1.1.2 "*CEQA*" means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) and the related CEQA Guidelines (14 Cal. Regs. § 15000 *et seq.*), as it now exists or may hereafter be amended.

1.1.3 "*CITY*" means the City of Covina, a California municipal corporation.

1.1.4 "*City Council*" means the City Council of the CITY.

1.1.5 “*Conditions of Approval*” mean those conditions of approval, if any, which are not set forth in this Agreement and which are otherwise imposed by the CITY in connection with CITY’s approval of the Development Approvals.

1.1.6 “*Default*” means a failure or unreasonable delay by CITY or OWNER to perform any material provision herein.

1.1.7 “*Development*” or “*Develop*” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure, improvements and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and park facilities and improvements. “*Development*” and “*Develop*” also includes, without limitation, the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement, landscaping or facility on the Property after the construction and completion thereof.

1.1.8 “*Development Approvals*” means collectively, the Initial Development Approvals and the Subsequent Development Approvals.

1.1.9 “*Development Plan*” means the plan for Development of the Property with the Project, including, without limitation, the planning and zoning standards, regulations, and criteria for the Development of the Property, contained in and consistent with Exhibit “C.”

1.1.10 “*Development Impact Fees*” means any requirement of CITY or other governmental or quasi-governmental agency in connection with a Development Approval for the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development of the Project on the environment, facilities, services, improvements and/or infrastructure; or other public interests.

1.1.11 “*Development Requirement*” means any requirement of CITY in connection with or pursuant to any Development Approval for the dedication of land, the construction or improvement of public facilities, the payment of Development Impact Fees or assessments in order to lessen, offset, mitigate or compensate for the impacts of Development on the environment, or the advancement of the public interest.

1.1.12 “*Discretionary Action(s)*” or “*Discretionary Approval(s)*” means an Initial or Subsequent Development Approval that requires the exercise of judgment, deliberation or discretion on the part of 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 a Ministerial Permit or Ministerial Approval (as hereafter defined).

1.1.13 “*Effective Date*” means the date the Ordinance adopting this Agreement takes effect.

1.1.14 “EIR” shall mean the final Environmental Impact Report (State Clearinghouse No. 2016051053) for the Project which was prepared, circulated and certified in accordance with applicable laws and regulations, including, without limitation, CEQA. “EIR Mitigation Measures” shall mean the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval as reflected in the adopted MMRP.

1.1.15 “Initial Development Approvals” means all permits, entitlements, approvals, licenses, consents, rights and privileges, and other actions (both ministerial and discretionary) in connection with Development of the Property with the Project that are considered, issued or approved by CITY on or before the Effective Date of this Agreement, including but not limited to:

- (a) General Plan Amendment (GPA) 16-001;
- (b) Covina Forward Specific Plan (SP) 16-001;
- (c) Zone Change (ZCH) 16-002;
- (d) Vesting Tentative Tract Map (TTM) 74512;
- (e) this Agreement (DA) 16-001; and
- (f) Site Plan Review /Development Review (SPR) 16-023.

1.1.16 “Land Use Regulations” means all ordinances, resolutions, laws, general or specific plans, codes, rules, regulations and official policies of CITY adopted and effective on or before the Effective Date of this Agreement governing Development and use of land, including, without limitation, the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, environmental review; and the design, improvement and construction standards and specifications, all as applicable to the Development of the Property with the Project. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

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

1.1.17 “OWNER” means MLC HOLDINGS, Inc., a California corporation and, where specified in this Agreement, its successors in interest and/or assigns to all or any part of the Property.

1.1.18 “Ministerial Permit(s),” or “Ministerial Approval(s)” means a permit or approval, including, but not limited to, building permits, grading permits, and certificates of occupancy, which require CITY, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

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

1.1.20 “Processing Fees” means all application, inspection and other regulatory processing fees and charges required by CITY that are adopted for the purpose of defraying CITY’s actual costs incurred or to be incurred in the processing and administration of any form of regulatory permit, license, land use entitlement or other approval, which are applied uniformly to all development related activity within CITY, including fees for land use applications. Processing Fees are distinguished from Development Impact Fees (as defined above). As set forth more fully below, Processing Fees are not vested under this Agreement.

1.1.21 “Project” means the Development of the Property consistent with the Development Plan and other Initial Development Approvals.

1.1.22 “Property” means the real property described in Exhibit “A” and shown on Exhibit “B” to this Agreement.

1.1.23 “Reservation of Authority” means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.24 “Subsequent Development Approvals” means all permits, entitlements, approvals, licenses, consents, rights and privileges, and other actions (both ministerial and discretionary) considered, issued or approved by CITY subsequent to the Effective Date in connection with Development of the Property.

1.1.25 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.26 “Term” shall mean the period of time from the Effective Date until the termination of this Agreement as provided in Subsection 9.1, or earlier termination as provided in Section 6.

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

Exhibit "A" Legal Description of the Property.

Exhibit "B" Map showing Property and its location.

Exhibit "C" Development Plan for the Development of the Property.

Exhibit "D" Legal Description and Depiction of City Property.

Exhibit "E" Legal Description and Depiction of Parkland Property.

Exhibit "F" Legal Description and Depiction of Property to be Conveyed to Foothill Transit.

Exhibit "G" Form of Grant Deed

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, Development of the Property with the Project and CITY actions on applications for Subsequent Development Approvals respecting the Property shall be subject to the terms and provisions of this Agreement.

2.2 **Interest in Property.** OWNER represents and covenants that it has an equitable interest in the Property.

2.3 **Assignment.**

2.3.1 *Right to Assign.* OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410 *et seq.*), and in so doing assign its rights and obligations under this Agreement as the same may relate solely to the portion of the Property being sold, transferred, or assigned to any person, partnership, joint venture, firm or corporation at any time during the Term of this Agreement.

2.3.2 *Release of Transferring OWNER.* Upon the sale, transfer or assignment of all or a portion of the Property, the transferring OWNER shall be released of all obligations under this Agreement that relate solely to the portion of the Property being sold, transferred, or assigned; provided that the obligations under this Agreement that relate to the portion of the Property being sold, transferred, or assigned are expressly assumed by and made enforceable against the transferee, pursuant to a written agreement executed by the transferee and provided to CITY not less than fourteen (14) days prior to the effective date of the transfer, and also recorded against the title of the transferred portion of the Property concurrently with the transfer. Notwithstanding the foregoing sentences of this Section 2.3.2, the

transferring OWNER shall remain responsible for all obligations set forth in the Development Plan that do not relate solely to the portion of the Property being sold, transferred, or assigned.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop; Development Plan Adjustments. Subject to the terms of this Agreement, OWNER shall have a vested right to Develop the Property in accordance with, and to the extent of, the Development Plan and the other Initial Development Approvals. Development of the Property, as provided for under the Development Plan and other Initial Development Approvals is hereby vested specifically with the Property, and OWNER retains the right to apportion development rights between itself and any subsequent OWNER, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Development Plan, the other Initial Development Approvals and the Land Use Regulations and any such transfer complies with Section 2.3.2. OWNER also is hereby vested into the Development Impact Fees that are in place on the Effective Date as these relate to Development of the Project, and therefore shall not be required to pay any new or increased Development Impact Fees that CITY adopts after the Effective Date. Notwithstanding anything to the contrary in this Section 3.1, in the event of a conflict between any provision of this Agreement and the other Initial Development Approvals, this Agreement shall prevail.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be those contained in the Development Plan, the other Initial Development Approvals, the Subsequent Development Approval(s) only after and to the extent approved by CITY, and the Land Use Regulations not inconsistent therewith and as otherwise provided for herein.

3.3 Subsequent Development Approvals. CITY shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters as established by the Land Use Regulations, for all or a portion of the Property at OWNER's option. CITY further agrees that, unless otherwise requested by OWNER or as expressly authorized by this Agreement, it shall not amend or rescind any Subsequent Development Approval(s) respecting the Property after such approvals have been granted by CITY. Pursuant to Section 66452.6(a) of the Government Code, the life of all Initial Development Approvals and any and all Subsequent Development Approvals approved by CITY with respect to the Property, including, without limitation, tentative or vesting tentative subdivision map(s) approved for the Property, or any portion thereof, shall also be extended for a period equal to the Term of this Agreement and any extensions thereto.

3.4 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when, or at what rate the Property will be developed with the Project. Such decisions depend upon numerous factors which are or may not be within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar

factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to Develop the Property with the Project in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.5 Changes and Amendments. The parties acknowledge that Development of the Property with the Project may require Subsequent Development Approvals, and that in connection therewith OWNER may determine that changes are appropriate and desirable in the Initial Development Approvals, including, without limitation, the Development Plan. In accordance with Section 3.1 above, in the event OWNER finds that such a change is appropriate or desirable, OWNER may apply in writing for an amendment to any Initial Development Approval(s), including, without limitation, the Development Plan to effectuate such change, and CITY shall process such application notwithstanding anything in this Agreement that may be to the contrary. CITY shall have no obligation to grant any such application by OWNER that modifies the permitted or conditionally permitted uses or the overall intensity or density of Development of the Property, or otherwise is a substantial modification of the Development Plan having significant adverse environmental impacts that have not been evaluated and mitigated to the extent feasible. CITY's approval of any Subsequent Development Approval (including, without limitation, any change in the Initial Development Approvals (including the Development Plan)) shall not require an amendment to this Agreement except in the event and to the extent that OWNER expressly seeks and CITY approves such amendment in connection therewith. Upon CITY's approval of any Subsequent Development Approval, it shall become a part of the Development Approvals governing Development of the Property and shall be conclusively deemed to be consistent with this Agreement, without any further need for any amendment to this Agreement or any of its Exhibits.

3.6 Reservation of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Property:

(a) Processing Fees imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued. The Project shall be subject to any increase in Processing Fees imposed by CITY, provided that such a change is applied on a CITY-wide basis.

(b) Procedural regulations not inconsistent with this Agreement, relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials as part of the then most current versions of the Uniform Building Code,

Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Solar Energy Code, Uniform Swimming Pool, Spa and Hot Tub Code, Uniform Housing Code, Uniform Administrative Code, National Electrical Code, and any other Uniform Code, and also adopted by CITY as Subsequent Land Use Regulations. Notwithstanding any provision of this Agreement to the contrary, construction in connection with the Project shall be subject to changes occurring from time to time in the provisions of the CITY's building standards codes, including the CITY's building, mechanical, plumbing and electrical regulations that are based on the recommendations of multi-state professional organization(s) and become applicable throughout the CITY, including the California Building Code and other similar or related uniform codes.

(d) Regulations which may be in conflict with the Initial Development Approval(s) but which are identified after the Effective Date as necessary to protect the public health, safety, and welfare. To the extent possible, any such regulations shall be applied and construed consistent with Section 3.6.3 below so as to provide OWNER with the rights and assurances provided under this Agreement.

(e) Regulations which are not in conflict with the Initial Development Approvals, including, without limitation, the Development Plan and this Agreement. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of Development of the Property, reducing the intensity or density of the Project, or attempting to assess any additional Development Impact Fees or taxes on Development of the Property, or imposing additional and/or more stringent architectural or landscaping requirements or reviews, shall be deemed to conflict with the Initial Development Approvals, and shall therefore not be applicable to Development of the Property with the Project.

(f) Regulations which are in conflict with the Initial Development Approvals provided OWNER has given written consent to the application of such regulations to Development of Property.

(g) Modifications in Federal or State laws and regulations which CITY is required to enforce as against the Project or the Development of the Property. Changes in, or additions to, the Land Use Regulations shall apply to the Project if such changes or additions are specifically mandated to be applied to developments such as the Project by applicable California or federal laws or regulations that go into effect on or after the Effective Date, which prevent or preclude compliance with one or more of the provisions of this Agreement. If CITY or OWNER believes that such a change or addition required by California or federal law or regulation exists, then that party shall provide the other party hereto with a copy of such California or federal law or regulation and a statement of the nature of its conflict with the provisions of the Land Use Regulations and/or of this Agreement. In the event that any such change or addition shall be required by California or federal law or regulation, then the provision(s) of this Agreement that require said change(s) shall be modified or suspended as may be

necessary to comply with such state or federal laws or regulations and CITY shall reasonably cooperate with OWNER in minimizing the impact of such change upon the Project and the Property. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.6.2 Future Discretion of CITY. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Initial Development Approvals, including, without limitation, the Development Plan or this Agreement as set forth in Section 3.6.1, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval subject to Section 3.6.1.

3.6.3 Intent. CITY acknowledges that OWNER has reasonably entered into this Agreement and intends to proceed with the Project on the assumption that CITY has adequately provided for the public health, safety and welfare through the Land Use Regulations and the Initial Development Approvals. In the event that any future, unforeseen public health or safety emergency arises, CITY agrees that it shall attempt to address such emergency in such a way as not to adversely impact Development of the Property in accordance with the Initial Development Approvals, and if that is not possible, to select that option for addressing the emergency which has the least adverse impact on Development of the Property in accordance with the Initial Development Approvals. CITY specifically also agrees that it will not adopt any development moratorium applicable to the Property or the Project except as a last resort response to such an emergency, and then shall maintain any such moratorium with respect to the Property and the Project only for so long as required for CITY to address the emergency in such a way as to permit the Project to be completed according to OWNER's timetable.

3.6.4 Taxes, Assessments and Fees. This Agreement shall not prevent CITY from enacting, levying or imposing any new or increased tax, assessment or Processing Fees that are levied or imposed on a CITY-wide basis and adopted in accordance with applicable laws and regulations; provided, however, that CITY acknowledges and agrees that it shall not impose any new or increased Development Impact Fees the Development of the Project that are adopted by CITY after the Effective Date. The parties further anticipate that CITY will impose a condition on the Project relating to its annexation into CITY's existing Community Facilities District for police, fire and park services ("Citywide CFD"). If and to the extent this condition is so imposed, the parties shall work diligently and in good faith to promptly process and bring to the City Council for consideration said annexation request upon OWNER's application for same, such that said annexation is complete prior to issuance of the first building permit for the production of units for the Project.

3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by CITY may possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other

public agencies. At such time as OWNER seeks such Subsequent Development Approvals from non-CITY agencies, CITY agrees to reasonably cooperate and coordinate with OWNER in such efforts for the purpose of implementing the Project, upon OWNER's request and subject to OWNER paying any and all costs incurred by CITY in connection therewith.

3.8 Tentative Maps. If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with Development of the Property, is a vesting map under the Subdivision Map Act (Government Code Section 66410 *et seq.*), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to OWNER, then and to that extent the rights and protection afforded OWNER under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above in this Section 3.8, Development of the Property shall occur only as provided in this Agreement and the other Initial Development Approvals (and any Subsequent Development Approval(s) if and to the extent approved by CITY), and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.9 OWNER's Right to Construct Facilities. It is understood and agreed that, subject to CITY review and approval of plans and specifications, OWNER may elect, and reserves the right, to construct, or cause the construction of, any public or quasi-public facility for which CITY intends to collect a fee, and to dedicate the completed facility to CITY, in lieu of payment of the fee (as well as reimbursement from fees paid to CITY by other benefitted third party property owners (if any), if said fee credit would not be sufficient to reimburse OWNER for costs beyond its proportionate fair share of said facility); provided, however, that any such reimbursement would only come from Development Impact Fees received by CITY from other third party property owners benefitted by OWNER's construction of said facilities in connection with other development projects and CITY shall have no obligation to directly reimburse OWNER for construction of public facilities from CITY's general funds.

3.10 Provision of Real Property Interests by CITY. In any instance where OWNER is required to construct any public improvement on land not owned by OWNER, CITY shall first have acquired the necessary real property interests to allow OWNER to construct such public improvements; otherwise, OWNER shall have no obligation to so construct pursuant to Government Code Section 66462.5. Costs associated with such acquisition or condemnation proceedings, if any, shall be OWNER's responsibility, and may be included in an assessment district (if any) on a fair share basis.

3.11 Cooperation in Completing Project. CITY agrees to cooperate with OWNER as necessary and lawful, without cost to CITY (except to the extent any such costs relate to CITY's development of the City Property and/or the Parkland Property, in which case CITY shall be responsible for said costs), for the successful completion of the Project, as reflected in the Initial Development Approvals, including, without limitation, the Development Plan and fulfillment of all OWNER's obligations set forth herein as well as all other Conditions of Approval or other Development Requirements, including, without limitation, accomplishment of each and every one of the Development Requirements or conditions that may be imposed on the Development of the Project by CITY or by other public agencies. In connection with the conveyance of the City Property and the Parkland Property (as set forth in Sections 5(a), (b)

below), the parties may enter into a temporary construction easement agreement, or other similar agreement, that provides for the ability of OWNER to stage construction activities on the City Property and/or the Parkland Property as necessary or desirable to facilitate the timely and efficient implementation of the Project, as well as other mutually acceptable terms including, without limitation, those relating to indemnification and insurance.

3.12 Issuance of Ministerial Permits. Upon written request of OWNER, CITY shall endeavor to expedite the processing of all applications for Ministerial Permits, including but not limited to building, grading, and other permits necessary to complete construction and occupancy of horizontal and/or vertical improvements on the Property, as set forth in the Initial Development Approvals (including, without limitation, the Development Plan), provided OWNER's applications for such permits comply with all Land Use Regulations applying to the subject matter of the applicable permit and with the other Initial Development Approvals (including any and all Conditions of Approval attached thereto) or any Subsequent Development Approval(s) if and to the extent approved by CITY.

4. PERIODIC REVIEW.

CITY shall review OWNER's performance every twelve (12) months at the anniversary of the adoption of the Agreement, and this periodic review shall be conducted in accordance with the Development Agreement Law ("Periodic Review"). In connection with this Periodic Review, OWNER shall demonstrate good faith compliance with the terms of this Agreement. If, as a result of the review, CITY finds and determines, based upon substantial evidence, that OWNER has not complied in good faith with the terms and conditions of this Agreement, CITY may serve on OWNER a notice to cure setting forth in detail the nature of OWNER's non-compliance with this Agreement. If OWNER fails to cure the non-compliance within sixty (60) days of the date of the notice or, if such cure cannot be effected within such sixty (60) day period and OWNER fails to commence and proceed in good faith in an effort to cure such non-compliance within such sixty (60) day period, CITY may, by written notice to OWNER, terminate this Agreement. The review shall be conducted by the Director of Community Development. Upon completion of a Periodic Review and a finding of OWNER's good faith compliance and further upon OWNER's request, City shall provide an Estoppel Certificate stating: (a) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (b) this Agreement has not been amended either orally or in writing, or if it has been amended, specifying the document number of any recorded amendments; and (c) there are no existing Defaults in the performance of OWNER's obligations under this Agreement to the actual knowledge of the party signing the Estoppel Certificate.

5. PUBLIC BENEFIT.

In consideration for the rights and benefits to OWNER under this Agreement, OWNER, through its compliance with this Agreement and otherwise through implementation of the Project, provides to CITY the following public benefits:

- (a) Land Conveyance to CITY: OWNER shall convey to CITY by grant deed a fee simple interest to a portion of real property within the Property,

comprising approximately 1.11 acres of land ("City Property") described and depicted in Exhibit "D", in accordance with the terms and provisions of this subsection (a). OWNER shall adhere to all recommendations set forth in that certain Phase I Environmental Site Assessment (dated August 10, 2015) ("Phase I ESA") and that certain Phase I Environmental Site Assessment Addendum (dated August 27, 2015) ("ESA Addendum"), including, but not limited to the recommendation that OWNER have a qualified environmental professional be present during the demolition of the underground structures on the Property. OWNER shall also adhere to any recommendations made by said professional regarding or resulting from any demolition of underground structures on the Property. In addition, OWNER shall provide to CITY reasonable documentation from said professional that the demolition occurred consistent with the above-referenced professional recommendations set forth in this subsection (a). So long as OWNER adheres to the foregoing requirements, CITY shall accept said conveyance pursuant to its standard acceptance procedures. Said Grant Deed shall be in substantially the same form as Exhibit "G". OWNER's conveyance of the City Property to CITY at the time established herein is a material term of this Agreement and a breach of such term shall entitle CITY to terminate this Agreement as provided herein and avail itself of any available remedy at law or equity in accordance with Section 6 below. OWNER shall demolish any existing structures on the City Property and rough grade it prior to conveying it to CITY. OWNER shall convey the City Property to CITY upon the later of the following: (i) the geotechnical professional's issuance of the rough grading certification of the Property, or (ii) the recordation of the final map for the Property, but in no event later than December 31, 2017; notwithstanding anything to the contrary in the foregoing OWNER's obligation to convey the City Property shall be subject to and contingent on the full and final resolution of any third party litigation challenging this Agreement or any other Development Approvals such that OWNER may proceed with Development of the Project.

(b) Parkland Conveyance to City. OWNER shall convey to CITY by grant deed a fee simple interest to a portion of real property within the Property, comprising approximately 0.351 acres of land ("Parkland Property"), described and depicted in Exhibit "E", in accordance with the terms and provisions of this subsection (b). OWNER shall adhere to all recommendations set forth in the Phase I ESA and the ESA Addendum, including, but not limited to the recommendation that OWNER have a qualified environmental professional be present during the demolition of the underground structures on the Property. OWNER shall also adhere to any recommendations made by said professional regarding or resulting from any demolition of underground structures on the Property. In addition, OWNER shall provide to CITY reasonable documentation from said professional that the demolition occurred consistent with the above-referenced professional recommendations set forth in this subsection (b). So long as OWNER adheres to the foregoing requirements, CITY shall accept said conveyance pursuant to its standard acceptance procedures. The Parkland Property shall be used for City park and recreation facilities pursuant to Chapter 16.28 of the Covina Municipal Code. Said Grand Deed shall be substantially in

the same form as Exhibit "G". OWNER's conveyance of the Parkland Property to CITY at the time established herein is a material term of this Agreement and a breach of such term shall entitle CITY to terminate this Agreement as provided herein and avail itself of any available remedy at law or equity in accordance with Section 6 below. OWNER shall demolish any existing structures on the Parkland Property and rough grade it prior to conveying it to City. OWNER shall convey the Parkland Property to CITY upon the later of the following: (i) the geotechnical professional's issuance of the rough grading certification for the Property, or (ii) the recordation of the final map for the Property, but in no event later than December 31, 2017; notwithstanding anything to the contrary in the foregoing, OWNER's obligation to convey the Parkland Property shall be subject to and contingent on the full and final resolution of any third party litigation challenging this Agreement or any other Development Approvals such that OWNER may proceed with Development of the Project.

(c) OWNER's conveyance of the City Property and the Parkland Property shall be treated as a "offer for dedication of parkland" in lieu of otherwise applicable parkland impact fees pursuant to the Covina Municipal Code Section 16.28.030 and shall be deemed to satisfy the Project's requirements for parkland (as set forth in Section 16.28) and thus OWNER shall not be required to pay any parkland impact fees pursuant to Section 16.28.070. Provided, however, that the parties acknowledge and agree that said conveyances result in a substantial public benefit to CITY since the fair market value of the City Property is significantly more than the amount of parkland impact fees that CITY could otherwise lawfully impose on the Project under Section 16.28 of the Covina Municipal Code.

(d) OWNER shall pay for the cost of a standard owner's title policy in favor of CITY for each of the two above-referenced conveyances to CITY. The liability amount of the title policy for the City Property shall be no less than \$1,387,500.00, and the liability amount of the title policy for the Parkland Property shall be no less than \$438,750.00.

(e) Public Land Conveyance to Foothill Transit: OWNER shall convey to the Foothill Transit a parcel of real property within the Property, comprising approximately 3.08 acres of land, described and depicted in Exhibit "E", for development and use by Foothill Transit as a park and ride facility, as described more fully in the Specific Plan ("Transit Center Property") for fair market values provided, however, that OWNER'S obligation to convey the Transit Center Property shall be subject to OWNER and Foothill Transit entering into a separate mutually acceptable contractual agreement and accompanying grant deed between OWNER and Foothill Transit.

(f) Demolition of aging, dilapidated retail uses and automobile repair facility uses in connection with Development of the Project.

(g) Elimination of blight and increased property tax revenue as a result of the implementation of the Project.

(h) Increased economic activity throughout the CITY as a result of the implementation of the Project.

(i) Increased access to regional public transportation and reduction of vehicle traffic by locating high-quality housing and providing for opportunities to create new civic and transit center uses near major transportation corridors and transit.

6. DEFAULT, REMEDIES AND TERMINATION.

6.1 Rights of CITY after Default: No Monetary Damages Remedy Against OWNER.

In the event of a Default by OWNER, CITY may terminate this Agreement and shall otherwise have hereunder all legal and equitable remedies as provided by law, except for the recovery of monetary damages which shall not be permitted. Before CITY may terminate this Agreement or take action to obtain judicial relief, CITY shall comply with the notice and cure provisions of Section 6.3.

6.2 OWNER Remedy Limited to Specific Performance: No Monetary Damages Remedy Against CITY. The nature of a development agreement under the Development Agreement Law is a very unusual contract involving promoting a very large development project facing many complex issues including geologic, environmental, financial, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to OWNER by CITY. The parties acknowledge that CITY would not have entered into this Agreement had it been exposed to monetary damages claims from OWNER for any termination, or Default hereunder. As such, the parties agree that in no event shall OWNER be entitled to recover monetary damages of any amount or of any kind against CITY for CITY's termination or Default under this Agreement. For purposes of enforcement, therefore, OWNER's sole remedy for any Default of this Agreement shall be the remedy of **specific performance**. Before OWNER takes action to obtain a judicial order for **specific performance** against CITY, OWNER shall comply with the notice and cure provisions of Section 6.3.

6.3 Notice and Opportunity to Cure. A non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any alleged Default of the other party ("Defaulting Party"). However, the non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such Default within sixty (60) days after the date of such notice. However, if such Default cannot be cured within such sixty (60) day period, and if the Defaulting Party does each of the following:

1. Notifies the non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the sixty (60) day period;
2. Notifies the non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default;
3. Promptly commences to cure the Default within the sixty (60) day period;
4. Makes periodic reports to the non-Defaulting Party as to the progress of the program of cure; and
5. Diligently prosecutes such cure to timely completion, then:

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

6.4 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any Default, or fail to diligently pursue such cure as prescribed above, the non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement ("Termination Notice"). The Termination Notice shall state that the non-Defaulting Party will elect to terminate the Agreement within sixty (60) days and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the non-Defaulting Party's election to terminate this Agreement shall only be rescinded (i) if the Defaulting Party fully and completely cures all Defaults prior to the date of termination, or (ii) if the non-Defaulting Party elects to revoke the Termination Notice.

6.5 Waiver of Breach. By not filing a legal challenge to CITY'S action to approve or issue any Development Approval within the period established by applicable law, OWNER shall be deemed to have waived any claim that any condition of approval attached to said Development Approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final subdivision map on any portion of the Property, OWNER shall be deemed to have waived any claim that any Condition of Approval of such final subdivision map is improper or that the Condition of Approval constitutes a breach of the provisions of this Agreement.

6.6 Attorneys Fees. In the event either party to this Agreement is forced to bring legal action to enforce its rights under this Agreement, and notwithstanding the limitation of the parties' remedies under Section 6.2, the prevailing party in any such action shall be entitled to recover its reasonable attorney's fees and costs of suit.

7. RELEASES AND INDEMNITIES.

7.1 Third-Party Litigation.

7.1.1 Non-liability of Parties. As set forth above, CITY has determined that this Agreement is consistent with the General Plan and meets all of the legal

requirements of State law. The parties acknowledge that:

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

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

C. In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 7, neither party shall have liability under this Agreement for any failure of either party to perform its respective obligations under this Agreement under this Agreement as the direct result of a judicial determination resulting from any claim or litigation that on the Effective Date, or at any time thereafter, the Land Use Regulations, the Development Approvals, the EIR or any related CEQA determination for the Project ("CEQA Determination"), this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

7.1.2 Revision of Land Use Regulations. If, for any reason, the Land Use Regulations, the Initial Development Approvals (including, without limitation, this Agreement), the EIR, or the CEQA Determination or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with applicable laws or regulations and, if such noncompliance can be cured by an appropriate action otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. If required by a judicial decision, CITY shall process any of OWNER's applications for amendments to any of the Initial Development Approvals, the EIR, the CEQA Determination, and this Agreement, as necessary in response to such judicial decision. The Parties understand and agree that no promise can be made as to any future approval, however, because land use regulations involve the exercise of CITY'S police power and it is settled California law that government may not contract away its right to exercise its police power in the future. *Avco Community Developers Inc. v. South Coast Regional Com.*, 17 Cal.3d 785, 800 (1976); *City of Glendale v. Superior Court*, 18 Cal.App.4th 1768 (1993).

7.1.3 Participation in Litigation: Indemnity. To the full extent permitted by law, OWNER agrees to and shall fully indemnify, hold harmless, and defend, CITY and its respective elected and appointed officials, officers, members, agents, employees, and representatives (each an "Agent" and collectively "Agents") from any and all claims, suits, causes of action, fines, penalties, proceedings, damages, injuries or losses of any name, kind or description, specifically including attorneys' fees (collectively, "Claim(s)"), arising in any way out of or challenging the validity of this Agreement, any of the other Development Approvals, the EIR or the CEQA Determination. OWNER's indemnification obligation shall include, but not be limited to, actions to attack, set aside, void, or annul any approval, should it occur, related to this Agreement, any of the other Initial Development Approvals, the EIR or the CEQA Determination, including actions invoking Planning and Zoning Law or

CEQA. OWNER shall reimburse CITY for any court costs and attorneys' fees that CITY may be required by a court to pay as a result of such Claim(s). CITY may, at its sole and absolute discretion, participate in the defense of any such Claim(s) undertaken by OWNER, or (b) retain separate counsel whose attorneys' fees and costs shall be paid by OWNER. Such participation in the defense of such Claim(s) or the retention of separate counsel by CITY shall not relieve OWNER of its obligations under this Agreement.

7.1.4 CITY shall promptly provide written notice to OWNER of any Claim(s). CITY shall take all necessary and reasonable steps to provide such notice to OWNER in a timely fashion and in a manner that will not result in any substantial prejudice to OWNER's ability to defend the relevant Claim(s). Such notice shall contain a copy of any relevant pleadings filed in connection with the relevant Claim(s). CITY acknowledges that OWNER desires to provide the defense of any Claim(s) in a cost efficient manner. CITY and OWNER shall coordinate and cooperate in their defense activities, whether CITY is participating in defense undertaken by OWNER or is retaining separate counsel. As used in this Agreement, cooperation does not include CITY having to take any action or make any decision that CITY does not believe, in the exercise of its good faith judgment, is in its own best interest. Unless expressly provided to the contrary, nothing in this Agreement shall be construed in a manner that requires CITY to exercise its discretion in a particular manner.

7.1.5 OWNER may not resolve such Claim(s) without CITY's prior written consent. In all events, CITY shall have the right to resolve any such Claim(s) in any manner, in its discretion, provided, however, OWNER's consent shall be required (and may be granted or withheld in OWNER's discretion) if the resolution of the Claim(s) shall require a payment by OWNER or limit OWNER's rights under the Development Approvals, including, without limitation, this Agreement. OWNER'S obligation to pay the cost of any such Claim(s), including judgment, post-judgment motions, and any and all appeals, shall extend until any Claim is completely concluded, judgment is entered and completely satisfied.

7.1.6 In the event OWNER fails or refuses to reimburse CITY for its cost to defend any Claim(s), CITY shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 6.3 above. Additionally, in the event of any such Claim(s), the Term of this Agreement shall be tolled for the period during which such Claim(s) are proceeding until fully and finally resolved.

7.1.7 In order to ensure compliance with this Section 7, within twenty (20) days after notification by CITY of the receipt of any Claim(s), OWNER shall deposit with CITY cash or other security in the amount of one hundred thousand dollars (\$100,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to CITY of all costs and fees related to any action triggering the obligations of this Section 7. If CITY is required to draw on that cash or security to indemnify or reimburse itself for such costs or fees, OWNER shall restore the deposit to its original amount within fifteen (15) days after notice from CITY that replenishment is required. Additionally, if at any time the City Attorney determines

that an additional deposit or additional security in an amount not to exceed an additional fifty thousand dollars (\$50,000) is necessary to secure the obligations of this Section 7, OWNER shall provide such additional payment or security within fifteen (15) days of notice from the City Attorney.

7.2 Hold Harmless: OWNER's Construction and Other Activities. OWNER shall indemnify, defend, save and hold CITY and its Agents, as defined in this Section 7 above, and shall hold and save them and each of them harmless from any and all claims, damages of any kind and litigation which may arise from OWNER's or OWNER's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by OWNER or by any of OWNER's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for OWNER or any of OWNER's agents, contractors or subcontractors. Notwithstanding anything to the contrary in this Section 7.2, nothing herein shall make OWNER liable for the negligence or willful misconduct of CITY's Agent(s).

7.3 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than CITY's Default as provided herein and shall continue to be the liability and obligation of OWNER, binding upon OWNER, until the final resolution of all Claims, and shall survive the completion, partial completion, or abandonment of the Project.

8. MORTGAGEE PROTECTION.

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

8.1.1 Any Mortgagee of the Property shall be entitled to the following rights and privileges hereunder:

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to CITY in the manner specified herein for giving notices, shall be entitled to

receive written notification from CITY of any Default by OWNER in the performance of OWNER's obligations under this Agreement.

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder; and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the Property or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 **Term of Agreement.** Unless earlier terminated as provided in Section 4 or Section 6 hereof, this Agreement shall continue in full force and effect for a period of ten (10) calendar years from the Effective Date.

9.2 **Recordation of Agreement.** This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments of this Agreement approved by the parties, and any termination of this Agreement, shall be similarly recorded.

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

9.4 **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of

California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of CITY shall not be employed in interpreting this Agreement, both parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

9.8 **Waiver.** Failure of a party to insist upon the strict performance of any of the provision(s) of this Agreement by the other party, or the failure by a party to exercise its rights upon the Default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

9.10 **Force Majeure.** Neither party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused by 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), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

9.11 **Notices.** Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage prepaid), overnight delivery, with a courtesy copy by email to the following:

CITY: Covina Community Development Department

ATTN: Community Development Director
125 E College St, Covina, CA 91723
(tel) _____
(email) _____

With a courtesy copy to:

City Attorney's Office
125 E College St, Covina, CA 91723

(tel) _____
(email) _____

OWNER: MLC Holdings, Inc.

Attn: Charles McKeag

(tel) _____
(email) _____

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

9.13 **Successors in Interest.** As provided in Section 65868.5 of the Government Code, and except as otherwise provided in this Agreement, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon, and inure to the benefit of, CITY and OWNER, and their respective successors and assigns.

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

9.15 **Jurisdiction and Venue.** Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, 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.

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

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

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

9.19 **Amendments in Writing/Cooperation.** This Agreement may be amended only by the written consent of both parties specifically approving the amendment and in accordance with the Development Agreement Law. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CITY: CITY OF COVINA

By _____
Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

(SEAL)

OWNER: MLC HOLDINGS, INC.

By _____

Title _____

By _____

Title _____

DRAFT

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 Los Angeles)

On _____, 201__, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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 Los Angeles)

On _____, 201__, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)



Exhibit "A"

Legal Description of the Property

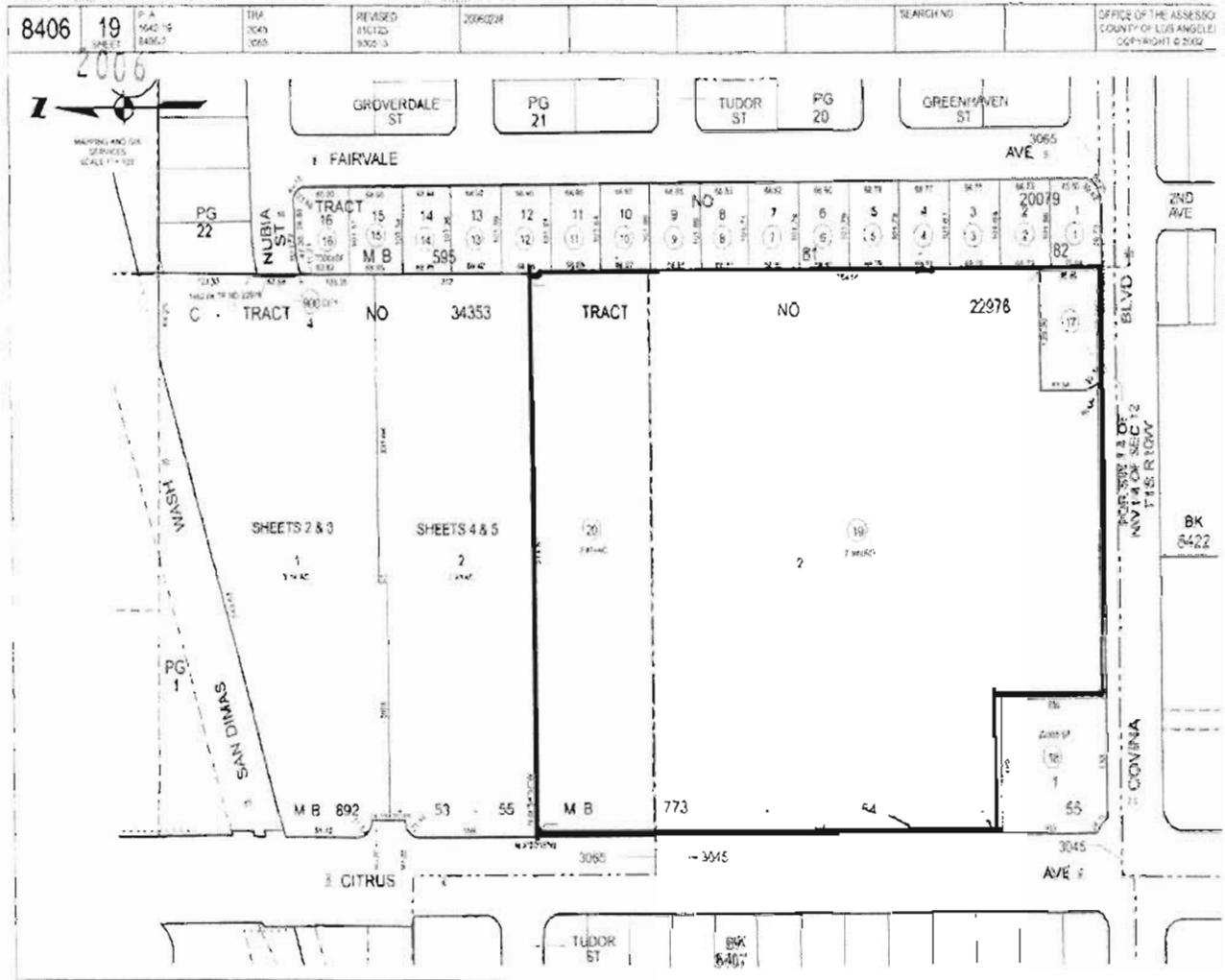


Exhibit "A"
Legal Description of the Property

DRAFT

Exhibit "B"
Map showing Property and its location

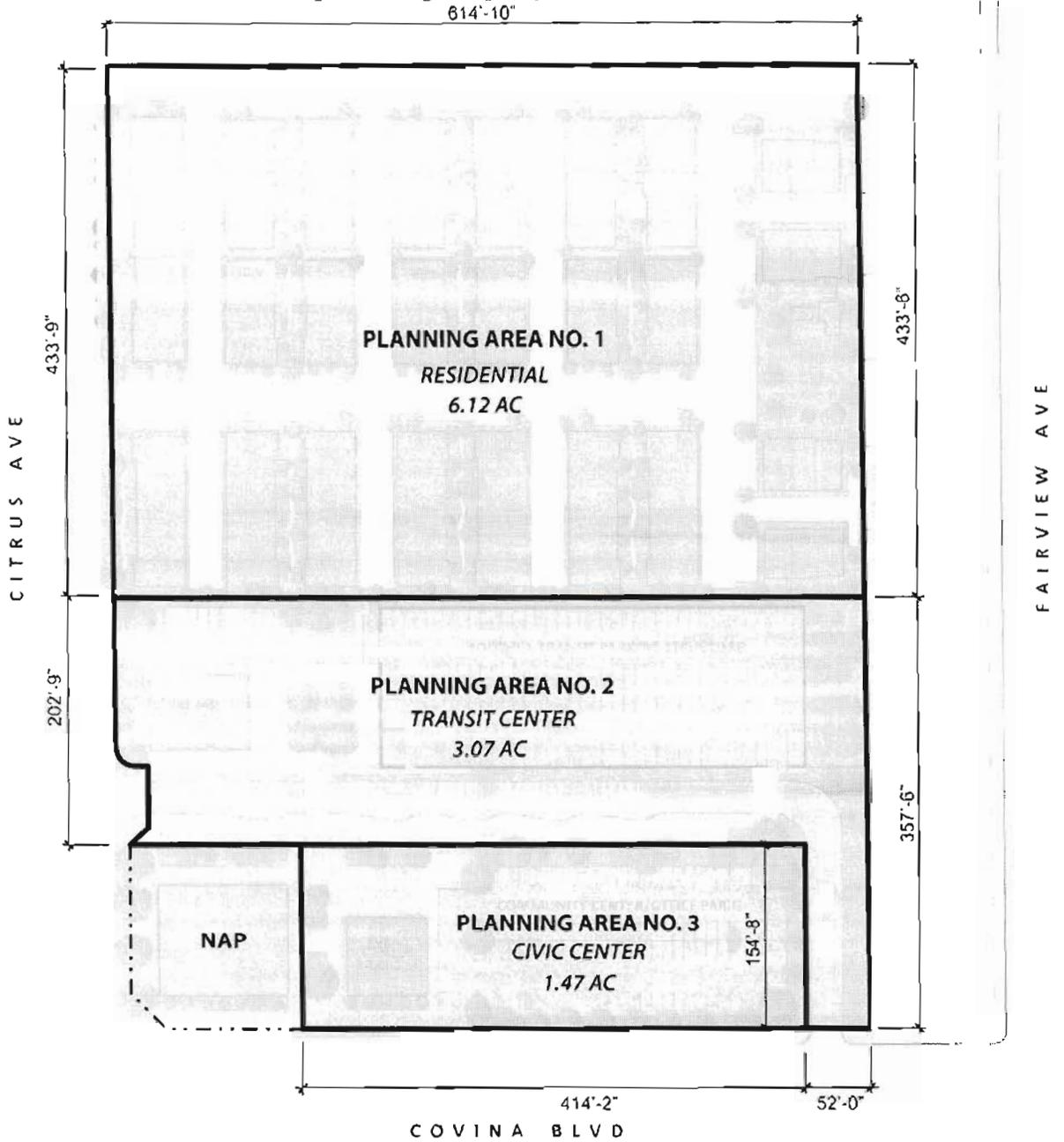


Exhibit "C"
Development Plan for the Development of the Property

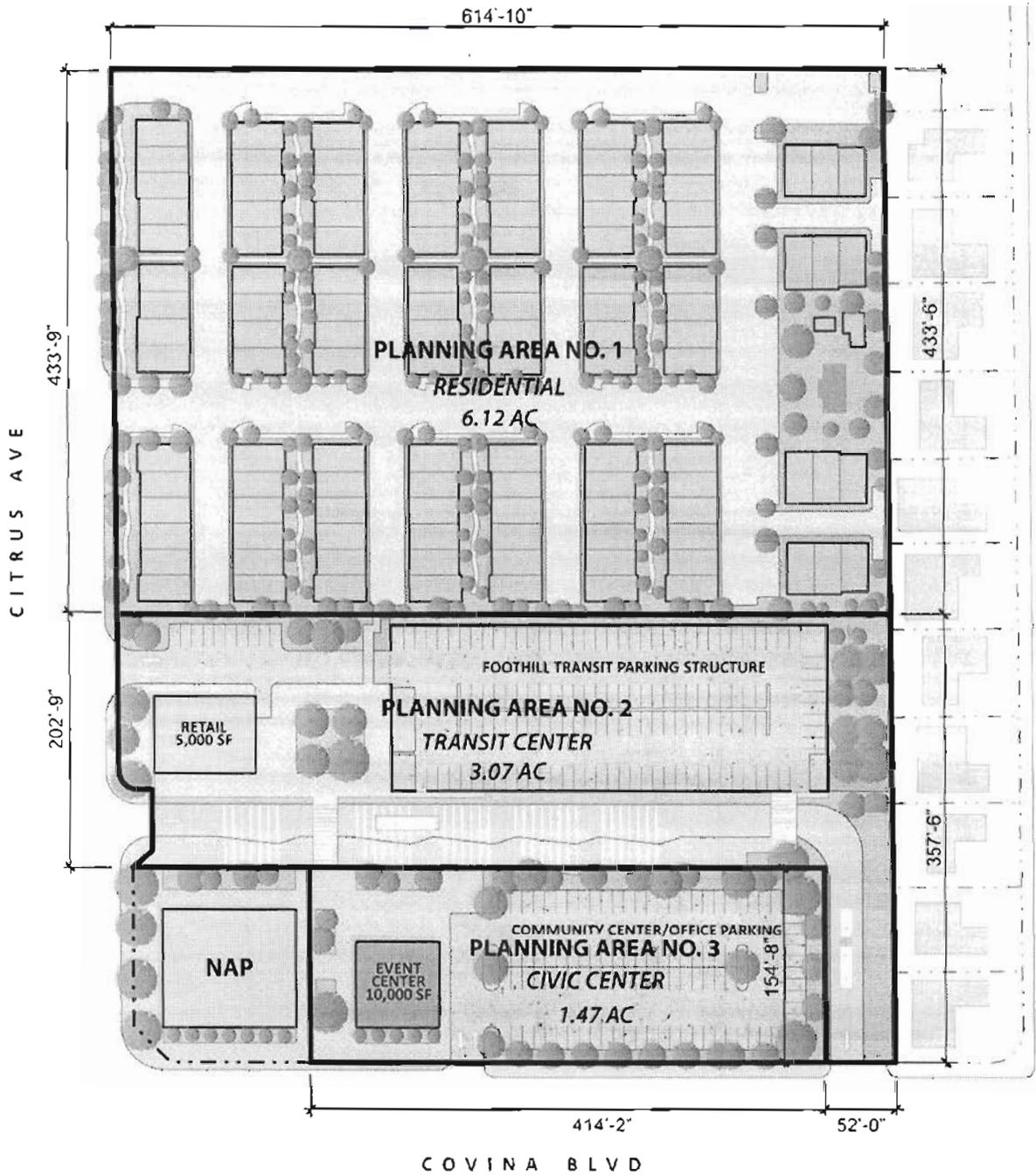


Exhibit "D"
Legal Description and Depiction of City Property and Parkland Property

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel A

In the City of Covina, County of Los Angeles, State of California, being a portion of Lot 2 of Tract No. 22976 filed in Book 773, Pages 53 and 54 Maps in the Office of the County Recorder of said County and a portion of the Southwest Quarter of the Northwest Quarter of Section 12, Township 1 South, Range 10 West, San Bernardino Meridian described as follows:

Commencing at the northwest corner of Lot 1 of said Tract No. 22976; thence along the northerly line of said Lot 1 North 89°54'00" East 150.00 feet to the True Point of Beginning; thence leaving said north line along the northerly prolongation of the easterly line of said Lot 1 North 0°24'30" West 4.22 feet; thence leaving said prolongation North 90°00'00" East 413.03 feet to a line parallel with and 52.00 feet westerly of the easterly line of said Lot 2; thence along said parallel line South 0°25'45" East 153.50 feet to the northerly line of Covina Boulevard as shown on said Tract; thence leaving said parallel line along said northerly line of Covina Boulevard South 89°54'00" West 413.09 feet to the easterly line of said Lot 1; thence leaving said northerly line of Covina Boulevard along said easterly line North 0°24'30" West 150.00 feet to the True Point of Beginning

Containing an area of 1.459 acres, more or less.

All as shown on Exhibit B attached hereto and by this reference made a part hereof.



Jason R. Kinnie, L.S. No. 7090
Date: 10-20-2016



October 20, 2016
WO No. 4089-1X
Page 1 of 1
H&A Legal No. 8940
By: J. Kinnie
Checked By: R. Wheeler

Exhibit "E"
Legal Description and Depiction of City Property and Parkland Property

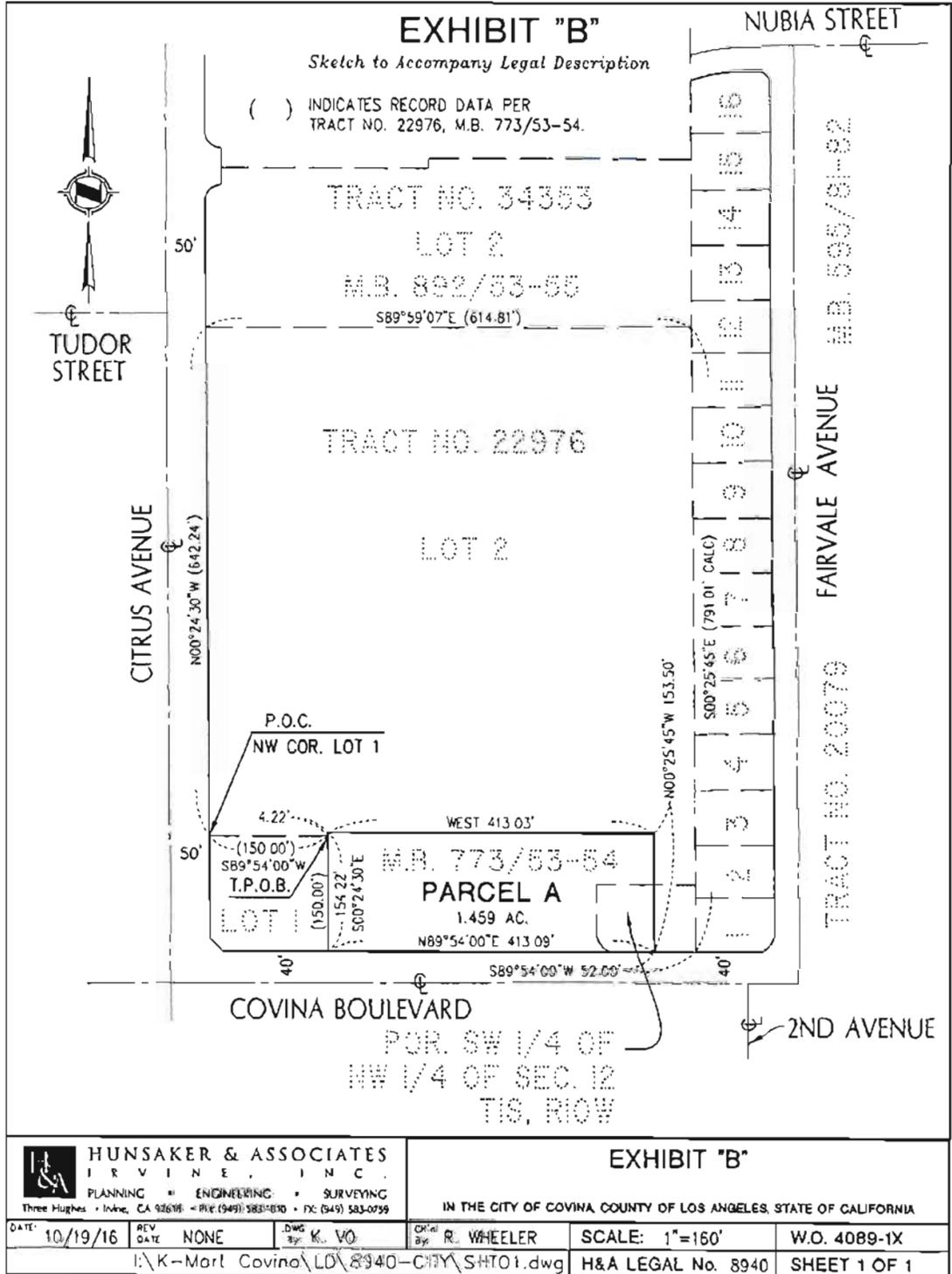


Exhibit "F"
Legal Description and Depiction of Transit Center Property

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel A

In the City of Covina, County of Los Angeles, State of California, being a portion of Lot 2 of Tract No. 22976 filed in Book 773, Pages 53 and 54 Maps in the Office of the County Recorder of said County and a portion of the Southwest Quarter of the Northwest Quarter of Section 12, Township 1 South, Range 10 West, San Bernardino Meridian described as follows:

Beginning at the northwest corner of Lot 1 of said Tract No. 22976; thence along the northerly line of said Lot 1 North 89°54'00" East 150.00 feet; thence leaving said north line along the northerly prolongation of the easterly line of said Lot 1 North 0°24'30" West 4.22 feet; thence leaving said prolongation North 90°00'00" East 413.03 feet to a line parallel with and 52.00 feet westerly of the easterly line of said Lot 2; thence along said parallel line South 0°25'45" East 153.50 feet to the northerly line of Covina Boulevard as shown on said Tract; thence leaving said parallel line along said northerly line of Covina Boulevard North 89°54'00" East 52.00 feet to the southerly prolongation of said easterly line; thence along said prolongation and said easterly line North 0°25'45" West 357.42 feet to a line parallel with and 204.00' northerly of the course hereinabove described as "North 90°00'00" East 413.03 feet"; thence along said last parallel line North 90°00'00" West 614.96 feet to the westerly line of said Lot 2; thence South 0°24'30" East 208.49 feet to the Point of Beginning.

Containing an area of 3.078 acres, more or less.

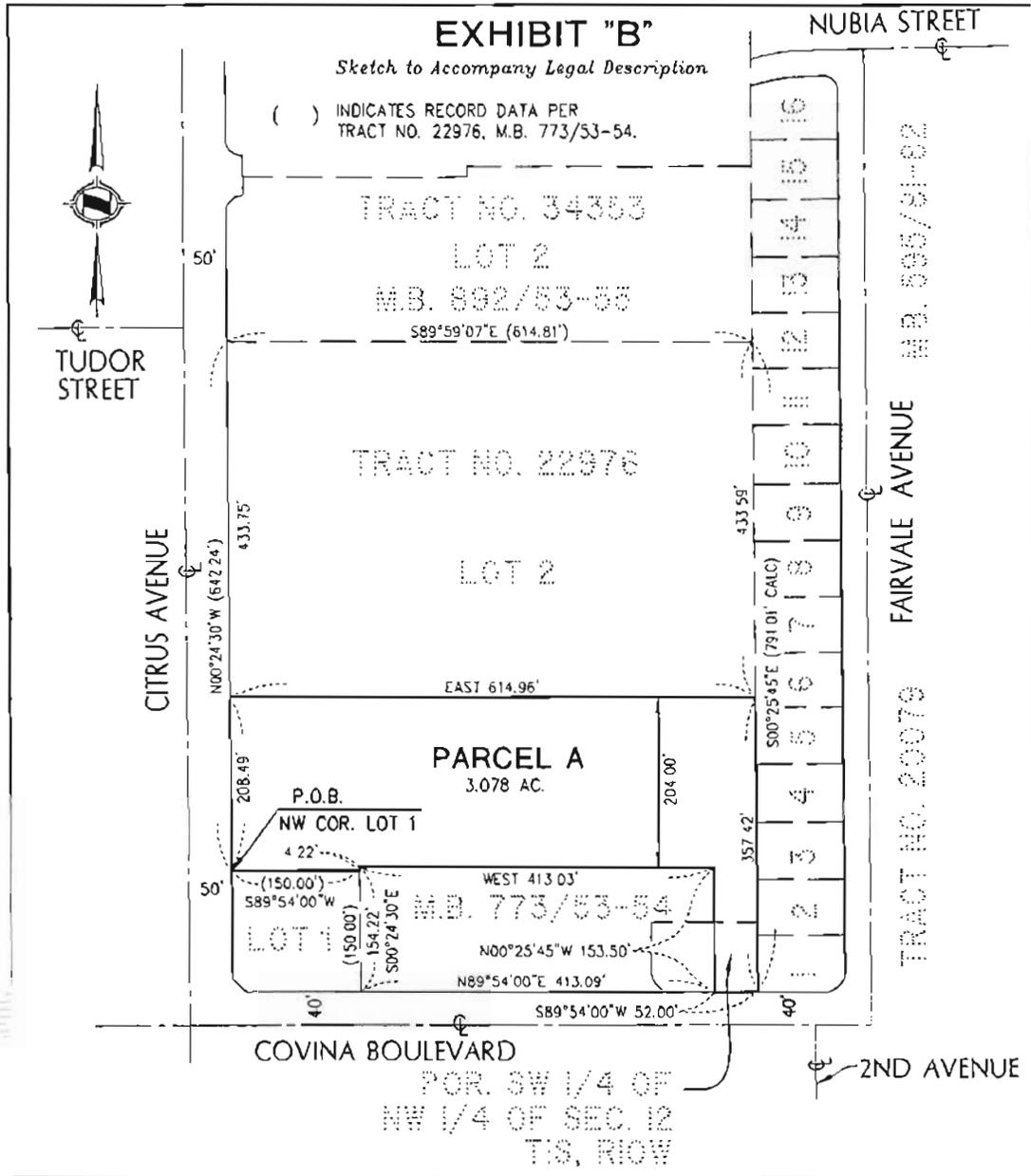
All as shown on Exhibit B attached hereto and by this reference made a part hereof.



Jason R. Kinnie, L.S. No. 7090
Date: 10-20-2016

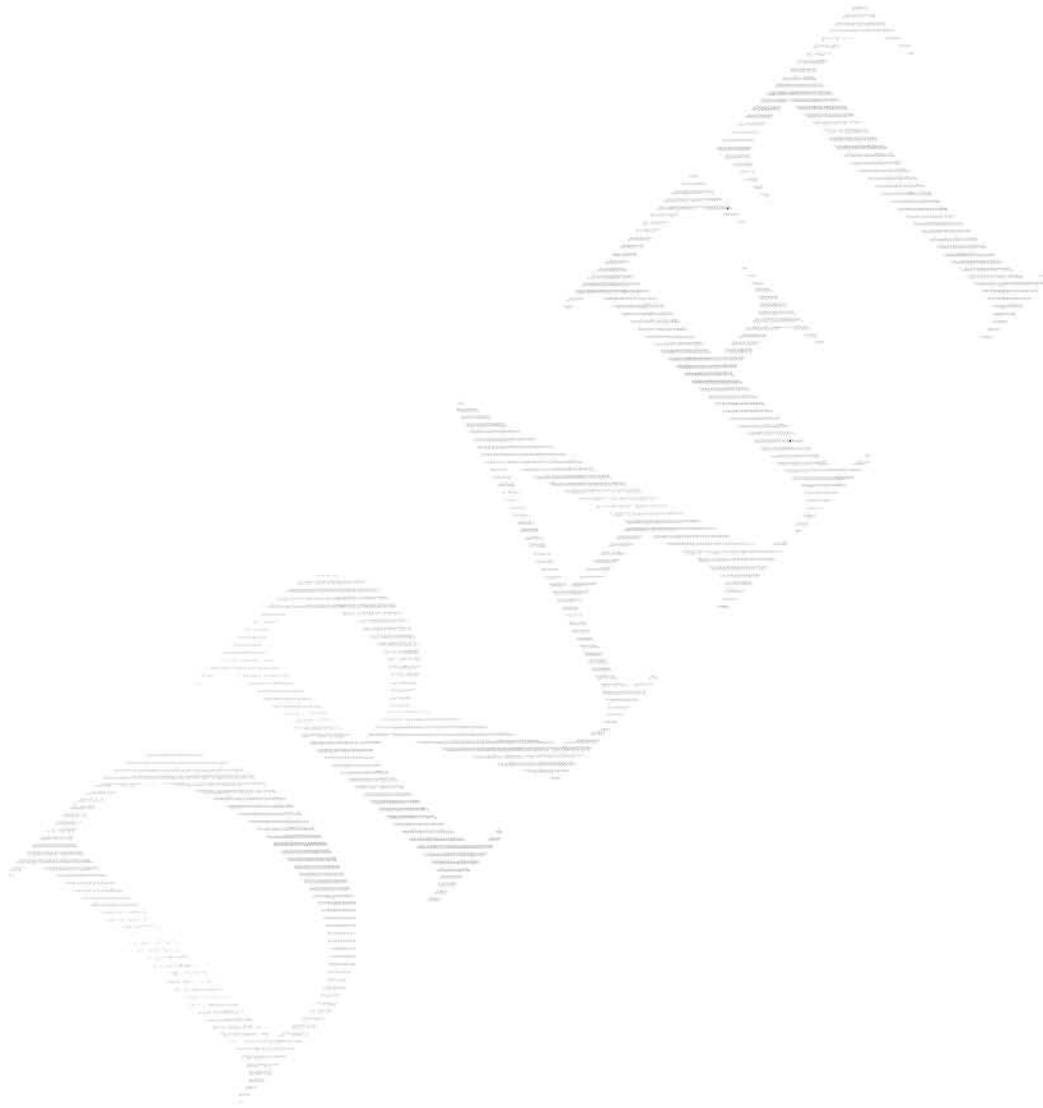


October 20, 2016
WO No. 4089-1X
Page 1 of 1
H&A Legal No. 8941
By: J. Kinnie
Checked By: R. Wheeler



HUNSAKER & ASSOCIATES IRVINE, INC. PLANNING • ENGINEERING • SURVEYING <small>Three Hughes • Irvine, CA 92618 • PH: (949) 383-1010 • FX: (949) 581-0759</small>				EXHIBIT "B" IN THE CITY OF COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA			
DATE	REV	DATE	DATE	DATE	DATE	DATE	
10/19/16	NONE						
		By:	By:	By:	By:	By:	
		K. VO	R. WHEELER				
I:\K-Mart Covino\LD\8941-TRANSIT CENTER\SHT01.dwg				SCALE: 1"=160'	W.O. 4089-1X		
				H&A LEGAL No. 8941	SHEET 1 OF 1		

EXHIBIT G
Form of Grant Deed



RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Covina
125 East College Street
Covina, CA 91723-2199
Attn: City Clerk

APN(s): _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This transfer is exempt from Documentary Transfer Tax pursuant to Revenue & Taxation Code Section 11922 (conveyance to a public entity), and is exempt from Recording Fees pursuant to California Government Code Section 6103.

GRANT DEED

_____, a _____ hereby grants to the CITY OF COVINA that certain real property located in the County of Los Angeles, State of California, more particularly described on Exhibit "A" attached hereto, including all improvements and fixtures thereon..

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of the date set forth below.

Dated: _____, 2016

_____,
a _____

By: _____

Print Name: _____

Title: _____

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

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by that certain Grant Deed dated _____, 2016, from the _____ to the CITY OF COVINA, is hereby accepted by the undersigned officer on behalf of the City of Covina pursuant to the authority conferred by [Resolution No. _____] [action] of the City of Covina [adopted] by the City Council of the City of Covina on _____, 2016, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2016

Print Name: _____

Title: _____

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

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)