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City of Jurupa Valley
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Jurupa Valley, California 92509
Attn: City Clerk

2020-0223972

05/27/2020 02:44 PM Fee: \$ 0.00

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309

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**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
JURUPA VALLEY AND CRESTMORE
REDEVELOPMENT, LLC FOR THE AGUA MANSA
COMMERCE PARK PROJECT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of May 7, 2020, by and between the CRESTMORE REDEVELOPMENT, LLC, a Colorado Limited Liability Company, its successors and/or assigns (hereinafter "OWNER"), and the CITY OF JURUPA VALLEY, a municipal corporation, organized and existing under the laws of the State of California (hereinafter "CITY"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Legislation") and Article XI, Section 2 of the California Constitution. Pursuant to the authority contained in the Development Agreement Legislation, as it applies to CITY, pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the recitals set forth in Section 1, the mutual covenants set forth in this Agreement and for the further consideration described in this Agreement, the parties agree as follows:

1. **RECITALS.** This Agreement is made for the following purposes and with respect to the following facts which the parties agree are true and correct:

1.1 The Development Agreement Legislation authorizes CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property for the following purposes:

1.1.1 Ensuring high quality development in accordance with comprehensive plans;

1.1.2 Reducing uncertainty in the development approval process that might otherwise result in a waste of resources, discourage investment, and escalate the cost of development to the consumer;

1.1.3 Strengthening CITY's comprehensive planning process to provide for the most efficient use of public and private resources by encouraging private participation in the comprehensive planning process;

1.1.4 Assuring owners of land that upon approval, they may proceed with their projects in accordance with defined policies, rules, regulations, and conditions of approval; and

1.1.5 Providing for the financing and/or construction of necessary public facilities.

1.2 In addition to the general purposes stated above, the following are among the considerations supporting this Agreement:

1.2.1 This Agreement authorizes OWNER to develop an approximately 208.71 acre property located within the City of Jurupa Valley, the County of Riverside, State of California (the "Property"), as described in Exhibit A, with a potential mixture of warehousing, industrial, business park, retail, commercial, and office uses as more particularly described herein. The Property is a former cement plant and mining operation with need for environmental remediation and redevelopment, which OWNER intends to carry out at significant cost to OWNER.

1.2.2 This Agreement will provide for both parties: (a) a high quality development on the Property subject to this Agreement; (b) certainty in the type of development to be undertaken on the Property; and (c) the assurance of adequate public facilities to ensure the good of the community regardless of CITY's legal authority to impose such requirements under constitutional or statutory authority.

1.2.3 For CITY, this Agreement serves to provide for: (a) employment growth anticipated to result from the Development (as defined in Section 2.5) of the Property, both during construction and use; (b) an increase in tax revenues; and (c) the achievement of the goals and directives of its General Plan.

1.2.4 The development of new commercial, industrial facilities and associated offices is an integral part of OWNER's development plans for the Property. Such facilities are expected to bring employment and increased tax revenue for CITY.

1.3 OWNER desires to develop the Property in accordance with the provisions of this Agreement, the Applicable Regulations, and those other agencies exercising jurisdiction over the Property.

1.4 OWNER has applied for, and CITY has approved, this Agreement in order to create beneficial development of the Property and a physical environment that will conform to and complement CITY's goals, create development sensitive to human needs and values, facilitate efficient traffic circulation, mitigate environmental conditions and otherwise provide for the development of the Property in accordance with the best interests of CITY.

1.5 The following actions have been taken with respect to this Agreement and the Project:

1.5.1 On March 25, 2020, following a duly noticed and conducted public hearing, the Planning Commission recommended that the Council approve this Agreement;

1.5.2 On April 16, 2020 after a duly noticed public hearing and pursuant to the California Environmental Quality Act of 1970, as amended, (“CEQA”) the City Council adopted Resolution 2020-18, certifying the Environmental Impact Report for the Project Approvals, this Agreement, and the Project and approving a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program;

1.5.3 On April 16, 2020, following a duly noticed public hearing, the City Council introduced Ordinance No. 2020-05 and on May 7, 2020 held the second reading and adopted Ordinance No. 2020-05, approving this Agreement , a copy of which is on file in the City Clerk’s Office at CITY, which ordinance includes the findings pertaining thereto, including those relating to the CEQA documentation for the Project and this Agreement’s consistency with CITY’s General Plan and each element thereof and any specific plans relating to the property.

1.5.4 On April 16, 2020, after a duly noticed public hearing, the City Council adopted the following resolution approving certain entitlements for the Project (the “Project Approvals”): (1) Resolution No. 2020-19, approving General Plan Amendment No. 16003; (2) Resolution No. 2020-19, approving Tentative Parcel Map TPM37528 ; (3) Resolution No. 2020-19, approving Specific Plan No. 16002; and introduced Ordinance No. 2020-04, approving Change of Zone; and (5) Resolution No. 2020-19, approving Site Development Permit No. 18044.

1.6 CITY has engaged in extensive studies and review of the potential impacts of the Project as well as the various potential benefits to CITY by the Development of the Project and has concluded that the Project is in the best interests of CITY.

1.7 In consideration of the Public Improvements (as defined in Section 2.15) and beneficial uses of the Property to be provided by OWNER for CITY and in order to strengthen the planning process for this Property and reduce the economic costs of development, by this Agreement, CITY intends to give OWNER assurance that OWNER can proceed with the Development of the Property for the Term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with the Project Approvals and CITY’s Applicable Regulations. In reliance on CITY’s covenants in this Agreement concerning the Development of the Property, OWNER has and will in the future incur substantial costs in site demolition, remediation, preparation, and the construction and installation of major infrastructure and facilities in order to make Development of the Property feasible.

1.8 Pursuant to Section 65867.5 of the Development Agreement Legislation, the City Council has found and determined that: (i) this Agreement implements the goals and policies of CITY’s General Plan, provides balanced and diversified land uses, and imposes appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within the CITY; (ii) this Agreement is in

the best interests of and not detrimental to the public health, safety and general welfare of the CITY and its residents; (iii) adopting this Agreement is consistent with CITY's General Plan, and each element thereof and any applicable specific plan, and constitutes a present exercise of CITY's police power; and (iv) this Agreement is being entered into pursuant to and in compliance with the requirements of Government Code Section 65867 of the Development Agreement Legislation.

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

2.1 **Authorizing Ordinance.** The "Authorizing Ordinance" means Ordinance No. 2020-05, adopted by CITY on May 7, 2020, approving this Agreement.

2.2 **Applicable Regulations.** The phrase "Applicable Regulations" is defined in Section 4.1.2 below.

2.3 **CITY.** "CITY" means the City of Jurupa Valley, a California municipal corporation, duly organized and existing under the Constitution and laws of the State of California, and all of its officials, employees, agencies and departments.

2.4 **City Council.** "City Council" means the duly elected and constituted City Council of the City of Jurupa Valley.

2.5 **Development.** "Development" means the improvement of the Property for purposes consistent with this Agreement, including, without limitation: demolition, remediation, grading, the construction of infrastructure and public facilities related to the Public Improvements and on-site improvements, the construction of structures and buildings and the installation of landscaping subject to the Project Approvals.

2.6 **Development Agreement Legislation.** The "Development Agreement Legislation" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

2.7 **Effective Date.** "Effective Date" means the date that the Agreement becomes effective in accordance with Section 3.4.1, below.

2.8 **Future Development Approvals.** "Future Development Approvals" means those entitlements and approvals contemplated, necessary, and requested by CITY or OWNER to cause development to occur upon the Property after the Effective Date, including both ministerial and discretionary Future Development Approvals.

2.9 **MSHCP.** "MSHCP" means the Western Riverside County Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan and related amendments and approvals associated therewith.

2.10 **OWNER.** "OWNER" shall mean Crestmore Redevelopment, LLC, a Colorado Limited Liability Company, and all successors in interest, in whole or part, to this entity with respect to the Property.

2.11 Open Space. "Open Space" shall mean the property depicted and described in Exhibit A.

2.12 Project. "Project" shall mean Development of the Property for commercial, industrial, warehousing, business park, retail and office uses in accordance with the Project Approvals and this Agreement, inclusive of the permitted uses and regulations set forth herein.

2.13 Project Approvals. The phrase "Project Approvals" as used herein shall mean all City approvals, entitlements, or both pertaining to the Project, including without limitation, the following resolutions approving certain entitlements for the Project : (1) Resolution No. 2020-19, approving General Plan Amendment No. 16003; (2) Ordinance No. 2020-04, approving Zone Change; (3) Resolution No. 2020-19, approving Specific Plan No. 16002; (4) Resolution No. 2020-19, approving Tentative Parcel Map TPM 37528; (5) Ordinance No. 2020-05, approving Development Agreement; (6) Resolution No. 2020-19, approving Site Development Permit No. 18044.

2.13 Property. "Property" shall mean the property depicted and described in Exhibit A.

2.14 Public Improvements. "Public Improvements" shall mean the improvements described on Exhibit B.

2.15 Transferee. The person to whom OWNER sells, assigns or otherwise transfers all or any portion of OWNER's interests in the Property together with all its right, title and interest in this Agreement in accordance with Section 3.6 of this Agreement.

3. GENERAL PROVISIONS.

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

3.2 Interest of OWNER. OWNER represents that OWNER has a legal or equitable interest in the Property that satisfies California Government Code Section 65865(b).

3.3 Term. This Agreement shall become effective on the Effective Date, and shall have a term of ten (10) consecutive calendar years, commencing upon the Effective Date. If, as of the end of such ten (10) year period, (i) a certificate of occupancy or temporary certificate of occupancy for at least one (1) building of the Project has been issued; and (ii) the Community Facilities In-lieu Fee referred to in Section 4.3.4 has been paid to CITY, then this Agreement shall be automatically extended for an additional ten (10) consecutive calendar years, for a total term of twenty (20) consecutive calendar years, with no further action needed to be taken by OWNER or CITY in order for the extension to become effective. Hereafter, the initial ten (10) year term and the extended ten (10) year term shall be individually and collectively referred to as the "Term". When the commencement of the Term has been determined, the parties shall execute and record an

Operating Memorandum pursuant to Section 3.6.4 of the Agreement that will confirm the Term. The termination of this Agreement pursuant to this Section shall not affect any right or duty arising independently from entitlements issued by CITY or other land use approvals approved prior to, concurrently or subsequent to the approval of this Agreement, except as may be provided in this Agreement. The zoning of the Property at the time of termination pursuant to this Section shall be the zoning in effect at the time of termination. Notwithstanding the provisions of this subparagraph, the provisions of Paragraphs 4.3.3, Community Benefit Contribution, 4.3.4, Community Facilities In-lieu Fee, 4.3.5, Community Facilities Special Assessment and 4.3.6, General Fund Special Assessment, shall survive the expiration this Agreement.

3.4 Dates

3.4.1 Effective Date. This Agreement shall become effective on the date the Authorizing Ordinance becomes effective. When the parties determine the Effective Date, they shall execute and record an Operating Memorandum pursuant to Section 3.7.4 of the Agreement confirming the Effective Date.

3.5 Termination. This Agreement may be terminated by either party upon notice to the other upon the occurrence of any of the following events: (1) if termination occurs pursuant to any specific provision of this Agreement; or (2) entry after all appeals have been exhausted of a final judgment or issuance of a final order 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 Agreement for any part of the Project. The termination of this Agreement pursuant to this Section shall not affect any right or duty arising independently from entitlements issued by CITY or other land use approvals approved prior to, concurrently or subsequent to the approval of this Agreement, except as may be provided in this Agreement. The zoning of the Property at the time of termination pursuant to this Section shall be the zoning in effect at the time of termination.

3.6 Transfers and Assignments.

3.6.1 Restrictions on Transfers. OWNER acknowledges and agrees that there are very significant public improvements required for the Project and that the completion of those public improvements will require coordination among CITY, OWNER and any Transferee of all or substantially all of the Property. It is essential that any transfer of the Property to a Transferee be completed in such a way that the public improvements will be completed in the manner contemplated in the Project Approvals and this Agreement. OWNER shall not sell, assign, or otherwise transfer any of its interests in the Property together with its right, title and interest in this Agreement, or the portion thereof which is subject to the transferred portion of the Property, to any Transferee until such time as the Public Improvements have been accepted by CITY, unless CITY has approved the transfer prior to its completion. CITY shall not unreasonably withhold or unreasonably delay consent to the transfer provided that: (1) the Transferee has specifically assumed in writing the obligations, or a portion of the obligations of OWNER, to design, construct, install and finally complete the Public Improvements for the Property; (2) the Transferee has the experience and financial capacity to complete the Public Improvements; and (3) if applicable, the Transferee has obtained replacement bonds, accepted by CITY for the Public Improvements (in which event, CITY shall release OWNER's corresponding Public Improvement bonds). In the event of any such sale, pursuant to this Section 3.6, (i) OWNER shall notify CITY

at least thirty (30) days prior to the transfer of the name of the Transferee, together with the corresponding entitlements being transferred to such Transferee and (ii) the agreement between OWNER and Transferee pertaining to such transfer shall provide that the Transferee shall be liable for the performance of those obligations of OWNER under this Agreement which relate to the Transferred Property and from and after the date of such transfer, OWNER shall be released from liability under this Agreement. Notwithstanding the foregoing, CITY preapproves the sale, assignment or transfer of all or any portion of OWNER's interest in the Property, together with all of its right, title and interest in this Agreement or the portion thereof which is subject to the transferred portion of the Property, to CTR Partners, LLC or CT Realty or any entity owned or controlled by either or both of them including, without limitation, CTM-AM Venture, LLC.

Following acceptance by CITY of the Public Improvements, OWNER may transfer by sale or lease portions of the Property, to the ultimate user or to a developer who will develop such portion of the Property for use by the ultimate user;

3.6.2 Exemptions. The following transfers shall not be subject to the foregoing restrictions:

3.6.2.1 Transfers of easements or real property interests which are necessary to provide utility service to the Property or to extend infrastructure to the Property;

3.5.2.2 Transfers in reorganization of OWNER, provided that management control of OWNER does not change as a result of such reorganization.

3.5.2.3 Transfers including, without limitation, sales or leases of individual parcels, in the ordinary course of OWNER's business.

3.6.3 Rights and Duties of Successors and Assigns. Any, each and all successors and assigns of OWNER shall have all of the same rights, benefits, duties and obligations of OWNER under this Agreement. All entities holding title to a portion of the Property shall be jointly liable for the design and construction of the Public Improvements for that portion of the Property as set forth in this Agreement, except as provided in this Agreement or as may be modified in an Operating Memorandum pursuant to Section 3.7.4. Without limiting the effect of anything contained in Section 19.4 and notwithstanding the foregoing, in the event of partial assignments of this Agreement, the breach by one assignee shall not affect the rights or obligations of another non-breaching assignee. In that event, CITY shall continue to perform all of its obligations with regard to the non-breaching assignee.

3.7 Amendment of Development Agreement.

3.7.1 Initiation of Amendment. Any party may propose an amendment to this Agreement and both parties agree that it may be beneficial to enter into additional agreements or modifications of this Agreement in connection with the implementation of the separate components of the Project.

3.7.2 Procedure. Except as set forth in Section 3.6.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

3.7.3 Consent. Except as expressly provided in this Agreement, any amendment to this Agreement shall require the written consent of both parties. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the parties.

3.7.4 Operating Memoranda. The parties acknowledge that refinements and further development of the Project may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when OWNER and CITY mutually agree that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications without amendment to this Agreement through one or more operating memoranda mutually approved and signed by OWNER and CITY. Such changes may include adjustments in square footages of any Project structure (so long as the total square footage of the Project does not thereby exceed the square footage analyzed in the Environmental Impact Report for the Project) or changes in the uses of the Project, assuming such changes in use are consistent with the Applicable Regulations, as defined below. The Operating Memoranda may be approved on behalf of CITY by the City Manager of CITY, or such person designated in writing by the City Manager, and by any corporate officer or other person designated for such purpose in a writing signed by a corporate officer on behalf of OWNER. After execution of an Operating Memoranda, it shall be attached hereto as an addendum and become a part hereof. Unless otherwise required by law or by this Agreement, no such changes, adjustments, or clarifications shall require prior notice or hearing, public or otherwise.

3.8 Term of Map(s) and Other Project Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of any subdivision or parcel map that has been or in the future may be processed for all or any portion of the Property and the term of each of the Project Approvals (including, without limitation, Future Development Approvals) shall be deemed extended without further required action for a period of time through the scheduled termination date of this Agreement as set forth in Section 3.3 above.

3.9 Amendments to Project Approvals. It is contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Project Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Applicable Regulations and shall, upon approval by CITY, continue to constitute the Project Approvals as referenced herein. The parties agree that any such amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

3.10 Public Improvement Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Project Approvals, OWNER and CITY recognize that economic and market conditions may necessitate changing the order in which the Public Improvements are constructed so long as the modification continues to ensure adequate Public Improvements are available to serve that portion of the Project being developed. Therefore, CITY acknowledges and agrees that the phasing and installation of public improvements shall be dependent upon the timing of the development of the Project, in order that public improvements

shall only be required to be constructed when the development of the Project generates specific direct impacts which trigger the need for such public improvements.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Development and Control of Development.

4.1.1 Control of Development. While this Agreement is in effect and throughout the Term, OWNER shall have the vested right, but not the obligation, to develop the Property pursuant to and in accordance with the Applicable Regulations pursuant to this Agreement, including, without limitation, specific uses, densities, and types of Development provided for in the Applicable Regulations, and CITY shall have the right to control the Development in accordance with the terms and conditions of this Agreement, the Project Approvals and all Applicable Regulations. Except as otherwise specified in the Project Approvals and this Agreement, the Applicable Regulations shall control the design and Development, Future Development Approvals and all Public Improvements and appurtenances in connection therewith. The Applicable Regulations are only those written rules, policies, ordinances, and resolutions described in Section 4.1.2. below. OWNER and CITY shall use reasonable efforts to compile the Applicable Regulations in a permanent written form, which shall be kept on file in the Office of the City Clerk with a copy to each party.

4.1.2 Applicable Regulations. The regulations applicable to the Development of the Property (in addition to the Project Approvals), shall consist of the following requirements ("Applicable Regulations").

4.1.2.1 General Development Regulations. Except as otherwise specified in this Agreement, the following shall govern the development of the Property: 1) The provisions of the Jurupa Valley Municipal Code in effect as of the Effective Date of this Development Agreement; 2) Ordinances, resolutions and written policies of CITY relating to the regulation of land within the City of Jurupa Valley, whether or not codified in the Jurupa Valley Municipal Code in effect as of the Effective Date of this Agreement; 3) the General Plan of the City of Jurupa Valley in effect as of the Effective Date of this Agreement; and 4) the Specific Plan referred to in Recital 1.5.4, and each element thereof, in effect as of the Effective Date of this Agreement.

4.1.2.2 Final Map Approval. OWNER agrees CITY shall not be required to approve the Final Map for Tentative Map No. 37528 in the event that OWNER fails to meet or perform any or all of the material requirements of this Agreement pertaining to Tentative Map No. 37528.

4.1.2.3 Subsequent Approvals. In connection with any Future Development Approval or action which CITY is permitted or has the right to make under this Agreement relating to the Project, CITY shall exercise its discretion or take action in a manner which complies and is consistent with this Agreement and such other standards, terms and conditions contained in this Agreement. Upon CITY's granting any Future Development Approval, such Future Development Approval shall become part of the Project Approvals.

4.2 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, and specifically Section 4.1., the following land use regulations shall apply to the Development:

4.2.1 Processing fees and charges of every kind and nature adopted by CITY pursuant to state law for the costs related to processing applications city-wide or such fees and charges as may be agreed to by the parties for Future Development Approvals.

4.2.2 Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matters of procedure.

4.2.3 Changes adopted by the City Council in the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, Uniform Housing Code, Uniform Administrative Code and Uniform Code for the Abatement of Dangerous Buildings and similar uniform codes as required by and in accordance with the authority granted to CITY under State law.

4.2.4 Regulations that are not in conflict with the Project Approvals and this Agreement.

4.2.5 Regulations that are in conflict with the Project Approvals, provided OWNER has given written consent to the application of such regulations to the Development.

4.2.6 Federal, State, County, and multi-jurisdictional laws and regulations which preempt local regulations, or mandate the adoption of local regulations, and are in conflict with the Project Approvals.

4.2.7 Land use regulations adopted by CITY after the Effective Date, in connection with any Future Development Approvals, necessary to protect the safety, or health, or both, of the residents or occupants of the Property, or the residents or people in the City of Jurupa Valley, or both.

4.3 Impact Fees.

4.3.1 Development Impact Fees. The presently adopted Development Impact Fees of CITY ("DIF") pursuant to Chapter 3.80 of the Jurupa Valley Municipal Code, as those rates may be revised from time to time by resolution of the City Council, shall be the DIF and the DIF rates which shall be imposed upon parcels within the Property. Thereafter, CITY shall apply those DIF rates in effect at that time or which may thereafter be enacted. Regarding each parcel within the Property, the DIF shall be payable at the time required by law. The parties acknowledge that the DIF and the DIF rates shall apply only to CITY's development impact fees and not to the TUMF or MSHCP, or to any similar regional impact fees or to any other development impact fees imposed by another governmental agency not under the control, directly or indirectly, of CITY. OWNER shall be entitled to such credits against DIF as may be available under law. Under no circumstances shall this Agreement be deemed to fix DIF rates applicable to parcels within the Property. All persons or entities holding title or interest in any portion of the Property, including any, each, and all successors and assigns of OWNER shall be separately

responsible for payment of any and all DIF for that portion of the property developed by such person or entity and shall not be responsible for payment of any DIF related to other portions of the property.

4.3.2 TUMF Fees and Other Regional Impact Fees. The presently adopted Transportation Uniform Mitigation Fee ("TUMF"), pursuant to Chapter 3.70 of the Jurupa Valley Municipal Code, and as adopted by Resolution No. 2017-51, any future similar regional development impact fee, or any other development impact fees imposed by another governmental agency, including without limitation, Western Riverside County Multi-Species Habitat Conservation Plan Fees ("MSHCP") shall be imposed upon Development within the Property at the rate in effect as of the date of issuance of each building permit for the Property. OWNER shall be entitled to any credits against TUMF, MSHCP, other regional impact fees imposed on the Property or DIF as might be available under law.

4.3.3 Community Benefit Contribution. In consideration of the benefits received by OWNER pursuant to the terms of this Agreement, OWNER shall pay to CITY a one-time Community Benefit Contribution ("CBC") in the amount of one dollar (\$1.00) per square foot of grade level square footage ("Base Footage") and one dollar (\$1.00) per square foot of mezzanine square footage ("Mezzanine Footage") of each building to be constructed on the Property, as such Base Footage and Mezzanine Footage are reflected in the applicable building permit issued by CITY.

4.3.3.1 The Community Benefit Contribution related to each building shall be paid to CITY according to the following schedule:

(a) Thirty-three and one-third cents (\$.334) per square foot of Base Footage of all buildings constituting the Project, thirty (30) days after the Project Approvals become final and non-appealable;

(b) Thirty-three and one-third cents (\$.333) per square foot of Base Footage and fifty cents (\$.50) per square foot of Mezzanine Footage of each building, at the time CITY issues a building permit for such building; and

(c) Thirty-three and one-third cents (\$.333) per square foot of Base Footage and fifty cents (\$.50) per square foot of Mezzanine Footage, at the time CITY issues a certificate of occupancy for the first tenant in each building.

4.3.3.2 CITY shall use the CBC for municipal purposes.

4.3.4 Municipal In-lieu Fee. In lieu of requiring OWNER to develop land to support a recreation or community facility on the Property, CITY hereby requires a one-time payment by OWNER in the sum of four million dollars (\$4,000,000 that the City may use for municipal purposes ("**Municipal In-lieu Fee**"). The Municipal In-lieu Fee is due and payable to CITY prior to issuance of the first certificate of occupancy for any building located within the Industrial District and shall be paid in cash.

CITY hereby finds that the Municipal In-lieu Fee and the Community Facilities Special Assessment described in Section 4.3.5, fully mitigate the impact of the Project on parks, recreational facilities and community facilities within the jurisdiction of CITY and that OWNER shall not be required to pay any other park related fee under the City's jurisdiction, except for the CITY's Development Impact Fee for parks and trails."

4.3.5 Community Facilities Special Assessment. Development of the Property shall be subject to an annual Community Facilities Special Assessment, in perpetuity. The Community Facilities Special Assessment shall be applied to pay CITY fifty-thousand dollars (\$50,000) per year toward the maintenance of community facilities, including the Open Space, if the Open Space is dedicated to a not-for-profit entity as provided in Section 5.2.2 ("**Community Facility Maintenance Fee**"). The Community Facilities Special Assessment will be assessed against each parcel in the Industrial Park District on a prorata share, based on parcel size. The Parties acknowledge and agree that OWNER may choose to include the Community Facilities Special Assessment in a Community Facilities District or other public financing mechanism, as provided in Section 5.6.

The City shall make diligent good faith efforts to cause the County Tax Collector to enroll each annual installment of the Community Facilities Special Assessment on the annual secured tax bill or tax bills for the Property to the extent as may be permitted by law.

4.3.5.3 With regard to each building constructed on the Property, the Community Facilities Special Assessment shall be paid upon occurrence of both the following: (a) issuance of a final certificate of occupancy; and (b) commencement of the business operations of the first tenant within such building (and prorated for the first fiscal year of CITY in which both conditions are satisfied), for purposes of development, improvement and/or servicing of public park facilities.

4.3.6 General Fund Special Assessment. The development of the Property shall be subject to an annual per square foot General Fund Special Assessment in perpetuity. With regard to each building constructed on the Property, the General Fund Special Assessment shall be paid upon occurrence of both of the following: (a) issuance of a final certificate of occupancy and (b) commencement of the business operations of the first tenant within such building. The General Fund Special Assessment shall be prorated for the first fiscal year of CITY in which both conditions are satisfied and is intended for purposes of offsetting impacts to streets, police services, forfeiture of potential sales tax, and other maintenance associated with development and operation of the Property. The General Fund Special Assessment shall be an amount of money equal to \$.10 per square foot of each building constructed on the Property, as such square footage is reflected in the applicable building permit issued by CITY. Commencing July 1st of CITY's second fiscal year in which payment of the General Fund Special Assessment will be due, and annually thereafter, the General Fund Special Assessment rate of \$.10 per square foot of each building constructed on the Property shall automatically increase by the percentage change in the Consumer Price Index (All Urban Consumers; Riverside-San Bernardino-Ontario) or by three percent (3%), whichever is greater. The calculation of the percentage change in the Consumer Price Index shall be made using the month of April over the month of April in the prior year. CITY shall take such steps as may be necessary to cause the County Tax Collector to enroll each annual installment of the

General Fund Special Assessment on the annual secured tax bill or tax bills for the Property, to the extent as may be permitted by law. As certificates of occupancy are issued for each new tenant, the General Fund Special Assessment shall adjust upward or downward, to the square footage stated in the building permit issued by the CITY for the applicable building.

Should OWNER not commence any construction activity on the Property (including, without limitation, demolition, remediation or grading) within twelve (12) calendar months following the Effective Date of this Agreement, OWNER shall pay CITY an additional amount of one hundred eighty one thousand two hundred fifty dollars (\$181,250) per year (prorated for any partial year, based on a 30-day month and a 360-day year) until commencement of construction.

4.4 North Rubidoux Master Plan. OWNER agrees to contribute a one-time payment of four hundred and forty thousand dollars (\$440,000) as OWNER's proportionate participation and/or funding of the planned North Rubidoux Master Plan. OWNER's one-time payment shall be payable upon the Project Approvals becoming final and non-appealable and OWNER acquiring the Property and shall fully satisfy any obligation OWNER may have to pay for the cost of the North Rubidoux Master Plan. In addition, the provisions of the North Rubidoux Master Plan shall not conflict or impede in any way development of the Project, the implementation of this Agreement and the Project Approvals and future Development Approvals described herein.

4.5 Administrative Fee. OWNER shall pay to CITY an initial administrative fee in the amount of fifty thousand dollars (\$50,000.00) on the Effective Date of this Agreement plus \$25,000 thereafter on an annual basis until such time that all buildings have received their certificates of occupancy.

4.6 LEED Green Building Standard. OWNER shall design or cause to be designed all buildings constructed on the Property to at least a LEED certified or equivalent design standard.

4.7 Timing of Development. Except as set forth in Agreement, regardless of any future enactment, by initiative, or otherwise, OWNER shall have the discretion to develop the Property in one phase or in multiple phases at such times as OWNER deems appropriate within the exercise of its subjective business judgment. Specifically, CITY agrees that OWNER shall be entitled to apply for and receive permits, maps, occupancy certificates, and other entitlements to develop and use the Property at any time, provided that such application is made in accordance with this Agreement and the Applicable Regulations. CITY further agrees it shall diligently process and not unreasonably delay issuance of permits, maps, occupancy certificates and other entitlements applied for by OWNER. The parties hereto expressly reject the holding of *Pardee Construction Company v. City of Camarillo*, 37 Cal. 3d 465 (1984), as regards any authority regulating the phasing of Development and construction on the Property.

4.8 Permits and Approvals – Cooperation. CITY further agrees to reasonably cooperate with OWNER, at no cost to CITY, in securing any County, State and Federal permits or authorizations which may be required in connection with Development contemplated by OWNER, including without limitation such permits, approvals, and/or consents required by the MSHCP.

This cooperation shall not entail any economic contribution by CITY. Without limiting the generality of the foregoing, CITY shall transmit OWNER's MSHCP fee and all other mitigation fees associated with the MSHCP, to Western Riverside County Regional Conservation Authority, within seven (7) days of payment by OWNER.

4.9 Vested Rights. By entering into this Agreement and relying thereon, OWNER is obtaining vested rights to proceed with the Development of the Property in accordance with the terms and conditions of this Agreement. By entering into this Agreement and relying thereon, CITY is securing certain public benefits which enhance the public health, safety and welfare, a partial listing of which benefits is set forth in the Recitals above.

4.10 No Conflicting Enactments. Except as otherwise provided by this Agreement, neither the City Council nor any other agency of CITY shall enact a rule, regulation, ordinance, or other measure (collectively "law") applicable to the Property that is inconsistent or conflicts with the terms of this Agreement. By way of example, any law, whether by specific reference to this Agreement or otherwise, shall be considered to conflict if it limits or reduces the density or intensity of Development as regulated by the Applicable Regulations and Project Approvals or otherwise requires any reduction or increase in the number, size, or square footage of lot(s), structures, buildings, or other improvements, except as provided in Section 4.2.

4.10.1 Moratorium. It is the intent of OWNER and CITY that no moratorium or other limitation (whether relating to the Development 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), site development permits, precise plans, site development plans, building permits, occupancy certificates, or other entitlements to use approved, issued, or granted within the City of Jurupa Valley, or portions of the City of Jurupa Valley, shall apply to the Project to the extent such moratorium or other limitation would restrict OWNER's right to develop the Property as provided by this Agreement in such order and at such rate as OWNER deems appropriate as limited or regulated by this Agreement. CITY agrees to reasonably cooperate with OWNER in order to keep this Agreement in full force and effect. 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 Agreement, the parties hereby agree to reasonably cooperate in defending such action. In the event of any litigation challenging the effectiveness of this Agreement, or any portion hereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending. The filing of any third party lawsuit(s) against CITY or OWNER relating to this Agreement, the Project Approvals or to other development issues affecting the Property shall not delay or stop the Development, processing, or construction of the Project, unless the third party obtains a court order preventing the activity. In addition, as further provided in Sections 11.4 and 11.4.1 of this Agreement, the filing of such lawsuits shall automatically toll (i) all applicable timeframes of this Agreement, including the Term of this Agreement, and (ii) the expiration date of all Project Approvals and Future Project Approvals, for the period of time such litigation is pending.

4.10.2 Consistency Between this Agreement and Current Laws. CITY represents that at the Effective Date there are no rules, regulations, ordinances, policies, or other measures of CITY in force that would interfere with the Development and use of all or any part of

the Property according to this Agreement. In the event of any inconsistency between any Applicable Regulation, Project Approval, and this Agreement, the provisions of this Agreement shall control.

4.11 Reimbursement. Nothing in this Agreement shall preclude CITY and OWNER from entering into any reimbursement agreements for the portion (if any) of the cost of any dedications, public facilities, Public Improvements, or any of these that CITY may require as conditions of the Project Approvals, to the extent that they are not in excess of those reasonably necessary to mitigate the impacts of the Project.

4.12 Acquisition of Right of Way for Public Improvements.

4.12.1 To the extent OWNER does not have sufficient title or interest in the real property required for the construction or installation of a Public Improvement, OWNER shall make a good faith effort to acquire the required property ("Required Property") in a timeframe calculated to allow for the orderly Development of the Project. If, following this effort, OWNER is unable to acquire the Required Property, OWNER shall have the right, but not the obligation, to request that CITY acquire the Required Property pursuant to the provisions of Government Code Section 66462.5, which shall be applicable, regardless of whether OWNER is applying for approval of a final map. CITY shall consider in good faith the acquisition of the Required Property pursuant to an acquisition agreement in substantially the form of Exhibit D ("Acquisition Agreement"), pursuant to the provisions of Government Code Section 66462.5 or Code of Civil Procedure Section 1230.010 and following, as the case may be, including proceedings for immediate possession of the Property pursuant to Code of Civil Procedure Section 1255.410 and following. This Agreement is neither a commitment nor an announcement of an intent by CITY to acquire any or all of the property required for Off-Site Improvements.

4.12.2 In the event CITY delays or is unwilling or unable to acquire the Required Property, such conditions of approval shall be automatically deemed waived. The specific acquisition of Right of Way requiring public improvements shall be referenced in the Acquisition Agreement.

4.12.3 Both parties acknowledge and agree that acquisition of the Required Property in accordance with the California Eminent Domain Law, requires more time than the suggested timeframes of Government Code Section 66462.5 allow and therefore, the parties waive these time constraints and the Acquisition Agreement shall so provide. The parties further acknowledge and agree that CITY cannot exercise its power of eminent domain unless and until a Resolution of Necessity has been duly adopted by the City Council pursuant to law. This Agreement is neither a commitment nor the announcement of an intent by CITY to acquire any or all of the Required Property for the Public Improvements.

4.12.4 If OWNER asks CITY and CITY agrees to acquire right-of-way through the use of its power of eminent domain, then OWNER and CITY shall enter into an Acquisition Agreement pursuant to Government Code Section 66462.5 for each Public Improvement. OWNER shall deposit with CITY the actual costs reasonably estimated by CITY for initiating such proceedings and each stage thereof. Notwithstanding the foregoing provisions of this Section 4.12, City shall not delay or refuse to issue any Future Development Approvals due to the failure or delay of the City to either (i) enter into the Acquisition Agreement; (ii) if

necessary, failure to initiate or conclude an eminent domain proceeding, if such a proceeding is necessary to obtain the Required Property; or (iii) approve any improvement plans needed to construct any Public Improvement.

4.13 Easements. In the event a Project Approval requires an easement to be dedicated for pedestrian use, such an easement shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable, and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use.

4.14 Prior to August 1, 2020, the Applicant shall establish an air filtration program to provide and install air filtration units and/or filters to approximately 260 single-family residential homes in the Belltown community west of Market Street and west of Rubidoux Boulevard and in unincorporated San Bernardino County north of the Projects boundary on El Rivionno Road, generally within 1,000 feet of the proximate truck route/street, at the Applicant's sole cost and subject to the approval of the City Manager.

4.15 The Applicant shall pay to the City the cost and expenses of the City retaining an independent technical consultant to monitor compliance with the State Department of Toxic Substances Control ("DTSC") Response Plan for the Property and the adjacent Open Space. The Applicant shall deposit with the City the sum of fifty thousand dollars (\$50,000.00) for these costs and expenses and shall replenish the deposit within five (5) business days following written notice from the City Manager. City shall maintain the invoices of the consultant and City payments thereof for the period specified in the City's Records retention Policy and provide them to Applicant upon request.

5. OBLIGATIONS OF THE PARTIES.

5.1 OWNER's Obligations to Construct Public Improvements. In the event OWNER elects, in its sole discretion, to proceed with development of the Project, OWNER shall, at its sole cost and expense, design, construct, install, and finally complete the Public Improvements. The design, construction, installation, and final completion of the Public Improvements shall be in conformance with CITY standards in effect as of the date of this Agreement and the plans and specifications for the Public Improvements, as approved by the City Engineer. Except as otherwise provided in this Agreement, the Public Improvements shall be completed at such time as set forth in the conditions of approval for Development on the Property. CITY and OWNER shall enter into CITY's standard subdivision improvement agreement, or an applicable modification thereof, for the completion of the Public Improvements.

5.2 Specific Obligations of Owner within the Open Space.

5.2.1 There currently exists a "Mining and Reclamation Plan, dated as of December 15, 1989 and revised on June 29, 1990 for the Property ("Reclamation Plan"), prepared pursuant to the California Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710 et seq.). Upon execution of this Agreement by OWNER and CITY, CITY shall take such steps and sign such documents as may be necessary to close out the Reclamation Plan and to facilitate the release of any and all financial assurances posted in connection with the same.

Thereafter, OWNER shall be deemed released from any and all obligations whatsoever to reclaim all or any portion of the Property and/or the Open Space.

5.2.2 The Open Space is depicted in Exhibit A. Previously, OWNER has, at its expense and in coordination with the California Department of Toxic Substances Control (“DTSC”), (i) negotiated and executed a California Land Reuse and Revitalization Act of 2004 Agreement (“CLRRRA Agreement”) for the Open Space and (ii) delivered a Phase I Environmental Site Assessment of the Open Space to CITY. Upon (a) the Project Approvals becoming final and non-appealable and (b) DTSC’s approval of an Open Space Response Plan, or an equivalent approval or clearance authorizing a plan to remediate the Open Space; and (c) OWNER’s acquisition of the Open Space, OWNER shall maintain the Open Space in accordance with the Open Space Response Plan and applicable approvals or may then place the Open Space under a conservation easement and dedicate the Open Space to a not-for-profit entity of its choosing who shall be obligated to maintain the Open Space in accordance with the Open Space Response Plan and applicable approvals. OWNER shall perform work required by DTSC to complete the remediation of the Open Space, which may include demolition, soil removal, soil treatment, and groundwater treatment, (the “Open Space Remediation”) and, subject to the provisions of Section 5.6, OWNER may choose to include the cost of the Open Space Remediation in a Community Facilities District or other public financing mechanism.

5.3 Once all remediation activities and engineering controls described in Sections 5.2.2 are implemented to the satisfaction of DTSC, OWNER shall obtain a DTSC Certificate of Completion and No Further Action Letter with regard to the Open Space, and will furnish copies of such documents to CITY. CITY shall use good faith efforts to assist OWNER in obtaining any and all applicable regional park impact fee credits, or MSHCP fee credits, or reimbursement, based upon OWNER's Open Space Remediation.

5.3.1 CITY Maintenance of Dedicated Public Improvements. CITY shall maintain all dedicated and accepted Public Improvements, including but not limited to, public streets and related walls, streetlights, and public storm drainage facilities.

5.3.2 OWNER Maintenance of Landscaping and Storm Drainage Facilities. OWNER shall maintain all landscaping on the Property and on adjacent CITY rights-of-way and all storm drainage facilities that are on the Property and serve the Property. This does not include any storm drainage facility for the benefit of the Riverside County Flood Control District.

5.4 Easements. CITY shall grant such easements over CITY property as are reasonably needed for the Development of the Property provided such easements do not impede or interfere with public services provided on such properties. OWNER agrees to grant to CITY such easements over its property as are reasonably needed for the construction and maintenance of public improvements, except to the extent such easements would have a material adverse economic effect on the Project. Such grants shall be at no additional cost to OWNER or CITY.

5.5 Private Improvement Financing Mechanisms.

5.5.1 Industrial Development Bonds. If requested by OWNER, CITY shall cooperate in the issuance of Industrial Development Bonds, as allowed by State or Federal law.

5.5.2 Cost of Creating Alternative Financing Mechanism. If the formation or establishment of any public or private financing mechanism is requested by OWNER, then CITY shall reasonably cooperate with such request, and OWNER shall bear the full cost of creating any and all such alternative financing mechanisms.

5.6 Public Financing of Improvements. OWNER or CITY may, from time to time, request that the other cooperate in establishing one or more financing mechanisms including, without limitation, assessment districts and/or community facilities districts, to finance environmental remediation, construction and maintenance of the Public Improvements, public facilities, mitigation mechanisms, the Community Facilities In-lieu Fee, assessments (including the Community Facilities Special Assessment) and/or development impact fees that may be required in connection with Development of the Project, all of which CITY hereby finds have a nexus to the construction of public facilities within the jurisdiction of CITY or to the public interest of the CITY and the health, safety and welfare of its residents. CITY hereby authorizes the use of such financing methods and agrees to use reasonable efforts to develop and implement such financing mechanisms, subject to public hearing and election requirements under applicable State law and, if tax-exempt bonds are to be issued, Federal law, the Existing Regulations and the customary and reasonable industry standards for the development of such financing. OWNER and CITY acknowledge and agree that the establishment of financing mechanisms and the public or private issuance of bonds are dependent on many factors that are not known at this time. The viability of the financing, the amount of special taxes or assessments for debt service, and available bond proceeds will be dependent on several factors existing at the time the bonds are sold, including, but not limited to, the financial markets, interest rates on tax exempt financings, industrial and commercial real estate markets, value of real property in the area, bond underwriting criteria and ratings by bond-rating agencies. OWNER shall be under no obligation to agree to any such assessment districts and/or community facilities districts. Should OWNER elect to pursue such financing mechanism, any assessment levied on the Property shall expire upon the full repayment of the outstanding indebtedness.

5.7 Further Assurances to OWNER. The parties further acknowledge that the public benefits to be provided by OWNER to CITY pursuant to this Agreement are in consideration for and reliance upon assurances that the Property can be developed in accordance with the Project Approvals and this Agreement. Accordingly, while recognizing that the Development of the Property may be affected by exercise of the authority and rights reserved and excepted as provided in Section 4.2. Limitations, Reservations and Exceptions, of this Agreement, OWNER is concerned that normally the judiciary extends to local agencies significant deference in the adoption of land use regulations which might permit CITY in violation of the Reserved Authority, to attempt to apply regulations which are inconsistent with the Project Approvals pursuant to the exercise of the Reserved Authority. Accordingly, OWNER desires assurances that CITY shall not and CITY agrees that it shall not further restrict or limit the Development of the Property in violation of this Agreement except in strict accordance with the terms of this Agreement.

5.8 Judicial Review. Based on the foregoing, in the event OWNER judicially (including by way of a reference proceeding) challenges the application of a future land use regulation as being in violation of this Agreement and as not being a land use regulation adopted pursuant to the Reserved Authority, OWNER shall bear the burden of proof in establishing that such rule, regulation, or policy is inconsistent with the Applicable Regulations, the Project Approvals, or both and CITY shall thereafter bear the burden of proof in establishing that such regulation was adopted pursuant to and in accordance with the Reserved Authority and was not applied by CITY in violation of this Agreement.

6. INDEMNIFICATION.

6.1 OWNER agrees to indemnify and hold harmless CITY, its agents, officers, consultants, contractors, attorneys, and employees (“Indemnified Parties”) from and against any claims or proceeding against the Indemnified Parties to set aside, void or annul the approval of this Agreement or the Environmental Impact Report approved for the Project or the Project Approvals. Notwithstanding the provisions of Section 3.5.1 of this Agreement, OWNER’s obligation pursuant to this Section is not a benefit or burden running with the land and shall not be assigned to any person without the express written consent of CITY. OWNER’s duties under this Section are solely subject to and conditioned upon the Indemnified Parties written request to OWNER to indemnify the Indemnified Parties. OWNER shall deposit the expected costs of defense with CITY within five (5) business days of notice from CITY of the claim and shall add to the deposit within five (5) business days from the request of CITY. Without in any way limiting the provisions of either this Section or Section 3.4, the parties hereto agree that this Section shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the Effective Date.

6.2 Notwithstanding Section 6.1., and as a separate and distinct obligation of OWNER, OWNER agrees to indemnify and hold harmless the Indemnified Parties from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature arising from alleged damages caused to third parties and alleging that the Indemnified Parties is or are liable therefor as a direct or indirect result of CITY’s approval of this Agreement. OWNER’s duties under this Section are solely subject to and conditioned upon the Indemnified Parties written request to OWNER to indemnify the Indemnified Parties. OWNER shall deposit the expected costs of defense with CITY within five (5) business days of notice from CITY of the claim and shall add to the deposit within five (5) business days from the request of CITY. Without in any way limiting the provisions of either this Section or Section 3.4, the parties hereto agree that this Section shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the Effective Date.

6.3 Notwithstanding Sections 6.1. and 6.2, and as a separate and distinct obligation of OWNER, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys’ fees and costs, arising directly or indirectly out of any claim for loss or damage to any property, including the Property and the Open Space, injuries to or death of persons, or for the cost of cleaning up the Property, including the Open Space, and removing Hazardous Materials or toxic substances, materials and waste therefrom, by reason of contamination or adverse effects on the environment, or by reason of any statutes, ordinances,

orders, rules or regulations of any governmental entity or agency requiring the clean up of any Hazardous Materials caused by or resulting from any Hazardous Material, or toxic substances or waste existing on or under, any portion of the Property, including the Open Space.

6.3.1 As used in Section 6.3, "Hazardous Materials" means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Property, including the Open Space, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; California Health and Safety Code Sections 25260 and 25141; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. ("RCRA"). The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR. Part 302) or pursuant to California Health and Safety Code Section 25141 and in any and all amendments thereto; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Property, to adjacent properties, or to persons on or about the Property, (ii) which causes the Property to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Property requires investigation, reporting or remediation under any such laws or regulations.

7. **RELATIONSHIP OF PARTIES.** The contractual relationship between CITY and OWNER is such that OWNER is an independent contractor and not the agent or employee of CITY. CITY and OWNER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with the Development of the Property shall be construed as making CITY and OWNER joint ventures or partners.

8. **AMENDMENT OR CANCELLATION OF AGREEMENT.** This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties in the manner provided for in Government Code Section 65868. No amendment or modification of this Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each party hereto. This provision shall not limit CITY's or OWNER's remedies as provided by Section 10.3.

9. PERIODIC REVIEW OF COMPLIANCE WITH AGREEMENT.

9.1 Periodic Review. CITY and OWNER shall review this Agreement at least once every 12-month period from the date this Agreement is executed. CITY shall notify OWNER in writing of the date for review at least thirty (30) days prior thereto. Such periodic review shall be conducted in accordance with Government Code Section 65865.1.

9.2 Good Faith Compliance. During each periodic review, OWNER shall be required to demonstrate good faith compliance with the terms of this Agreement. OWNER agrees to furnish such reasonable evidence of good faith compliance as CITY, in the exercise of its reasonable discretion, may require. If requested by OWNER, CITY agrees to provide to OWNER, a certificate that OWNER or a duly authorized Transferee is in compliance with the terms of this Agreement, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

9.3 Failure to Conduct Annual Review. The failure of CITY to conduct the annual review shall not be an OWNER default. Further, OWNER shall not be entitled to any remedy for CITY's failure to conduct this annual review.

9.4 Initiation of Review by City Council. In addition to the annual review, the City Council may at any time initiate a review of this Agreement by giving written notice to OWNER. Within thirty (30) days following receipt of such notice, OWNER shall submit evidence to the City Council of OWNER's good faith compliance with this Agreement and such review and determination shall proceed in the same manner as provided for the annual review. The City Council shall initiate its review pursuant to this Section only if it has probable cause to believe CITY's general health, safety, or welfare is at risk as a result of specific acts or failures to act by OWNER.

9.5 Administration of Agreement. Any final decision by CITY staff concerning the interpretation and administration of this Agreement and Development of the Property in accordance herewith may be appealed by OWNER to the City Council, provided that any such appeal shall be filed with the City Clerk within ten (10) business days after OWNER receives written notice that the staff decision is final. The City Council shall render its decision to affirm, reverse, or modify the staff decision within thirty (30) days after the appeal was filed. The decision of the City Council as to the administration of this Agreement shall be final and is not appealable. The foregoing notwithstanding, breaches of this Agreement are subject to judicial relief as provided in this Agreement.

9.6 Availability of Documents. If requested by OWNER, CITY agrees to provide to OWNER copies of any documents, reports or other items reviewed, accumulated or prepared by or for CITY in connection with any periodic compliance review by CITY, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto. CITY shall respond to OWNER's request on or before ten (10) business days have elapsed from CITY's receipt of such request.

10. **EVENTS OF DEFAULT: REMEDIES AND TERMINATION.** Unless amended, modified, or suspended pursuant to Government Code Section 65869.5, this Agreement is enforceable by either party hereto.

10.1 Defaults by Owner. If CITY determines that OWNER has not complied in good faith with the terms and conditions of this Agreement, CITY shall, 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. If, within thirty (30) days after the effective date of notice from CITY specifying the manner in which OWNER has failed to so comply, OWNER does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then OWNER shall be deemed to be in default under the terms of this Agreement. The foregoing 30-day period shall be tolled during the pendency of any appeal undertaken pursuant to Section 9.5, if applicable. Default of OWNER shall also include, but not limited to, OWNER's failure to timely commence construction of the Public Improvements pursuant to this Agreement; OWNER's failure to timely complete construction of the Public Improvements; OWNER's failure to timely cure any defect in the Public Improvements; OWNER's failure to perform substantial construction work on the Public Improvements for a period of 20 calendar days after commencement of the work; or OWNER's failure to perform any other obligation concerning the Public Improvements under this Agreement. Except as provided in Section 13 ("Attorneys Fees") CITY's remedies for OWNER's breach shall be limited to those specified in Section 10.3.

10.2 Defaults by City. If OWNER determines that CITY has not complied in good faith with the terms and conditions of this Agreement, OWNER shall, by written notice to CITY, specify the manner in which CITY has failed to so comply and state the steps CITY must take to bring itself into compliance. If, within thirty (30) days after the effective date of notice from OWNER specifying the manner in which CITY has failed to so comply, CITY does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then CITY shall be deemed to be in default under the terms of this Agreement. OWNER's remedies for CITY'S breach shall be limited to those specified in Section 10.3.

10.3 Legal Remedies.

10.3.1 No Monetary Damages. Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, 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 Development of the Property in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this 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 Agreement and that OWNER shall have the right to seek and obtain specific performance as a remedy for any breach of this Agreement. Moreover, CITY would not have consented to this Agreement if it were to be subject to damages for breach of this Agreement.

Therefore, OWNER specifically agrees that it has no authority under this Agreement or otherwise to seek monetary damages against CITY for any breach of this Agreement by CITY, and agrees not to seek monetary damages against CITY for breach of this Agreement.

10.3.2 Specific Performance Remedy. CITY and OWNER further acknowledge that, if OWNER fails to carry out its obligations under this Agreement, CITY shall have the right to refuse to issue any permits or other approvals that OWNER would otherwise have been entitled to pursuant to this Agreement. Therefore, CITY's remedy of denying issuance of permits or terminating this Agreement shall be sufficient in most circumstances if OWNER fails to carry out its obligations hereunder. Notwithstanding the foregoing, if CITY issues a permit or other approval pursuant to this Agreement in reliance (explicitly stated in writing) 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. 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.

10.4 Institution of Legal Action. In addition to any other rights or remedies, and except as provided in Section 11.3, OWNER or CITY may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof to recover damages for any default, or to obtain any other remedies consistent with the purpose of this Agreement. Such legal action shall be heard by a referee from the Riverside County Superior Court pursuant to the reference procedures of the California Code of Civil Procedure Sections 638, et seq., OWNER and CITY shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him/her. If OWNER and CITY are unable to agree on a referee within ten (10) days of a written request to do so by either party hereto, either party may seek to have one appointed pursuant to the California Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

10.5 Estoppel Certificates.

10.5.1 Written Request. Either party may at any time deliver written notice to the other party requesting an estoppel certificate (the "Estoppel Certificate") stating: (1) this Agreement is in full force and effect and is a binding obligation of the parties; (2) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and (3) no default in the performance of the requesting party's obligations under this Agreement exists or, if a default does exist, the nature and amount of any default.

10.5.2 Fifteen (15) Days to Respond. A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within fifteen (15) days after receipt of the request.

10.5.3 Authorized Signatories. The City Manager or any person designated by the City Manager may sign the Estoppel Certificates on behalf of CITY. Any officer of OWNER may sign on behalf of OWNER.

10.5.4 Reliance. An Estoppel Certificate may be relied on by assignees and mortgagees.

10.5.5 Reimbursement. In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all actual and direct costs and fees incurred by such party with respect thereto.

10.5.6 Failure to Provide Estoppel Certificate. Failure by a party to provide an Estoppel Certificate within thirty (30) days after receipt of the request therefor shall be deemed confirmation that this Agreement is in full force and effect, has not been amended or modified either orally or in writing and that no defaults in the performance of the requesting party's obligations under this Agreement exist.

11. WAIVERS AND DELAYS.

11.1 No Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, and failure by a party to exercise its rights upon a default by the other party hereto, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future.

11.2 Third Parties. Non-performance shall not be excused because of a failure of a third person, except as provided in Section 11.3

11.3 Force Majeure. Neither CITY nor OWNER shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots, terrorism, or similar hostilities, strikes and other labor difficulties, government regulations (including, without limitation, state and federal environmental and natural resource regulations applied to the Property), or judicial decisions directly applicable to the Property and such cause is beyond such party's reasonable control.

11.4 Extensions. The Term of this Agreement and the time for performance by OWNER or CITY of any of its obligations hereunder shall be automatically extended by the period of time that any of the events described in Section 11.3 and this Section 11.4 exists and/or prevents performance of such obligations. In addition, the Term shall be extended for delays arising from the following events for a time equal to the duration of each delay occurring during the Term. The party seeking to apply force majeure extensions shall notify the other within thirty (30) days of the commencement of the event giving rise to force majeure.

11.4.1 Litigation. The period of time after the Effective Date during which litigation related to this Agreement or having the actual effect of delaying implementation of the Development of the Property is pending, including litigation pending on the Effective Date. This period shall include any time during which appeals may be filed or are pending. In addition, as

provided in Section 4.10.1, such a period shall automatically toll the expiration dates of all Project Approvals and Future Project Approvals.

11.4.2 Government Agencies. Any delay resulting from the acts or omissions of CITY or any other governmental agency or public utility and beyond the reasonable control of OWNER except those related to the normal and customary processing of Future Development Approvals.

12. **NOTICES.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery. Notices required to be given to CITY shall be addressed as follows:

City of Jurupa Valley
8930 Limonite Avenue
Jurupa Valley CA 92509
Attention: City Manager

With a copy to:

Richards, Watson & Gershon
350 South Grand, 37th Floor
Los Angeles, CA 90071-1469
Attention: Peter M. Thorson, City Attorney

Notices required to be given to OWNER shall be addressed as follows:

Crestmore Redevelopment, LLC
1805 Shea Center Drive Suite 250
Highlands Ranch, CO 80129
Attention: Tate Goss

With a copy to:

Gresham Savage Nolan & Tilden, PC
550 East Hospitality Lane, Suite 300
San Bernardino, CA 92408
Attn: Mark A. Ostoich

A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, or air bill.

13. **ATTORNEYS' FEES.** If legal action is brought by either party against the other for breach of this Agreement, including actions derivative from the performance of this Agreement, or to compel performance under this Agreement, the prevailing party shall be entitled to an award of its costs, including reasonable attorneys' fees, and shall also be entitled to recover

its contribution for the costs of the referee referred to in Section 10.4 above as an item of damage and/or recoverable costs. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses, including, without limitation, expert witness fees, incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

14. **RECORDING.** This Agreement and any amendment or cancellation hereof shall be recorded, at no cost to CITY, in the Official Records of Riverside County by the City Clerk within the period required by Section 65868.5 of the Government Code.

15. **EFFECT OF AGREEMENT ON TITLE.**

15.1 Effect on Title. OWNER and CITY agree that this Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.

15.2 Encumbrances and Lenders' Rights. OWNER and CITY hereby agree that this Agreement shall not prevent or limit any OWNER of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at its or their sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust sale and leaseback arrangement or other security device. CITY acknowledges that any Lender (as hereinafter defined) may require certain interpretations of or modifications to this Agreement or the Project and CITY agrees, upon request, from time to time, to meet with OWNER(s) and/or representatives of such Lenders to negotiate in good faith any such request for interpretation or modification. CITY further agrees that it will not unreasonably withhold its consent to any such requested interpretation or modification to the extent such interpretation or modification is consistent with the intent and purpose of this Agreement. A default under this Agreement shall not defeat, invalidate, diminish, or impair the lien of any Lender.

15.3 Notice of Defaults. The mortgagee of a mortgage or beneficiary of a deed of trust or holder of any other security interest in the Property or any portion thereof and their successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity which obtains title by deed-in-lieu of foreclosure ("Lender") shall be entitled to receive a copy of any notice of default (as defined in Section 10.1 hereof) delivered to OWNER and, as a pre-condition to the institution of legal proceedings or termination proceedings, CITY shall deliver to all such Lenders written notification of any default by OWNER in the performance of its obligations under this Agreement which is not cured within sixty (60) days (the "Second Default Notice") and shall allow the Lender(s) an opportunity to cure such defaults as set forth herein. The Second Notice of Default shall specify in detail the alleged default and the suggested means to cure it. After receipt of the Second Default Notice, each such Lender shall have the right, at its sole option, within ninety (90) days to cure such default or, if such default cannot reasonably be cured within that ninety (90) day period, to commence to cure such default, in which case no default shall exist and CITY shall take no further action. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Lender obtaining

possession of the Property, or any portion thereof, and such Lender seeks to obtain possession, such Lender shall have until ninety (90) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, then to commence to cure such default. Further, a Lender shall not be required to cure any non-curable default of OWNER, and any such default shall be deemed cured if any Lender obtains possession.

16. **SEVERABILITY OF TERMS.** If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby if the tribunal finds that the invalidity was not a material part of consideration for either party. The covenants contained herein are mutual covenants. The covenants contained herein constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

17. **SUBSEQUENT AMENDMENT TO AUTHORIZING STATUTE.** This Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation in effect as of the Effective Date. Accordingly, to the extent that subsequent amendments to the Government Code would affect the provisions of this Agreement, such amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868 as in effect on the Effective Date.

18. **LOCAL, STATE AND FEDERAL LAWS.** OWNER and its contractors shall carry out the design and construction of all private improvements on the Property and all Public Improvements in conformity with all applicable laws, including, without limitation, all applicable federal, state and local occupation, employment, prevailing wage, safety and health laws, rules, regulations and standards. OWNER agrees to indemnify, defend and hold the Indemnified Parties (as defined in Section 6.1) harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach by or failure of OWNER or its contractor(s) or agents to comply with such laws, rules or regulations. OWNER's indemnity obligations set forth in this Section shall survive the termination or expiration of this Agreement.

19. **RULES OF CONSTRUCTION AND MISCELLANEOUS TERMS.**

19.1 Interpretation and Governing Law. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. The parties understand and agree that this Agreement is not intended to constitute, nor shall 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 Agreement shall not be deemed to constitute the surrender or abnegation of CITY's governmental powers over the Property.

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

19.3 Gender. The singular includes the plural; the masculine gender includes the feminine; “shall” is mandatory, “may” is permissive.

19.4 No Joint and Several Liability. At any time that there is more than one OWNER, no breach hereof by an OWNER shall constitute a breach by any other OWNER. Any remedy, obligation, or liability, including but not limited to the obligations to defend and indemnify CITY, arising by reason of such breach shall be applicable solely to OWNER that committed the breach. However, CITY shall send a copy of any notice of violation to all OWNERS, including those not in breach. In addition, a default by any Transferee shall only affect that portion of the Property owned by such Transferee and shall not cancel or diminish in any way OWNER’s rights hereunder with respect to any portion of the Property not owned by such Transferee. The Transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such Transferee, and any amendment to this Agreement between CITY and a Transferee shall only affect the portion of the Property owned by such Transferee.

19.5 Time of Essence. Time is of the essence regarding each provision of this Agreement of which time is an element.

19.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all previous negotiations, discussion 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.

19.7 Authority to Execute Agreement. The person executing this Agreement on behalf of OWNER warrants and represents to CITY that this Agreement has been duly approved by OWNER and that all applicable notices and procedures were complied with and that he/she is duly authorized by OWNER to execute this Agreement on behalf of OWNER and has been duly authorized to do so.

19.8 Not for Benefit of Third Parties. This Agreement and all provisions hereof are for the exclusive benefit of CITY and OWNER and its Transferees and shall not be construed to benefit or be enforceable by any third party.

19.9 Counterparts. This Agreement may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts shall constitute one and the same agreement.

19.10 Exhibits. The following Exhibits are attached to this Agreement and incorporated herein as though set forth in full:

Final Draft: April 27, 2020

- Exhibit A: Description of Property and Description of Open Space
- Exhibit B: Public Improvements;
- Exhibit C: [Intentially Deleted];
- Exhibit D: Agreement for Acquisition of Off-Site Property for Public Improvements (Government Code Section 66462.5)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**CITY OF JURUPA VALLEY,
a municipal corporation**



Mayor

ATTEST:



Victoria Wasko, CMC
City Clerk

APPROVED AS TO FORM:



Peter M. Thorson
City Attorney



CRESTMORE REDEVELOPMENT, LLC,
a Colorado limited liability company

By: Viridian Capital Management, LLC
Its: Sole Manager

By: 

Tate Goss, President

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~~ Colorado
COUNTY OF _____)

On April 28, 2020 before me, Christopher Dorman, Notary Public
(insert name and title of the officer)

personally appeared Tate Goss,
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 Colorado that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

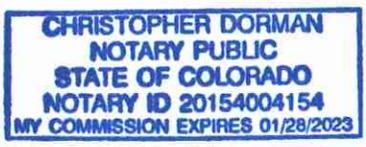


EXHIBIT A

(Description of Property)

And

(Description of Open Space)

EXHIBIT "A"
DESCRIPTION OF PROPERTY

PARCEL 1

IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING PARCEL "B" AND OF LOT LINE ADJUSTMENT NO. 5218 RECORDED MAY 29, 2008 AS INSTRUMENT NO. 2008-0291639 AND A PORTION OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 1601 RECORDED OCTOBER 26, 2017 AS INSTRUMENT NO. 2017-0446791 BOTH OF OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST OF SAID PARCEL "B"; THENCE ALONG THE EAST LINE OF SAID PARCEL "B" AND "A":

- 1) SOUTH 12°08'23" EAST, 1699.08 FEET;
- 2) THENCE LEAVING SAID LINE, SOUTH 73°09'00" WEST, 224.01 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL "A", SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 2044.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 79°11'04" WEST;
- 3) THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°57'46" AN ARC LENGTH OF 747.84 FEET;
- 4) THENCE NORTH 31°47'25" WEST, 954.76 FEET;
- 5) THENCE NORTH 00°47'58" EAST, 97.97 FEET;
- 6) THENCE NORTH 72°33'37" EAST, 177.27 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 656.00 FEET;
- 7) THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°24'41" AN ARC LENGTH OF 208.97 FEET;
- 8) THENCE NORTH 00°48'37" EAST, 44.00 FEET;
- 9) THENCE SOUTH 89°11'23" EAST, 253.20 FEET TO THE **TRUE POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS 16.32 ACRES, MORE OR LESS.

PARCEL 2

IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF **BEGINNING** AT THE SOUTHWEST CORNER OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 1601 RECORDED OCTOBER 26, 2017 AS INSTRUMENT NO. 2017-0446791 OF OFFICIAL RECORDS; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

SHEET 1 OF 5

EXHIBIT "B" – LEGAL DESCRIPTION
CITY OF JURUPA VALLEY, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A" SAID POINT ALSO BEING A POINT ON THE EAST RIGHT OF WAY OF RUBIDOUX BOULEVARD AS SHOWN ON SAID LOT LINE ADJUSTMENT;

- 1) THENCE ALONG SAID RIGHT OF WAY NORTH 05°46'04" WEST, 18.25 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1402.69 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 46°57'03" EAST;
- 2) THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°43'34" AN ARC LENGTH OF 189.14 FEET;
- 3) THENCE NORTH 50°46'30" EAST, 13.40 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 746.78 FEET;
- 4) THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 44°09'05" AN ARC LENGTH OF 575.46 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 2844.79 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS SOUTH 84°31'50" WEST;
- 5) THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°02'10" AN ARC LENGTH OF 349.34 FEET;
- 6) THENCE SOUTH 01°33'59" WEST, 68.69 FEET;
- 7) THENCE NORTH 79°15'18" WEST, 79.39 FEET;
- 8) THENCE SOUTH 54°49'44" WEST, 425.90 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS 1.06 ACRES, MORE OR LESS.

PARCEL 3

IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING THAT PORTION OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 1601 RECORDED OCTOBER 26, 2017 AS INSTRUMENT NO. 2017-0446791 OF OFFICIAL RECORDS;

- 1) THENCE SOUTH 05°46'04" EAST, 18.37 FEET TO THE **TRUE POINT OF BEGINNING**;
- 2) THENCE NORTH 54°49'44" EAST, 428.14 FEET;

SHEET 2 OF 5

EXHIBIT "B" – LEGAL DESCRIPTION
CITY OF JURUPA VALLEY, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY

- 3) THENCE SOUTH 79°15'18" EAST, 121.22 FEET;
- 4) THENCE SOUTH 40°31'37" EAST, 9.20 FEET;
- 5) THENCE SOUTH 05°39'03" EAST, 140.53 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 980.37 FEET;
- 6) THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°00'00" AN ARC LENGTH OF 205.33 FEET;
- 7) THENCE SOUTH 17°44'40" EAST, 4.58 FEET;
- 8) THENCE SOUTH 79°15'23" WEST, 163.95 FEET;
- 9) THENCE SOUTH 85°09'23" WEST, 257.40 FEET;
- 10) THENCE NORTH 87°42'37" WEST, 40.00 FEET;
- 11) THENCE CONTINUING ALONG SAID LINE, NORTH 87°42'37" WEST, 53.18 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 4960.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 82°10'44" EAST;
- 12) THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°03'12" AN ARC LENGTH OF 177.75 FEET TO **THE TRUE POINT OF BEGINNING.**

THE ABOVE DESCRIBED PARCEL CONTAINS 3.62 ACRES, MORE OR LESS.

PARCEL 4

IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 1601 RECORDED OCTOBER 26, 2017 AS INSTRUMENT NO. 2017-0446791 OF OFFICIAL RECORDS, TOGETHER WITH LOTS 4, 8, 14, AND PORTIONS OF LOTS 3, 9, 15 AND 16 OF THE MAP OF RIVINO HEIGHTS BLOCK 1 PER MAP RECORDED IN BOOK 5, PAGE 145 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH LOTS 1 THROUGH 18, INCLUSIVE, OF THE RIVINO GARDEN SUBDIVISION PER MAP RECORDED IN BOOK 21, PAGE 29 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALL AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL "A";

THENCE ALONG THE NORTH LINE OF SAID PARCEL "A", NORTH 89°18'59" WEST, 1950.21 FEET TO A POINT ON THE EAST LINE OF THAT CERTAIN LAND CONVEYED TO RIVERSIDE & PACIFIC RAILROAD

SHEET 3 OF 5

EXHIBIT "B" – LEGAL DESCRIPTION
CITY OF JURUPA VALLEY, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY

COMPANY PER DOCUMENT RECORDED OCTOBER 29, 1917 IN BOOK 471 PAGE 179 OF DEEDS OF SAID COUNTY;

THENCE ALONG SAID EAST LINE THE FOLLOWING 4 COURSES:

- 1) SOUTH 12°15'59" EAST, 2966.14 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 5769.58 FEET;
- 2) THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°35'47" AN ARC LENGTH OF 664.24 FEET;
- 3) THENCE SOUTH 05°32'36" EAST, 168.10 FEET;
- 4) THENCE SOUTH 41°19'00" WEST, 7.17 FEET;
- 5) THENCE LEAVING SAID LINE:
- 6) THENCE SOUTH 09°27'00" EAST, 160.20 FEET;
- 7) THENCE SOUTH 18°43'00" EAST, 200.00 FEET;
- 8) THENCE SOUTH 25°59'00" EAST, 159.90 FEET;
- 9) THENCE SOUTH 52°46'00" EAST, 375.80 FEET;
- 10) THENCE SOUTH 78°22'00" EAST, 260.50 FEET;
- 11) THENCE SOUTH 83°43'00" EAST, 175.00 FEET;
- 12) THENCE NORTH 56°55'00" EAST, 345.80 FEET;
- 13) THENCE NORTH 53°26'00" EAST, 1231.45 FEET;
- 14) THENCE NORTH 54°17'00" EAST, 362.57 FEET;
- 15) NORTH 43°27'00" WEST, 141.86 FEET;
- 16) THENCE NORTH 12°00'00" EAST, 641.70 FEET TO THE SOUTHEAST CORNER OF LOT 16 OF SAID MAP OF RIVINO HEIGHTS BLOCK 1, SAID CORNER ALSO BEING A POINT IN THE CENTERLINE OF HALL AVENUE, 60.00 FEET WIDE, AS SHOWN ON SAID MAP;
- 17) THENCE ALONG SAID CENTERLINE NORTH 00°07'25" EAST, 1593.09 FEET;

SHEET 4 OF 5

EXHIBIT "B" – LEGAL DESCRIPTION
CITY OF JURUPA VALLEY, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY

- 18) THENCE LEAVING SAID CENTERLINE NORTH 89°48'25" WEST, 29.89 FEET TO A POINT ON THE WEST RIGHT OF WAY OF SAID HALL AVENUE;
- 19) THENCE ALONG SAID RIGHT OF WAY NORTH 00°06'59" EAST, 987.86 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 20.00 FEET;
- 20) THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°04'36" AN ARC LENGTH OF 31.44 FEET TO A POINT IN THE SOUTH RIGHT OF WAY OF EL RIVINO ROAD, SHOWN AS COUNTY LINE ROAD, 60.00 FEET WIDE ON SAID RIVINO GARDENS SUBDIVISION;
- 21) THENCE ALONG SAID RIGHT OF WAY NORTH 89°26'09" WEST, 1269.20 FEET;
- 22) THENCE LEAVING SAID RIGHT OF WAY NORTH 00°37'26" EAST, 30.01 FEET TO A POINT ON THE CENTERLINE OF SAID EL RIVINO ROAD, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS 260.30 ACRES, MORE OR LESS.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


PASCAL R. APOTHELOZ P.L.S. 7734

02/20/2020



SHEET 5 OF 5

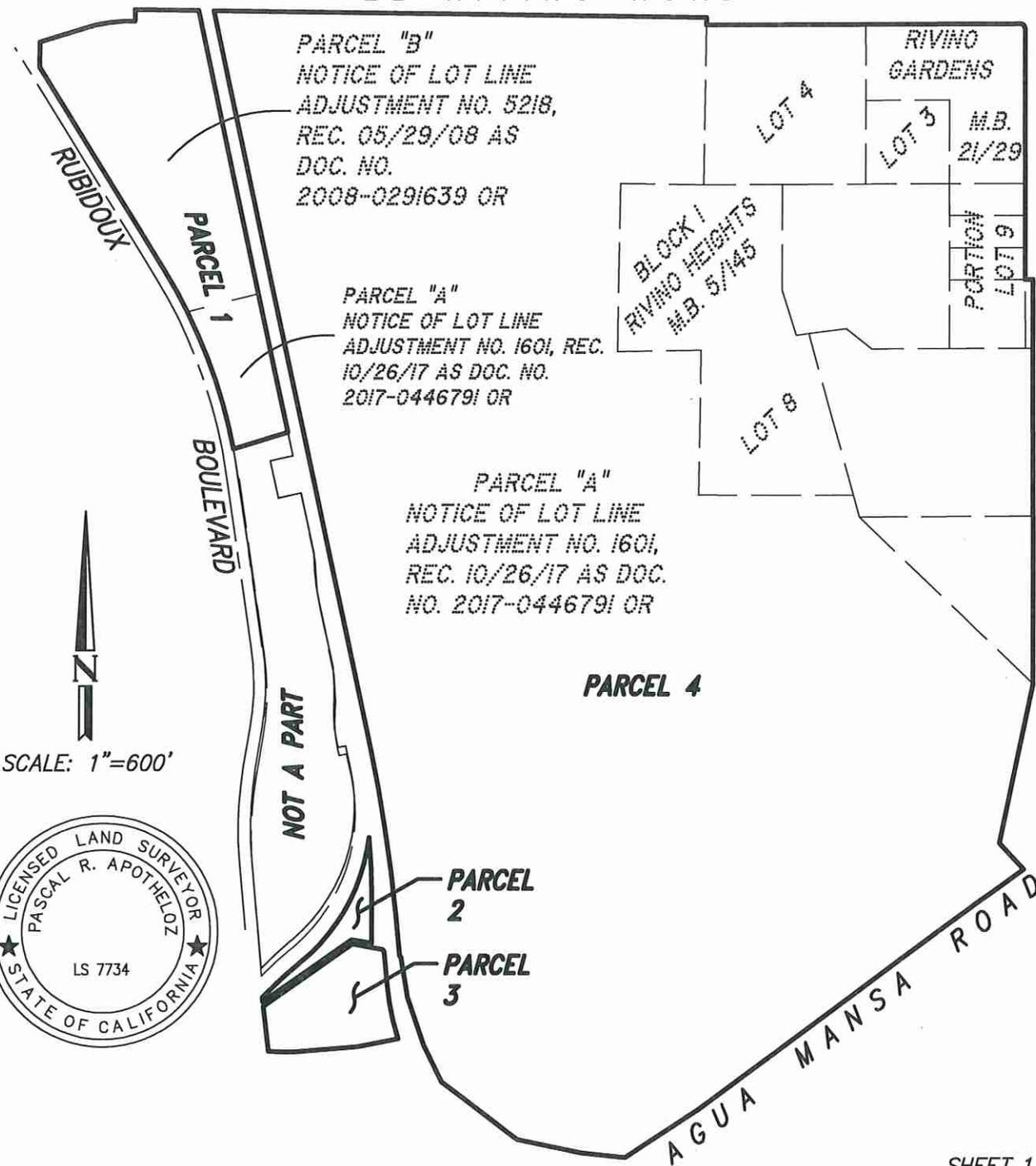
EXHIBIT "B" – LEGAL DESCRIPTION
CITY OF JURUPA VALLEY, CALIFORNIA

 **DORC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY

EL RIVINO ROAD



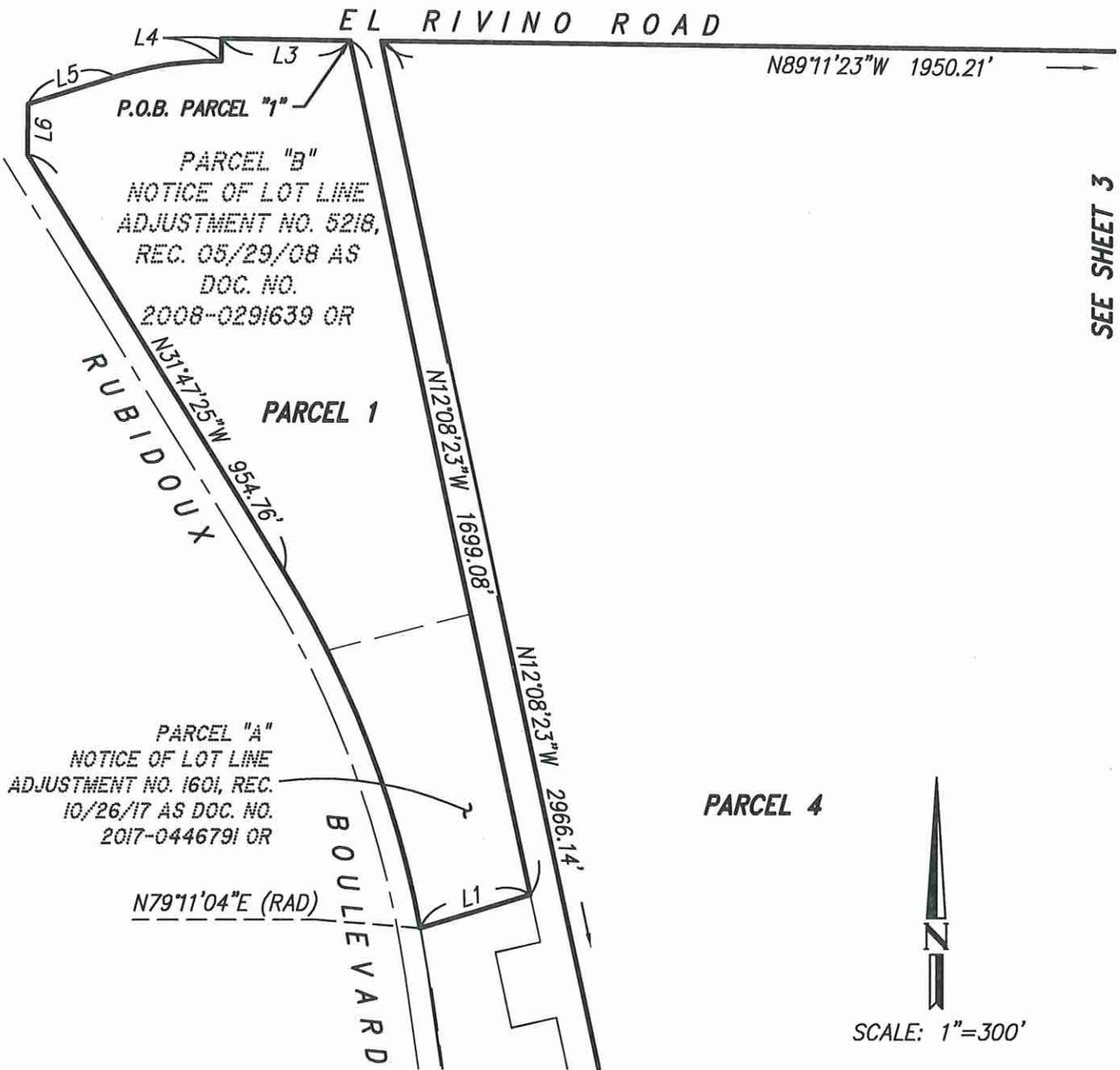
SHEET 1 OF 7

CITY OF JURUPA VALLEY, CALIFORNIA

JORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY



SEE SHEET 7 FOR LINE AND CURVE TABLES

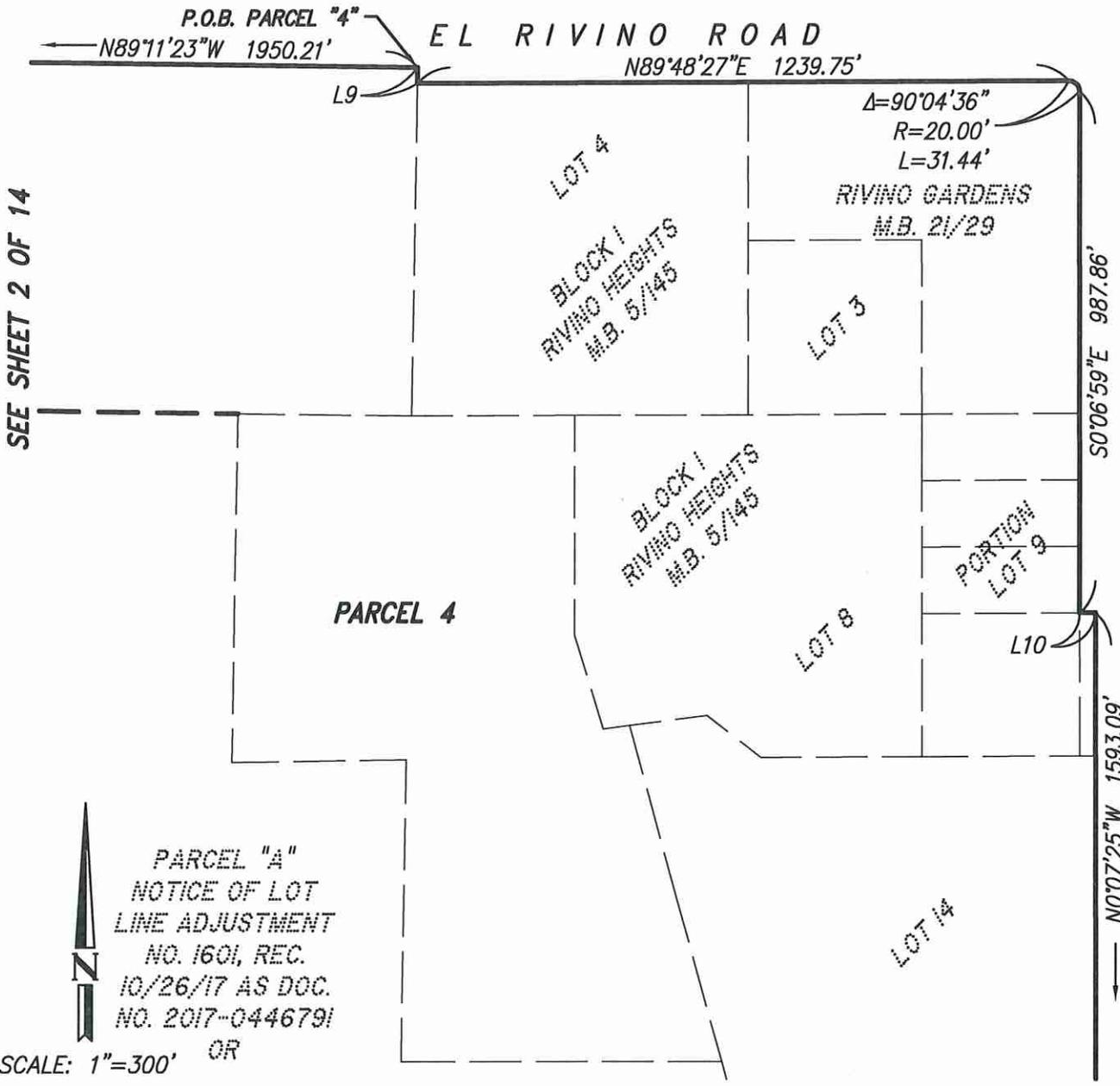
SHEET 2 OF 7

CITY OF JURUPA VALLEY, CALIFORNIA

ORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY



SEE SHEET 2 OF 14

SEE SHEET 5



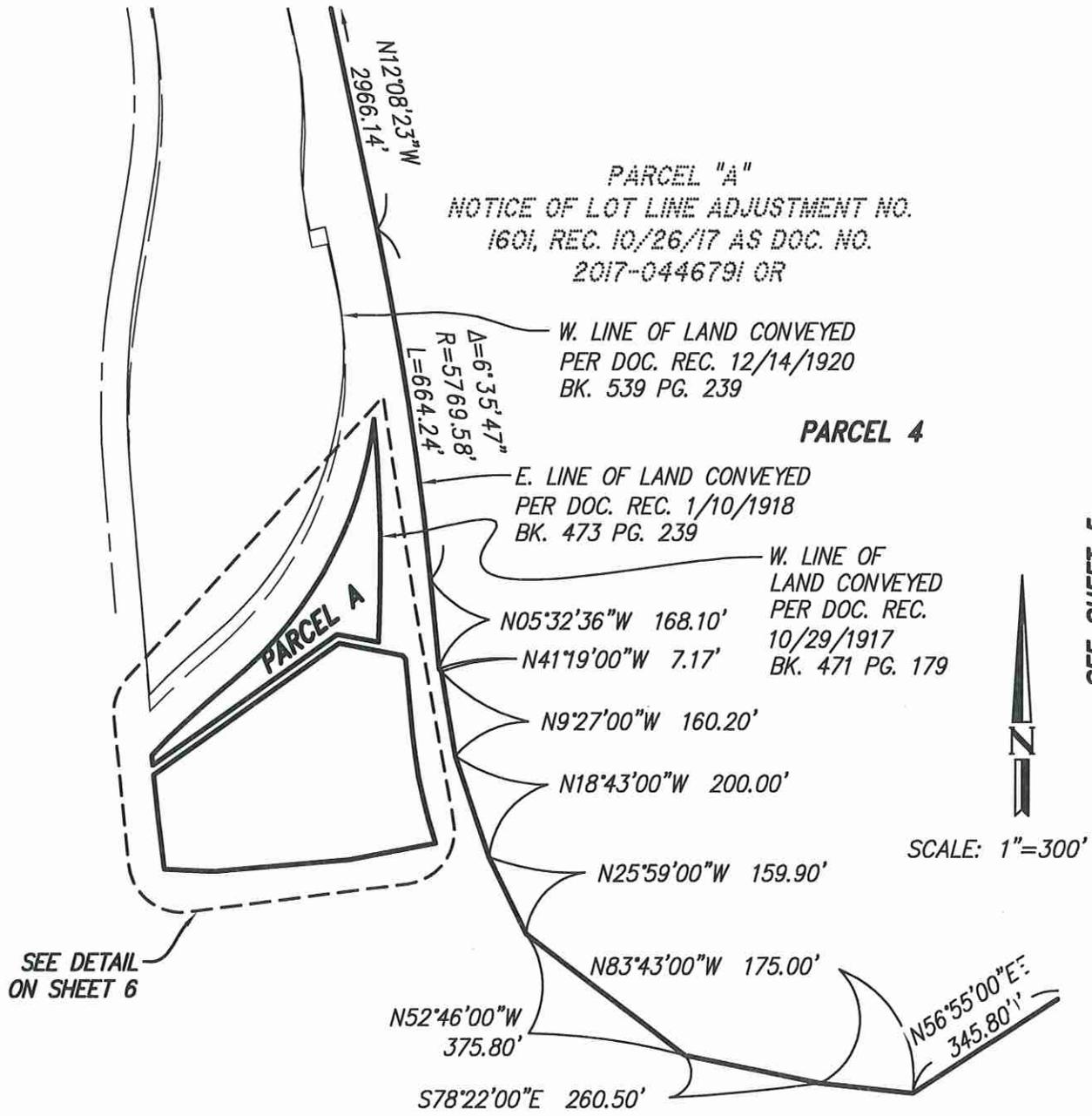
PARCEL "A"
NOTICE OF LOT
LINE ADJUSTMENT
NO. 1601, REC.
10/26/17 AS DOC.
NO. 2017-0446791

SCALE: 1"=300' OR

SHEET 3 OF 7

EXHIBIT "A"
DESCRIPTION OF PROPERTY

SEE SHEET 2



SEE SHEET 7 FOR LINE AND CURVE TABLES

SHEET 4 OF 7

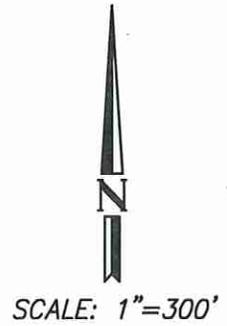
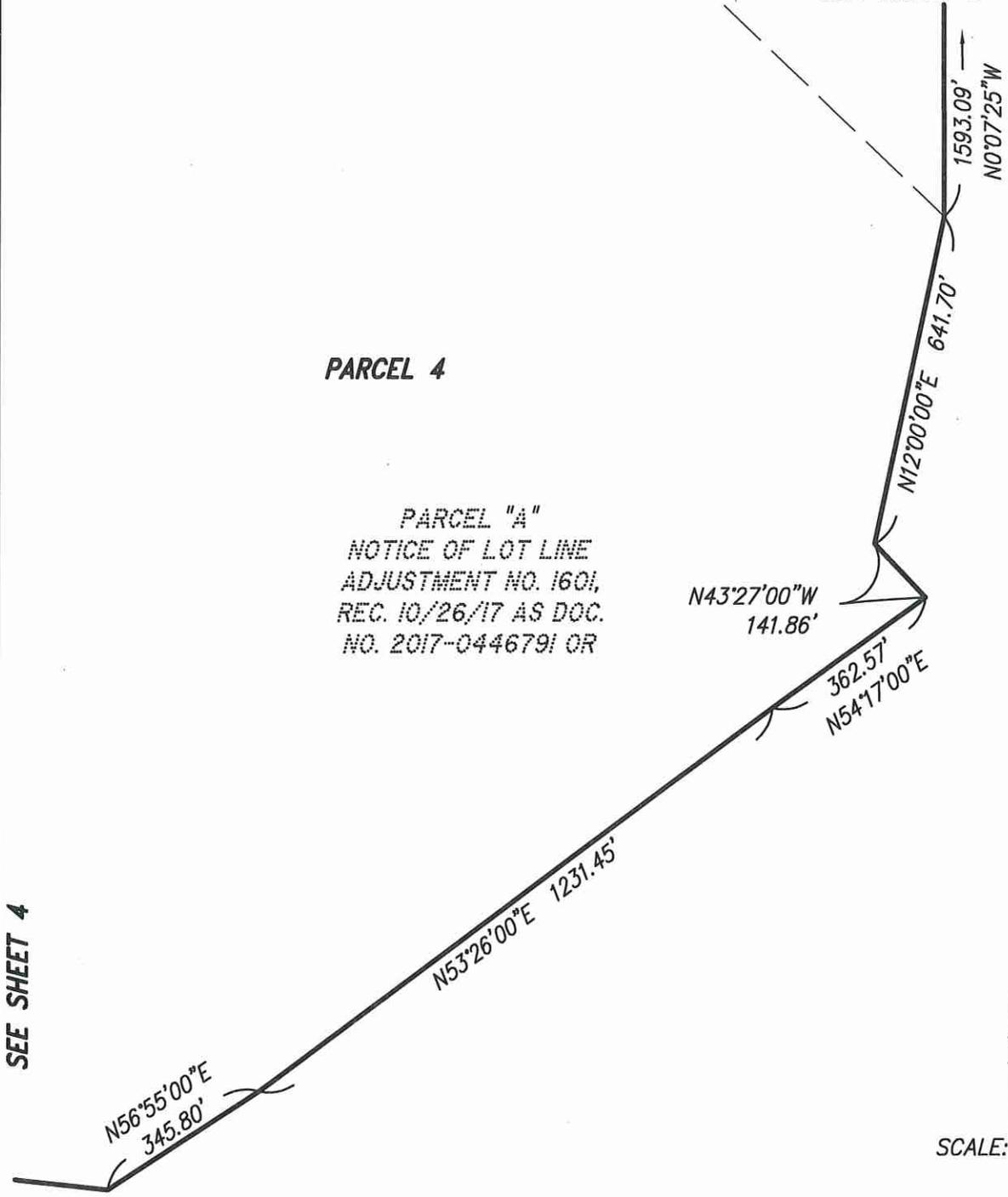
EXHIBIT "A"
DESCRIPTION OF PROPERTY

PARCEL 4

PARCEL "A"
NOTICE OF LOT LINE
ADJUSTMENT NO. 1601,
REC. 10/26/17 AS DOC.
NO. 2017-0446791 OR

SEE SHEET 3

SEE SHEET 4



SHEET 5 OF 7

CITY OF JURUPA VALLEY, CALIFORNIA

JORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anheim Hills, California 92808
(714) 685-6860

EXHIBIT "A"
DESCRIPTION OF PROPERTY

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N73°09'00"E	224.01'
L3	N89°11'23"W	253.20'
L4	S00°48'37"W	44.00'
L5	N72°33'37"E	177.27'
L6	N00°47'58"E	97.97'
L9	N00°51'37"E	29.99'
L10	N89°48'25"E	30.00'
L11	N54°49'44"E	428.14'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	18°15'00"	656.00'	208.95'
C3	20°57'46"	2044.00'	747.84'

SHEET 7 OF 7

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EXHIBIT "A"

OPEN SPACE

IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING PARCELS 10 AND 11 OF PARCEL MAP 37528, AS PER MAP FILED IN BOOK _____, PAGES ___ THROUGH ___ OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


PASCAL R. APOTHELOZ P.L.S. 7734

02/20/2020



SHEET 1 OF 1

EXHIBIT "A"
OPEN SPACE

EL RIVINO ROAD



SCALE: 1"=600'



LEGEND

OPEN SPACE BOUNDARY

SHEET 1 OF 1

CITY OF JURUPA VALLEY, CALIFORNIA

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EXHIBIT B

(Public Improvements)

Various street improvements, sewer improvements, storm drain improvements, utility improvements and other improvements constructed either (a) as required by mitigation measures and conditions of approval issued by CITY in connection with the Project Approvals, and (b) additional improvements that may be requested by OWNER and approved by CITY.

EXHIBIT C
INTENTIONALLY DELETED

EXHIBIT D
FORM OF AGREEMENT TO ACQUIRE OFF-SITE RIGHT OF WAY (GOVERNMENT
CODE SECTION 66462.5

AGREEMENT PURSUANT TO GOVERNMENT CODE SECTION 66462.5

This Agreement for acquisition of real property pursuant to Government Code section 66462.5 is made and entered into as of _____, 20____, by and between CRESTMORE REDEVELOPMENT, LLC, a Colorado Limited Liability Company (“OWNER” hereinafter) and the CITY OF JURUPA VALLEY, a municipal corporation (“CITY” hereinafter). OWNER and CITY are referred to jointly below as “parties.” In consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement and for the further consideration described in this Agreement, the parties agree as follows:

1. **Recitals.** The parties hereto acknowledge and agree that this Agreement is made with respect to the following facts and purposes that each agrees to be true and correct.

A. OWNER has submitted, and CITY has had approved, applications for development of a residential and/or commercial project on that certain real property of OWNER generally located _____ in the City of Jurupa Valley;

B. On _____, the _____ of the City of Jurupa Valley adopted _____ thereby approving _____ OWNER’s “Project”;

C. To facilitate the orderly development of the Project on the above-referenced property, a specific condition of approval required OWNER to construct _____. However, satisfaction of the condition involves real property that is neither owned by OWNER or CITY (the “Off-site Property” hereinafter). A legal description and map depiction of the Off-site Property required to satisfy the condition of approval is attached hereto as Exhibit 1, and incorporated herein by this reference as though set forth in full.

D. Pursuant to California Government Code section 66462.5, when a condition of a subdivision map approval or a development agreement requires the installation or construction of improvements on off-site property not owned or controlled by OWNER, and title cannot be obtained by negotiated purchase, a city is required to commence proceedings to acquire off-site property by eminent domain or such off-site improvement conditions will be waived. Pursuant to said section 66462.5, a city and an OWNER may enter into an agreement to allocate the costs and responsibilities for acquisition of such off-site property.

E. OWNER has recorded or intends to record Tract Map No. 37528 and, under a separate subdivision improvement agreement, has agreed (and posted security) to undertake and complete all required public improvements set forth in _____, including _____ said Off-site Property, following recordation of Tract Map No. 37528.

F. CITY has been provided credible evidence that OWNER has made a good faith effort to acquire the Off-site Property but has been unable to do so by negotiated purchase;

G. California Government Code Section 40404 and California Code of Civil Procedure Sections 1230.010 et seq. authorizes CITY to acquire by eminent domain any and all property necessary for _____ purposes;

H. The CITY must comply with Relocation Assistance Act, Government Code Sections 7260 et seq., and the Eminent Domain Law, Code of Civil Procedure Sections 1230.010 et seq., and their implementing regulations, in acquiring property for public improvements ("Public Land Acquisition Statutes").

I. To facilitate the satisfaction of the condition of approval, CITY and OWNER now mutually desire to enter into this Agreement under Government Code Section 66462.5 concerning acquisition of the Off-site Property and to allocate responsibility between the respective parties; and

J. This Agreement is solely made in furtherance of the authority granted under Government Code Section 66462.5. The parties recognize that CITY cannot exercise its power of eminent domain until all legally required preconditions under the Land Acquisition Statutes, including a Resolution of Necessity have been lawfully adopted by the City Council of the CITY pursuant to law. It is neither a commitment nor an announcement of an intent by CITY to acquire any or all of the Off-site Property that may be identified in this Agreement. In the event CITY elects to commence an action after the required public hearing on the Resolution of Necessity, then CITY shall cause the eminent domain action for the acquisition of the specified interest or interests (whether fee, leasehold or otherwise) in and to the Off-site Property to be filed and expeditiously processed to completion by and through the use of CITY's power of eminent domain. 0

2. **CITY Acquisition of Off-site Property.** Subject to OWNER's timely and continuous performance of all elements of this Agreement, CITY shall cause an action pursuant to the Land Acquisition Statutes to be pursued to completion for the acquisition of the Off-site Property using legal counsel and consultants of CITY's selection. OWNER agrees CITY's selected legal counsel is not representing OWNER in any capacity and further that OWNER is not a third party beneficiary under the engagement agreement between CITY and CITY's selected legal counsel.

3. **OWNER Responsible for All Costs of Acquisition.** OWNER shall solely responsible for all Off-site Property acquisition costs, which shall include, but not be limited to, the costs of title reports and/or litigation guarantees, litigation expenses, court costs, attorneys' fees, deposits necessary to take immediate possession of any such interest, deposits reflecting verdicts as to the value of any such interest necessary to obtain any final order or orders of condemnation, any sum paid as and for a settlement of any suit filed by CITY pursuant to this

Agreement, payments for land and improvements on the land, severance damages, fixtures and equipment payments, payments for loss of business goodwill, relocation benefits, precondemnation damages, relocation expenses, abandonment damages, Off-site Property owners' statutory costs and litigation expenses authorized by the Eminent Domain Law, codified as Code of Civil Procedure Section 1230.010, et seq. (Eminent Domain Law), Public Land Acquisition Statutes and any and all fees, costs and expenses arising from or related to any of the foregoing items, actions, and proceedings. No settlement of an action brought by CITY to acquire Off-Site Property or arising from CITY's action(s) shall be effective without OWNER first providing its written approval thereof to CITY, which approval shall not be unreasonably withheld.

4. **Limitations on City's Ability to Acquire Off-site Property; Time Waiver.** The parties hereto recognize that if the City Council, in its discretion, adopts a Resolution of Necessity and authorizes the filing of an eminent domain proceeding, the City may not be able to obtain the fee title to the Property within the time set forth in Government Code section 66462.5 and in recognition of this potential circumstance the parties hereby waive the time requirements for action by the City set forth in Government Code Section 66462.5.

5. **Deposit of Costs.** Concurrently with the execution of this Agreement by CITY, OWNER shall deliver to CITY the sum of Twenty Thousand Dollars (\$20,000.00). CITY agrees to deposit said sum in a separate CITY account ("Separate Fund") and to use the principal sum, and any interest earned thereon, in furtherance of satisfying the costs specified in this Agreement, other than the unsatisfied costs identified in this paragraph.

A. CITY shall, on a monthly basis, or as often as CITY deems necessary, provide OWNER with an accounting of disbursements from the Separate Fund established pursuant to paragraph 5, above. In the event disbursements reduce the balance of the fund to Five Thousand Dollars (\$5,000.00) or less, OWNER, five (5) business days following a written request of CITY, shall deliver to CITY such additional monies as are necessary to maintain the balance in the separate fund at Twenty Thousand Dollars (\$20,000.00).

B. In addition to its deposits to the Separate Fund, OWNER agrees to deliver to CITY, promptly upon demand by CITY, the entire amount CITY determines is required by the Eminent Domain Law ("Deposit Amount"), which amount CITY will deposit under Code of Civil Procedure sections 1255.010, et seq. if CITY and OWNER agree that CITY should seek prejudgment possession of the Off-Site Property. If the City's expert valuation witness determines at the date of exchange of valuation data under Code of Civil Procedure section 1258.220 that the fair market value of the Off-site Property is higher than the Deposit Amount, OWNER shall deliver this additional amount to CITY upon five (5) business days written notice by CITY or as ordered by any court of competent jurisdiction. CITY shall promptly deposit this additional amount with the Court.

C. If for any reason OWNER fails to maintain the Separate Fund balance referenced in this paragraph, or fails to provide the monies as required by this paragraph, CITY may utilize and draw down all or any portion of the improvement security deposited pursuant to the separate subdivision improvement agreement to pay any of the costs and expenses referenced herein for acquisition of the Off-site Property. CITY shall not commence any activity under or in furtherance

of this Agreement until OWNER provides CITY and CITY agrees with and approves a written acknowledgment from both OWNER and the person, firm, or entity who has provided the referenced security that: (i) the CITY may make demand on the security for the purposes described in this Agreement; (ii) the surety will promptly pay such monies to CITY upon CITY's demand and (iii) the amount of the security deposit is adequate to fund both the anticipated physical improvements under the map and the anticipated costs of acquisition pursuant to this Agreement.

D. When any eminent domain action which was commenced pursuant to this Agreement is concluded, CITY shall remit to OWNER the balance of the separate fund within sixty (60) days after full payment of just compensation, costs and all applicable litigation expenses have been made to Off-site property owners. Additionally, CITY shall expeditiously withdraw any funds remaining on deposit with the Court and disburse the same to OWNER once a final order of condemnation or a dismissal of the eminent domain action is entered by the Court.

6. **OWNER Acquisition of Property.** If OWNER should independently acquire all or any portion of the Off-site Property by negotiated purchase after an eminent domain action is filed by the CITY, OWNER shall immediately notify CITY of the acquisition. After OWNER obtains fee title to the subject interest CITY shall move to abandon all or any unnecessary part of the action relating to the property acquired by negotiation. If a complete or partial abandonment is filed, OWNER shall bear any and all costs, expenses and/or damages related thereto, including, but not limited to, any condemnee's recoverable costs and/or recoverable attorneys' fees pursuant to Code of Civil Procedure Section 1268.610, et seq.

7. **General Provisions.**

A. **Notices.** Any and all notices, requests or other communications required or permitted to be given under this Agreement or by reason of this Agreement shall be in writing and shall be deemed to have been given when: (i) delivered in person or by courier or overnight delivery service; or (ii) five (5) business days after mailing, by certified or registered mail, return receipt requested, to the parties at the following addresses or any such other address or addresses as the parties may, from time to time, designate in writing in the manner herein specified:

CITY: CITY OF JURUPA VALLEY
8930 Limonite Avenue
Jurupa Valley, CA 92509
Attention: City Manager

With a copy to:

RICHARDS, WATSON & GERSHON
350 South Grant, 37th Floor
Los Angeles, CA 90071-1469
Attention: Mr. Peter M. Thorson, City Attorney

OWNER:

Crestmore Redevelopment, LLC
1805 Shea Center Drive Suite 250
Highlands Ranch, CO 80129
Attention: Tate Goss

With a copy to:

Gresham Savage Nolan & Tilden, PC
550 East Hospitality Lane, Suite 300
San Bernardino, CA 92408
Attn: Mark A. Ostoich

B. Further Cooperation. Each party to this Agreement agrees to cooperate by performing any further acts and by executing and delivering any and all additional monies, items, or documents which may be reasonably necessary to carry out the terms and provisions of this Agreement, and each party to this Agreement agrees that it will not act in any manner whatsoever which would hinder, impede, interfere or prohibit or make more onerous or difficult the performance of the other party hereto under this Agreement.

C. Amendment. No amendment to this Agreement shall be effective unless first provided in writing and executed by the parties hereto.

D. No Agency or Joint Venture. The terms and provisions of this Agreement shall not cause the parties hereto or any of each parties' agents, consultants, contractors or other providers of professional services to be construed in any manner whatsoever as partners, joint venturers or agents of each other in the performance of their respective duties and obligations under this Agreement, or subject either party to this Agreement to any obligation, loss, charge or expense of the other party to this Agreement.

E. Time of Essence. Time is expressly made of the essence of each and every provision of this Agreement.

F. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

G. Remedies. No remedy or election hereunder shall be deemed to be exclusive but shall, wherever possible, be cumulative with all other remedies at or in equity.

H. Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any action arising directly or indirectly under this Agreement shall be in the Superior Court of Riverside County, California.

EXHIBIT 1

**AGREEMENT TO ACQUIRE OFF-SITE RIGHT OF WAY (GOVERNMENT CODE
SECTION 66462.5**

LEGAL DESCRIPTION AND MAP DEPICTION OF THE OFF-SITE PROPERTY