AGENDA FOR THE REGULAR MEETING OF THE
CITY COUNCIL
SUCCESSOR AGENCY TO THE
IRWINDEALE COMMUNITY REDEVELOPMENT AGENCY
HOUSING AUTHORITY
APRIL 8, 2015
5:30 P.M. - CLOSED SESSION
6:30 P.M. - OPEN SESSION
IRWINDEALE CITY HALL / COUNCIL CHAMBER
CLOSED SESSION – CITY HALL CONFERENCE ROOM
REGULAR MEETING – CITY HALL COUNCIL CHAMBER

Spontaneous Communications: The public is encouraged to address the City Council on any matter listed on the agenda or on any other matter within its jurisdiction. The City Council will hear public comments on items listed on the agenda during discussion of the matter and prior to a vote. The City Council will hear public comments on matters not listed on the agenda during the Spontaneous Communications period.

Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future City Council meeting.

Americans with Disabilities Act: In compliance with the ADA, if you need special assistance to participate in a City Council meeting or other services offered by this City, please contact City Hall at (626) 430-2200. Assisted listening devices are available at this meeting. Ask the Deputy City Clerk if you desire to use this device. Upon request, the agenda and documents in the agenda packet can be made available in appropriate alternative formats to persons with disabilities. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Note: Staff reports are available for inspection at the office of the Deputy City Clerk, City Hall, 5050 N. Irwindale Avenue, during regular business hours (8:00 a.m. to 6:00 p.m., Monday through Thursday).
As City of Irwindale Council Members, our fundamental duty is to serve the public good. We are committed to the principle of an efficient and professional local government. We will be exemplary in obeying the letter and spirit of Local, State and Federal laws and City policies affecting the operation of the government and in our private life. We will be independent and impartial in our judgment and actions.

We will work for the common good of the City of Irwindale community and not for any private or personal interest. We will endeavor to treat all people with respect and civility. We will commit to observe the highest standards of morality and integrity, and to faithfully discharge the duties of our office regardless of personal consideration. We shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

We will inform ourselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand. We will base our decisions on the merit and substance of that business. We will be fair and equitable in all actions, claims or transactions. We shall not use our official position to influence government decisions in which we have a financial interest or where we have a personal relationship that could present a conflict of interest, or create a perception of a conflict of interest.

We shall not take advantage of services or opportunities for personal gain by virtue of our public office that are not available to the public in general. We shall refrain from accepting gifts, favors or promises of future benefit that might compromise our independence of judgment or action or give the appearance of being compromised.

We will behave in a manner that does not bring discredit or embarrassment to the City of Irwindale. We will be honest in thought and deed in both our personal and official lives.

Ultimate responsibility for complying with this Code of Ethics rests with the individual elected official. In addition to any other penalty as provided by law, violation of this Code of Ethics may be used as a basis for disciplinary action or censure of a Council Member.

These things we hereby pledge to do in the interest and purposes for which our government has been established.

IRWINDALE CITY COUNCIL
1. **Conference with Real Property Negotiators**
   Pursuant to California Government Code Section 54956.8

   A) Property: 2200 Arrow Highway
      Negotiating Parties: Athens
      Under Negotiation: Price and terms of Sale

   B) Property: APN 8532-002-042 (NuWay Pit)
      Negotiating Parties: City and Nuway Industries
      Under Negotiation: Price and terms of portion of property

   C) Property: 4224 Alderson Avenue & 14910 Los Angeles Street
      14808 Los Angeles Street & 4342 Alderson Street
      APN 8437-019-901, 8437-019-902, 8437-019-900, 8437-020-900
      Negotiating Parties: Successor Agency, City, and 7th Street Development
      Under Negotiation: Price and terms to be offered

   D) Property: 2428 Mountain Avenue
      Negotiating Parties: Housing Authority and Donald Stiles and Sandra Stiles,
      Trustees of the Donald Stiles and Sandra Stiles Trust and
      Charles James Stiles and Susan Diane Stiles, Trustees of the
      Charles James Stiles and Susan Diane Stiles Trust
      Under Negotiation: Price and terms

2. **Conference with Legal Counsel – Existing Litigation**
   Pursuant to California Government Code Section 54956.9

   A) Case Name: City of Baldwin Park v. City of Irwindale
      Case Number: BS 152919
OPEN SESSION – 6:30 P.M.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. INVOCATION

D. ROLL CALL: Councilmembers: Albert F. Ambriz, Julian A. Miranda, H. Manuel Ortiz, Mayor Pro Tem Manuel R. Garcia, Mayor Mark A. Breceda

E. REPORT FROM CLOSED SESSION

F. CHANGES TO THE AGENDA

G. COUNCIL MEMBER TRAVEL REPORTS

H. ANNOUNCEMENTS

I. INTRODUCTION OF NEW EMPLOYEES/PROMOTIONS
   1. Introduction of Senior Planner Shawnika Johnson

J. PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS
   1. Proclamation proclaiming April as Autism Awareness Month
   2. Presentation by Metro Art of an original artwork featuring the City of Irwindale for the “Through the Eyes of Artists” poster program

SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. State law prohibits any Council discussion or action on such communications unless 1) the Council by majority vote finds that a catastrophe or emergency exists; or 2) the Council by at least four votes finds that the matter (and need for action thereon) arose within the last five days. Since the Council cannot (except as stated) participate it is requested that all such communications be made in writing so as to be included on the next agenda for full discussion and action. If a member of the audience feels he or she must proceed tonight, then each speaker will be limited to 2 minutes and each subject limited to 6 minutes, unless such time limits are extended.
1. **CONSENT CALENDAR**

The Consent Calendar contains matters of routine business and is to be approved with one motion unless a member of the City Council requests separate action on a specific item. At this time, members of the audience may ask to be heard regarding an item on the Consent Calendar.

A. **Minutes**

Recommendation: Approve the following minutes:

No minutes for approval

B. **Warrants/Demands/Payroll**

Recommendation: Approve

C. **2nd Reading of Ordinance No. 689**

Recommendation: Adopt on second reading Ordinance No. 689 entitled, “AN ORDINANCE OF THE CITY OF IRWINDALE CITY COUNCIL APPROVING ZONE CHANGE NO. 03-2013 TO AMEND THE ZONING DESIGNATION OF THE SUBJECT SITE AT 500 SPEEDWAY DRIVE (APNs 8532-004-022; 025; 026) FROM M-2 (HEAVY MANUFACTURING) TO C-2 (HEAVY COMMERCIAL) TO MAKE IT CONSISTENT WITH THE CURRENT GENERAL PLAN LAND USE DESIGNATION OF “COMMERCIAL/RECREATION” SUBJECT TO MAKING FINDINGS OF FACT IN SUPPORT THEREOF” reading by title only and waiving further reading thereof.

D. **2nd Reading of Ordinance No. 690**

Recommendation: Adopt on second reading Ordinance No. 690 entitled, “AN ORDINANCE OF THE CITY OF IRWINDALE CITY COUNCIL APPROVING DEVELOPMENT AGREEMENT (DA) NO. 01-2013 WITH IRWINDALE OUTLET PARTNERS, LLC TO DEVELOP AN APPROXIMATELY 700,000 SQUARE-FOOT OUTLET SHOPPING CENTER WITH ATTENDANT PARKING ON PROPERTY LOCATED AT 500 SPEEDWAY DRIVE (APNs 8532-004-022; 025; 026) SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS OF FACT IN SUPPORT THEREOF” reading by title only and waiving further reading thereof.

E. **Approval of Parcel Map No. 72936 – Baca Avenue**

Recommendation: 1) approve Parcel Map No. 72936 and authorize the City Clerk, City Treasurer and the City Engineer to sign the map on behalf of the City, and 2) direct the City Clerk to submit Parcel Map No. 72936 to the Los Angeles County Registrar
Recorder’s office for recordation and return a recorded copy of this Parcel Map to the City Engineer’s office.

2. NEW BUSINESS

A. Exclusive Negotiation Agreement for the Acquisition and Development of the 4342 Alderson Avenue / 14808 Los Angeles Street Site

Recommendation: Adopt Resolution No. 2015-18-2747 authorizing the execution of an exclusive negotiation agreement (“ENA”) with Seventh Street Development, Inc. (“Developer”) for acquisition and development of a light industrial project at the 1.94 acre site located at 4342 Alderson Avenue and 14808 Los Angeles Street (“Site”). The Site is currently improved with an approximately 11,952 square foot building in which City archives are stored, which would need to be relocated as part of the redevelopment project. The proposed development is one light industrial / manufacturing building with ancillary office totaling approximately 50,000 square feet.

3. OLD BUSINESS

4. PUBLIC HEARINGS

5. CITY MANAGER’S REPORT

6. ADJOURN

SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY

A. Report from Closed Session

SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. Spontaneous Communications for the Successor Agency are subject to the same State prohibitions and City guidelines as cited on the City Council agenda.

1. CONSENT CALENDAR

A. Minutes

Recommendation: Approve the following minutes:

No minutes for approval
2. NEW BUSINESS

A. Exclusive Negotiation Agreement for the Acquisition and Development of the 242 Live Oak Avenue Site

Recommendation: Adopt Resolution No. SA 2015-20-2749 authorizing the execution of an exclusive negotiation agreement ("ENA") with Panattoni Development Company ("Developer" or "Panattoni") for acquisition and development of a light industrial project at the 3.36 acre site located at 242 Live Oak Avenue ("Site"), pursuant to the Long-Range Property Management Plan ("LRPMP"). The Site is currently improved with a monopine cell phone tower leased by SBA and vacant buildings built between 1954 and 1955 that total approximately 16,972 square feet. The proposed development includes a 46,400 to 61,000 square-foot light industrial warehouse with ancillary offices.

B. Exclusive Negotiation Agreement for the Acquisition and Development of the 4224 Alderson Avenue / 14910 Los Angeles Street Site

Recommendation: Adopt Resolution No. SA 2015-19-2748 authorizing the execution of an exclusive negotiation agreement ("ENA") with Seventh Street Development, Inc. ("Developer") for acquisition and development of a light industrial project at the 9.82 acre site located at 4224 Alderson Avenue and 14910 Los Angeles Street ("Site"), pursuant to the Long-Range Property Management Plan ("LRPMP"). The Site is improved with an approximately 9,771 square foot meeting hall facility currently leased by AMVETS Post 113, an approximately 25,250 square foot landscaped area, and an approximately 36,365 square foot parking lot. The proposed development includes four light industrial / manufacturing buildings with ancillary office totaling 120,800 square feet.

3. PUBLIC HEARINGS

4. ADJOURN

HOUSING AUTHORITY

A. Report from Closed Session

SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. Spontaneous Communications for the Housing Authority are subject to the same State prohibitions and City guidelines as
cited on the City Council agenda.

1. CONSENT CALENDAR

A. Minutes

Recommendation: Approve the following minutes:

No minutes for approval

2. NEW BUSINESS
3. PUBLIC HEARINGS
4. ADJOURN

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Deputy City Clerk, certify that I caused the agenda for the regular meeting of the City Council, Irwindale Successor Agency to the Irwindale Community Redevelopment Agency, and Housing Authority, to be held on April 8, 2015 to be posted at the City Hall, Library, and Post Office on April 2, 2015.

Laura M. Nieto, CMC
Laura M. Nieto, CMC
Deputy City Clerk
CITY OF IRWINDALE
PAYROLL WARRANT REGISTER
March 2015

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# Accounts Payable

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# Accounts Payable

## Checks by Date - Summary By Check Number

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**Printed:** 3/25/2015 - 5:29 PM

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Report Total: 248,489.57
AGENDA REPORT

Date: April 8, 2015

To: Mayor and Council Members

From: Eva Carreon, Acting City Manager

Issue: 2nd Reading of Ordinance No. 689

City Manager's Recommendation: That the City Council adopt on second reading Ordinance No. 689 entitled, "AN ORDINANCE OF THE CITY OF IRWINDALE CITY COUNCIL APPROVING ZONE CHANGE NO. 03-2013 TO AMEND THE ZONING DESIGNATION OF THE SUBJECT SITE AT 500 SPEEDWAY DRIVE (APNs 8532-004-022; 025; 026) FROM M-2 (HEAVY MANUFACTURING) TO C-2 (HEAVY COMMERCIAL) TO MAKE IT CONSISTENT WITH THE CURRENT GENERAL PLAN LAND USE DESIGNATION OF "COMMERCIAL/RECREATION" SUBJECT TO MAKING FINDINGS OF FACT IN SUPPORT THEREOF" reading by title only and waiving further reading thereof.

Analysis: At its meeting of March 25, 2015, City Council introduced the above ordinance for first reading. The appropriate ordinance is attached and it would be in order to adopt the ordinance on second reading.

Fiscal Impact: (Initial of CFO)

Legal Impact: (Initial of Legal Counsel)

Prepared By/Contact Person: Laura Nieto, Deputy City Clerk
Phone: 430-2202

Attachment
ORDINANCE NO. 689

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING ZONE CHANGE NO. 03-2013 TO CHANGE CURRENT ZONING DESIGNATION FROM M-2 (HEAVY MANUFACTURING) TO C-2 (HEAVY COMMERCIAL) ON PROPERTY LOCATED AT 500 SPEEDWAY DRIVE (APNs 8532-004-022; 025; 026) SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF

A. RECITALS.

(i) Lindom Company (Applicant) on behalf of Irwindale Outlet Partners, LLC, 328 South Atlantic Boulevard, #268, Monterey Park, CA 91754 (Owner) has made a request to approve a Zone Change for General Plan consistency purposes for property located at 500 Speedway Drive - APNs 8532-004-022; 025; 026 ("Subject Property").

(ii) The Subject Property is currently zoned M-2 (Heavy Manufacturing) and is proposed to be re-zoned to C-2 (Heavy Commercial) for General Plan consistency purposes.

(iii) The Zone Change is proposed together with a Development Agreement between the City and the property owner to construct and operate a +/-700,000 square-foot shopping center on property located at the Subject Site, a Site Plan and Design Review with an exemption from the City’s Commercial and Industrial Design Guidelines.

(iv) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has prepared an Environmental Impact Report ("EIR"). The EIR was circulated for public review for the required 45 days from December 24, 2014 through February 6, 2015. A copy of the EIR was circulated through the State Clearinghouse (SCH# 2014071042), posted on the City’s website, and was available at the Irwindale Public Library and Deputy City Clerk’s Office. A copy of the EIR and Mitigation Monitoring and Reporting Program was posted on the City’s website.

(v) On February 26, 2015, the project was duly noticed and scheduled before the Planning Commission for consideration. The Planning Commission opened the hearing, solicited public testimony, left the hearing open, and continued the hearing at the request of the Applicant to a special meeting on March 9, 2015, at which time it received input from staff, the Assistant City Attorney, and the Applicant, heard public testimony, discussed the
Proposed Project, and closed the public hearing. The Planning Commission recommended that the City Council approve the Development Agreement, Zone Change, Site Plan and Design Review with design guidelines exemption, certify the Final EIR, and adopt the Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program per PC Resolution No. 658(15).

(vi) On March 25, 2014, the City Council conducted a duly noticed public hearing, as required by law, on the Application and recommendation of the Planning Commission to approve the Proposed Project, which allows development of a +/-700,000 square-foot shopping center on the Subject Property, took testimony, reviewed relevant documentary evidence and conducted a first reading of this Ordinance approving Zone Change No. 01-2013; and

(vii) All legal prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. The City Council finds that the above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council finds as follows:

Zone Change Findings:

a) The approval of the proposed Zone Change for property located at 500 Speedway Drive will bring the zoning designation into conformance with the General Plan Land Use Designation of Commercial/Recreation. Therefore, the proposed zone change is consistent with Section 17.84.010 of the Irwindale Municipal Code, which reads as follows: “the classification of property may be amended whenever the public interest and necessity so require.”

b) The site is or will be adequate in size, shape, topography, location, and other factors to accommodate the use and development thereof in that the site located at 500 Speedway Drive is approximately 63.5 acres, which can readily accommodate the two building phases totaling approximately 700,000 square feet without the need for any concessions to the City’s Zoning Ordinance.

c) Adequate street access and traffic capacity are and will be available to serve the proposed development and anticipated development in the surrounding area in that the site will have direct access from Live Oak Avenue via three new driveways that will be constructed on the site as part of the project.
d) Adequate utilities and public services are and will be available to serve the proposed development, as well as existing and anticipated development in the surrounding area, in that the site is located in a developed urban area and has direct access to utilities and public services.

e) The use and development, as described herein, will be compatible with the existing and intended character of the area, in that the project is located adjacent to the I-605 Freeway and industrial and quarry uses. Future uses in the vicinity of the project site will likely include uses such as retail commercial, hotels, and restaurants.

SECTION 3. In light of the above findings and further testimony and documentation provided at the public hearing to consider approval of the project described in Zone Change No. 01-2013, the City Council hereby approves Zone Change No. 01-2013 and authorizes its execution and all actions necessary to comply with its terms.

SECTION 4. The City Council hereby authorizes and directs the Mayor and the City Clerk to execute this Ordinance on behalf of the City of Irwindale forthwith upon its adoption.

SECTION 5. The Deputy City Clerk shall certify as to the passage of this Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Irwindale.

PASSED, APPROVED, AND ADOPTED this 8th day of April, 2015.

Mark A. Breceda, Mayor

ATTEST:

Laura M. Nieto, CMC
Deputy City Clerk
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF IRWINDALE

I, Laura M. Nieto, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Ordinance No. 689 was duly introduced at a regular meeting of the Irwindale City Council held on the 25th day of March 2015, and was duly approved and adopted on second reading at its regular meeting held on the 8th day of April 2015, by the following vote of the Council:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, CMC
Deputy City Clerk

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Deputy City Clerk, certify that I caused a copy of Ordinance No. 689, adopted by the City Council of the City of Irwindale at its regular meeting held April 8, 2015, to be posted at the City Hall, Library, and Post Office on April 9, 2015.

Laura M. Nieto, CMC
Deputy City Clerk

Dated: ________________
Date: April 8, 2015

To: Mayor and Council Members

From: Eva Carreon, Acting City Manager

Issue: 2nd Reading of Ordinance No. 690

City Manager's Recommendation: That the City Council adopt on second reading Ordinance No. 690 entitled, "AN ORDINANCE OF THE CITY OF IRWINDALE CITY COUNCIL APPROVING DEVELOPMENT AGREEMENT (DA) NO. 01-2013 WITH IRWINDALE OUTLET PARTNERS, LLC TO DEVELOP AN APPROXIMATELY 700,000 SQUARE-FOOT OUTLET SHOPPING CENTER WITH ATTENDANT PARKING ON PROPERTY LOCATED AT 500 SPEEDWAY DRIVE (APNs 8532-004-022; 025; 026) SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS OF FACT IN SUPPORT THEREOF" reading by title only and waiving further reading thereof.

Analysis: At its meeting of March 25, 2015, City Council introduced the above ordinance for first reading. The appropriate ordinance is attached and it would be in order to adopt the ordinance on second reading.

Fiscal Impact: (Initial of CFO)

Legal Impact: (Initial of Legal Counsel)

Prepared By/Contact Person: Laura Nieto, Deputy City Clerk
Phone: 430-2202

Attachment
ORDINANCE NO. 690

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING DEVELOPMENT AGREEMENT NO. 01-2013, BETWEEN CITY OF IRWINDALE AND IRWINDALE OUTLET PARTNERS, LLC, FOR THE PROPOSED OUTLET MALL PROJECT, WHICH ENTAILS CONSTRUCTION OF AN APPROXIMATELY 700,000 SQUARE-FOOT SHOPPING CENTER WITH ATTENDANT PARKING ON PROPERTY LOCATED AT 500 SPEEDWAY DRIVE (APNs 8532-004-022; 025; 026) SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF

A. RECITALS.

(i) Lindom Company (Applicant) on behalf of Irwindale Outlet Partners, LLC, 328 South Atlantic Boulevard, #268, Monterey Park, CA 91754 (Owner) has made a request to enter into a Development Agreement with the City of Irwindale to construct and operate a +/-700,000 square-foot shopping center on property located at 500 Speedway Drive, APN # 8532-004-022; 025; 026 ("Subject Property"). In association with this request, the Applicant has also requested that the City approve a Zone Change and a Site Plan and Design Review with an exemption from the City’s Commercial and Industrial Design Guidelines.

(ii) The Subject Property is currently zoned M-2 (Heavy Manufacturing) and is proposed to be re-zoned to C-2 (Heavy Commercial) as part of the associated Zone Change request (ZC No. 01-2013) for General Plan consistency purposes.

(iii) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has prepared an Environmental Impact Report ("EIR"). The EIR was circulated for public review for the required 45 days from December 24, 2014 through February 6, 2015. A copy of the EIR was circulated through the State Clearinghouse (SCH# 2014071042), posted on the City’s website, and was available at the Irwindale Public Library and Deputy City Clerk’s Office. A copy of the EIR and Mitigation Monitoring and Reporting Program was posted on the City’s website.
The public review period for the Draft EIR ended on February 6, 2015.

A Final Environmental Impact Report was prepared on the proposed project, including the Draft EIR, comments received on the Draft EIR and responses to those comments, and any applicable revisions/corrections to the Draft EIR made in response to comments received.

On February 26, 2015, the project was duly noticed and scheduled before the Planning Commission for consideration. The Planning Commission opened the hearing, solicited public testimony, left the hearing open, and continued the hearing at the request of the Applicant to a special meeting on March 9, 2015, at which time it received input from staff, the Assistant City Attorney, and the Applicant, heard public testimony, discussed the Proposed Project, and closed the public hearing. The Planning Commission recommended that the City Council approve the Development Agreement, Zone Change, Site Plan and Design Review with design guidelines exemption, certify the Final EIR, and adopt the Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program per PC Resolution No. 658(15).

On March 25, 2014, the City Council conducted a duly noticed public hearing, as required by law, on the Application and recommendation of the Planning Commission to approve the Proposed Project, which allows development of a +/-700,000 square-foot shopping center on the Subject Property, took testimony, reviewed relevant documentary evidence and conducted a first reading of this Ordinance approving Development Agreement No. 01-2013; and

All legal prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. The City Council finds that the above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council finds as follows:
Development Agreement Findings:

a. Development Agreement No. 01-2013 is consistent with the provisions of the Development Agreement statutes, at Government Code sections 65864 et seq.;

b. The proposed development of Outlet Shopping Center per Development Agreement No. 01-2013 is consistent with the General Plan and proposed C-2 Zoning designation; and

c. Development Agreement No. 01-2013 contains provision for periodic review of Developer's compliance with its terms, is limited in duration through 2030, with two (2) additional ten (10) year extension options, and specifies the permitted use of the site related to retail and associated activities thereon and provisions for City access to the site where necessary.

SECTION 3. In light of the above findings and further testimony and documentation provided at the public hearing to consider approval of the project described in Development Agreement No. 01-2013, the City Council hereby approves Development Agreement No. 01-2013 and authorizes its execution and all actions necessary to comply with its terms, subject to approval as to form, including non-substantive changes, as approved by the City Attorney.

SECTION 4. The City Council hereby authorizes and directs the Mayor and the City Clerk to execute this Ordinance on behalf of the City of Irwindale forthwith upon its adoption.

SECTION 5. The Deputy City Clerk shall certify as to the passage of this Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Irwindale.

PASSED, APPROVED, AND ADOPTED this 8th day of April, 2015.

______________________________
Mark A. Breceda, Mayor

ATTEST:

______________________________
Laura M. Nieto, CMC
Deputy City Clerk
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF IRWINDALE

I, Laura M. Nieto, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Ordinance No. 690 was duly introduced at a regular meeting of the Irwindale City Council held on the 25th day of March 2015, and was duly approved and adopted on second reading at its regular meeting held on the 8th day of April 2015, by the following vote of the Council:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

__________________________________________
Laura M. Nieto, CMC
Deputy City Clerk

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Deputy City Clerk, certify that I caused a copy of Ordinance No. 690, adopted by the City Council of the City of Irwindale at its regular meeting held April 8, 2015, to be posted at the City Hall, Library, and Post Office on April 9, 2015.

__________________________________________
Laura M. Nieto, CMC
Deputy City Clerk

Dated: ________________________

Ordinance No. 690
Page 4
Recorded Requested by And
When Recorded Return To:

5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Clerk

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code § 6103)

DEVELOPMENT AGREEMENT

between

THE CITY OF IRWINDALE

("City")

and

IRWINDALE OUTLET PARTNERS, LLC

A Delaware Limited Liability Corporation

("Developer")
DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter “Agreement”) is entered into this 25th day of March, 2015, by and between the City of Irwindale, a municipal charter corporation (hereinafter “City”), and Irwindale Outlet Partners, LLC, a Delaware limited liability corporation, (“hereinafter “Developer”). City and Developer are hereinafter referred to each as a “party” and collectively as the “parties”.

RECITALS

A. The Development Agreement Law. California Government Code Sections 65864 et seq. (“Development Agreement Law”) authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development. The legislative findings and declarations underlying the Development Agreement Law and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing and commercial economic development opportunities, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

B. The Property. Developer is the owner of legal and/or equitable interests in certain real property legally described in Exhibit “A” attached hereto and incorporated herein (the “Property”), and thus qualifies to enter into this Agreement in accordance with Development Agreement Law. The Property was most recently developed as the “Irwindale Speedway”. Prior to the speedway, the Property was used as an outdoor swap meet for several years and prior to the swap meet, a landfill. Prior Property owner, Irwindale Speedway, LLC, declared bankruptcy after the 2011 season and vacated the property in early 2012. The Property was purchased by the Developer in 2013. There is extant a certain lease permitting operation of drag racing and other activities on the Property, which Developer hereby represents will continue at Developer’s option until the Developer has pulled first building permit and starts construction of the Project (as hereinafter defined).

C. Existing Uses and Zoning. The Property is zoned M-2 (Heavy Manufacturing) and is relatively flat. The General Plan land use designation for the site is Commercial/Recreation. The Property’s surroundings consist of General Plan land use designations of Industrial/Business Park, Quarry Overlay, and Regional Commercial and related zoning of M-2 and C-2 (Heavy Commercial). Water features in the area include the Santa Fe Dam approximately 0.8 miles northeast of the Property, and the San Gabriel River approximately 0.25 miles east of the Property. Beyond the immediately adjacent land uses are residential neighborhoods.
D. The Project. Developer and City agree that a development agreement should be approved and adopted for this Property in order to memorialize the development expectations of City and Developer as more particularly described herein. Developer proposes to develop, pursuant to this Agreement, an approximate 702,000 square foot regional shopping center and associated parking on the approximately 63.5 acre Property (the "Project"). (See Scope of Development at Exhibit "B"). In addition to the primary function of the shopping center to provide retail space for shopping opportunities, the Project includes ancillary amenities including a central plaza for public gatherings, entryway features, an outdoor entertainment/performance area, a food court, and a police substation. The proposed Project would include related improvements, including, but not limited to parking, landscape planters, fencing, and walls. The Project consists of at least two fundamental components:

Phase 1: The (a) demolition and removal of the existing speedway and associated buildings, with environmental/soils testing and remediation to be conducted. Depending on the results of soil testing currently underway, on-site soils will likely need to be over-excavated and re-compacted or replaced with suitable soils. And (b) development of approximately 459,000 square feet or 65 percent of the total Project building space.

Phase 2: Development of approximately 242,000 square feet or 35 percent of the total Project space. Concrete, asphalt, and other acceptable demolition debris would be used on site as fill within the racetrack oval as well as other portions of the project as deemed necessary for proper preparation of the Property's foundations.

E. Public Benefits of the Project. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives, including the orderly development of the Property; the provision of public benefits to the City and its residents through public improvements, including a recreational component, improvements to the Property, and infrastructure improvements in and around the Property. The Project will provide local and regional public benefits to the City, including, without limitation:

- Increased Tax Revenues. The development of the Property in accordance with the terms of this Agreement will result in increased real property, sales, utility and business taxes, and other revenues to the City.

- Pedestrian Mobility. The Project encourages pedestrian mobility through the provision of a "one stop" shopping center with walking paths serving a variety of consumer needs in one location within walking distance. Increased pedestrian mobility, and the concurrent
decrease in vehicle trips, reduces air and noise pollution and is consistent with the City's sustainability goals.

- **Sustainable Design.** The Developer will, to the extent reasonably feasible, include sustainable design for commercial and industrial uses and green building standards.

- **Recreational Amenities.** The Project includes an outdoor entertainment/performance area.

- **Job Creation.** The Project proposes to employ approximately 5,000 people.

**F. Public Hearing Findings.** City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 690 of the City Council have been duly and regularly taken. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, *et seq.* ("CEQA")), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a duly noticed public hearing on March 9, 2015, recommended certification of a Final Environmental Impact Report (SCH 2014071042) (the “EIR”), adoption of Findings of Fact, Mitigation Monitoring and Reporting Program (MMRP), and Statement of Overriding Considerations in compliance with CEQA through the adoption of PC Resolution No. 659(15). On the same day, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer’s application for this Agreement a Zone Change, and a Site Plan and Design Review application and adopted Resolution No. 659(15) recommending to the City Council approval of said requests. On March 25, 2015, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer’s application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

**G. Exemption from Design Guidelines.** This Project shall be exempt from the City’s “Design Guidelines” (as defined in Article 17 of the Irwindale Municipal Code) pursuant to Irwindale Municipal Code Section 17.70.010(B)(3), which exempts from Design Guidelines, “[n]ew or renovated buildings in a development subject to a development agreement where the development contains at least fifty percent of the square footage committed to retail establishments on one or more parcels tied together and having at least 500,000 square feet of retail space.”

**COVENANTS**

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

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. The defined terms include the following:

1.1.1 Agreement. "Agreement" means this Development Agreement and all attachments and exhibits hereto.


1.1.3 Applications. "Application(s)" means a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.1.4 Authorizing Ordinance. "Authorizing Ordinance" means Ordinance No. 690 approving this Agreement, introduced on March 25, 2015 and adopted on April 8, 2015.

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

1.1.6 City. "City" means the City of Irwindale, a chartered municipal corporation.

1.1.7 City Council. "City Council" means the City Council of the City.

1.1.8 Claims or Litigation. "Claims or Litigation" means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan as it is applied and processed in connection with the Project, Land Use Regulations as applied and processed in connection with the Project, this Agreement, the Development Approvals or other actions of the City pertaining to the Project, or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement and/or the construction, maintenance and operation of the Project.

1.1.9 Developer. "Developer" means Irwindale Outlet Partners, LLC, a Delaware limited liability corporation, and its successors and assigns to all or any part of the Property.

1.1.10 Development. "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities.
comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof on the Property.

1.1.11 Development Approvals. "Development Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, General Plan amendments, specific plans, site plans, tentative and final subdivision maps, design guidelines, variances, zoning designations or changes, conditional use permits, grading, building, and other similar permits, the site-specific provisions of General Plans, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City, or (ii) any matter where City has reserved authority under Article 3. It is anticipated that the following Development Approvals will be approved before or in conjunction with this Agreement: (i) Site Plan & Design Review Permit No. 01-2013, and (ii) Zone Change No. 03-2013, and (iii) Lot Line Adjustment No. 01-2013, and (iv) approval of the EIR pursuant to CEQA.

1.1.12 Development Plan. "Development Plan" means the Development Approvals and Subsequent Development Approvals as to be processed pursuant to the Existing Land Use Regulations by City subsequent to the Effective Date. Conceptual drawings and Site Plan for the Development Plan are attached hereto as Exhibit "B."

1.1.13 Effective Date. "Effective Date" means the date thirty (30) days after the adoption of the Authorizing Ordinance if no Claim or Litigation have been filed which would prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been filed, then tolled until the date that the Claim or Litigation has been successfully resolved in the City’s favor, and the time for any further judicial review has run, so that the Authorizing Ordinance shall be effective. The City shall give Developer notice as to the date established as the Effective Date. The Effective Date is not otherwise tolled for any other Force Majeure as described in Section 10.10 or Section 3.4.2.

1.1.14 Existing Land Use Regulations. "Existing Land Use Regulations" means the Land Use Regulations which have been adopted and are effective on or before the Effective Date of this Agreement.

1.1.15 Land Use Regulations. "Land Use Regulations" means all ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City’s General Plan,
any applicable Specific Plan, and Municipal Code and Zoning Code and including all development impact fees (except as otherwise provided in Sections 3.11 and 3.13), which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Property, subject to the terms of this Agreement. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupancies generally; taxes and assessments; regulations for the control and abatement of nuisances; uniform codes; utility easements; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; health and safety regulations; environmental regulations; or similar matters or any other matter reserved to the City pursuant to Article 3.

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

1.1.17 Project. "Project" means the Development of the Property consistent with the Development Plan and this Agreement and as further described in Recital D hereinabove and Exhibit "B."

1.1.18 Project Completion. "Project Completion" means issuance of Certificate of Occupancy for 100% of the building shells within each phase and 65% of the tenant space improvements therein for each phase.

1.1.19 Property. "Property" means the real property described in and shown in Exhibit "A."

1.1.20 Public Improvements. "Public Improvements" means the improvements to be constructed on and adjacent to the Property, as further described in Exhibit "C" attached hereto.

1.1.21 Reservation of Authority. "Reservation of Authority" shall have the meaning set forth in Section 3.6 of this Agreement.

1.1.22 Subsequent Development Approvals. "Subsequent Development Approvals" means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Property, which shall include, without limitation, the approvals defined herein as the Development Plan and (i) all on-site plans, including grading and on-site utilities, (ii) approval of a Storm Water Pollution Prevention Plan (SWPPP) to mitigate site runoff during construction and a Standard Urban Stormwater Mitigation Plan (SUSMP) to mitigate for post-construction runoff flows, (iii) demolition permits for existing on-site structures, and (iv) amendments of the Development Approvals and the Development Plan, subject to Article 9 hereof.
1.1.23 Subsequent Land Use Regulations. “Subsequent Land Use Regulations” means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement), which governs development, and use of the Property.

1.1.24 Term. “Term” shall mean the period of time from the Effective Date until the termination of this Agreement as provided in Section 2.4, unless earlier terminated as provided in this Agreement.

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

A. Exhibit “A” (Legal Descriptions);
B. Exhibit “B” (Scope of Development with Development Plan, conceptual and site plans);
C. Exhibit “C” (Public Improvements).
D. Exhibit “D” (CC&Rs)
E. Exhibit “E” (Estimated City Fees)
F. Exhibit “F” (Sign Design Depictions)

2. TERM & GENERAL COVENANTS.

2.1 Binding Effect of Agreement; Termination of Prior Entitlements. From and following the Effective Date, actions by the City and Developer with respect to the Development of the Property, including actions by the City on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement.

Further, it is agreed by the parties that this Agreement shall terminate all prior development approvals, entitlements, agreements and permits that were granted by the City to the Irwindale Speedway, LLC (“Speedway Approvals”) for the specific purposes of the Property’s use and development by Irwindale Speedway, LLC.

2.2 Ownership of Property. Developer represents it has a legal or equitable interest in the Property and thus Developer is qualified to enter into and be a party to this Agreement under the Development Agreement Law.

2.3 Assignments Require City Approval. The experience, knowledge, capability and reputation of Developer, its principals, employees and affiliates were a substantial inducement for the City to enter into this Agreement. Except as otherwise provided herein, the Developer shall not sell, transfer, or assign this Agreement or any part thereof without the prior written consent of the City Manager, and then only upon presentation of evidence demonstrating that the person or entity to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated, meets the following criteria: (i) the transferee has the financial strength and capability to perform its obligations under the Agreement, including the provision of transferee’s audited financials for at
least the immediately preceding three (3) operating years; (ii) reasonably satisfactory
evidence that the transferee has the experience and expertise to operate the Project,
including reasonably satisfactory evidence that the transferee has experience with
operations and projects with a similar scale of this Project; and (iii) reasonably
satisfactory evidence that the transferee's key principals have no felony convictions.
The proposed transferee shall execute and deliver to the City an assumption agreement
assuming Developer's Project obligations, which assumption agreement shall be in a
form approved by the City Manager and City Attorney. No approved transfer shall
release the Consultant or any surety of Consultant of any liability hereunder without the
express consent of City.

2.3.1 Transfer Defined. As used herein, a “Transfer” or assignment
shall include any sale, transfer, lease, assignment, hypothecation or encumbrance of the
Property and the transfer to any person or group of persons acting in concert of more
than thirty percent (30%) of the present ownership and/or control of the Developer in the
aggregate, taking all transfers into account on a cumulative basis. In the event
Developer or its successor is a corporation or trust, such transfer shall refer to the
transfer of the issued and outstanding capital stock of Developer, or the beneficial
interests of such trust; in the event that Developer is a limited or general partnership,
such transfer shall refer to the transfer of more than thirty percent (30%) of the
ownership and/or control of any such joint venture partner, taking all transfers into
account on a cumulative basis (“Trigger Percentages”). The following shall not be
deemed to be a “Transfer”:

A. Any mortgage, deed of trust, sale/lease-back, or other form of
conveyance for financing and any resulting foreclosure therefrom,
but Developer shall notify City in advance of any such mortgage,
deed of trust, or other form of conveyance for financing.

B. The granting of easements or dedications to any appropriate
governmental agency or utility or permits to facilitate the
development of the Property.

C. A sale or transfer resulting from, or in connection with, a
reorganization as contemplated by the provisions of the Internal
Revenue Code of 1986, as amended or otherwise, in which the
ownership interests of a corporation are assigned directly or by
operation of law to a person or persons, firm or corporation which
acquires the control of the voting capital stock of such corporation
or all or substantially all of the assets of such corporation.

D. A sale or transfer of less than the Trigger Percentages between
members of the same immediate family, or transfers to a trust,
testamentary or otherwise, in which the beneficiaries consist solely
of immediate family members of the trustor or transfers to a
corporation or partnership in which the immediate family members
or shareholders of the transferor who owns at least ten percent
(10%) of the present equity ownership and/or at least fifty percent (50%) of the voting control of Developer.

E. A transfer of common areas to a property owners’ or tenants’ association.

F. Any transfer to Lindom Companies, LLC (“Lindom”), including any wholly owned subsidiary or limited liability company of which Lindom is the manager, managing member or member or a limited partnership of which Lindom is a partner, or any affiliate of Lindom or any other Developer Affiliate. “Developer Affiliate” shall mean any entity which owns, or controls Developer, any entity owned or controlled by Developer, any entity owned or controlled by or affiliated with any entity which owns or controls Developer, or any entity resulting from a consolidation, or the surviving entity in case of a merger, to which consolidation or merger Developer shall be a party, or to an entity to which all or substantially all of the assets of Developer have been sold. The term “control,” as used in this subsection F, means, with respect to a corporation or limited liability company, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

G. Any transfer of any of the Property to a limited liability company or limited partnership to be formed in the future with which Lindon has entered into an agreement for Lindom to be the developer of the Project for which Lindom to have primary decisionmaking responsibility for leasing, construction, design and development of the Project.

H. The execution of any leases or subleases within the Project for commercial unit occupancy purposes.

2.3.2 Declaration of Covenants, Conditions and Restrictions. Prior to the transfer of any portion of the Project to a third party, Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the Property to City for its review and approval (“CC&Rs”). Such CC&Rs shall be substantially similar in form and substance to City’s standard form of declaration of covenants, conditions and restrictions imposed by City upon commercial development projects located in the City, and will contain, among other things, protective covenants to protect and preserve the integrity and value in the Project, including but not limited to use restrictions, maintenance covenants, EIR Mitigation Measures, restrictions under this Agreement and the Development Plan that will continue to apply to the Project, and a provision giving City the right to enforce said CC&Rs (See, Exhibit “D” hereto).
2.4 **Term of Agreement.** Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the date that is fifteen (15) years from and after the Effective Date. Provided Developer is not in default of this Agreement or the CC&Rs beyond applicable notice and cure periods set forth in Section 5.2, either at the time it exercises an option or the date the applicable Extended Term (as defined below) would commence, Developer shall have the right to extend the Term, under the same terms, conditions and covenants herein contained for two (2) additional successive terms of ten (10) years each, each Extended Term to begin at the expiration of the preceding term (the "Extended Terms"). In order to extend the Term or the Extended Term, Developer shall notify the City in writing of its intent to do so at least thirty (30) days, but no more than sixty (60) days prior to expiration of the Term or the Extended Term, as applicable.

2.5 **Covenants Run with the Land.** Except as specifically provided otherwise in this Agreement, and pursuant to the Development Agreement Statute (Gov. Code § 65868.5):

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

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

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

2.6 **Covenant Against Discrimination.** The Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of this Agreement. The Developer shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry.

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3. DEVELOPMENT OF THE PROJECT.

3.1 Rights to Develop. Subject to and during the Term of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan, the Existing Land Use Regulations, and this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the Development of the Property (including the uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project). The Developer retains the right to apportion the uses, intensities and densities, between itself and any subsequent Owners, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement. Developer may elect to develop and construct upon the Property or any portion thereof a Project of lesser height or building size than that permitted by the Development Plan provided that such Project otherwise complies with the Development Plan and this Agreement. Developer may apportion the uses, intensities and densities within the Property so long as such apportionment complies with the Existing Land Use Regulations, subject to any applicable requirements of Article 9 for Project modifications.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Pursuant to Government Code Section 66452.6, the term of any tentative map for the Property or any portion thereof, if any, filed within the term of this Agreement shall automatically be extended for the term of this Agreement, as amended by the Development Approvals. Except as expressly provided in this Agreement, any Subsequent Land Use Regulations shall not be applied to the Project or any phase thereof unless Developer, in its sole discretion, gives written notice to City of its election to have such Subsequent Land Use Regulations applied to the Project or such phase. All Subsequent Development Approvals for the Property shall, upon approval by the City, be vested in the same manner as provided in this Agreement for the Existing Land Use Regulations, for the term of this Agreement.

3.3 Timing of Development. The Parties acknowledge that the substantial public benefits to be provided by the Developer to the City pursuant to this Agreement are in consideration for, and in reliance upon, assurances that the City will permit Development of the Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development of the Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that the Developer cannot at this time predict the timing or rate at which the Property will be Developed. The timing and rate of Development depend on
numerous factors such as market demand, interest rates, absorption, completion schedules and other factors, which are not within the control of Developer or the City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city’s growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company’s vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the Pardee case by acknowledging and providing in this Agreement that the Developer shall have the vested right to Develop the Property in such order and at such rate and at such time as the Developer deems appropriate, but in accordance with the “Development Schedule” (defined below) and the phasing plans developed in accordance with Section 3.4, and in accordance with other terms hereof or in the Development Approvals related to project phasing and timing, to the extent feasible. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Property to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, the Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations to the phasing of development of the Project; or (ii) restricting the City from exercising the powers reserved to it under this Article 3 to regulate development of the Property. Nothing in this Section is intended to excuse or release the Developer from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event.

3.4 Development Schedule. Notwithstanding the provisions of Section 3.3, the Developer must achieve certain goals and objectives in terms of Development in order to keep the Agreement in place for the full Term or an Extended Term. Satisfaction of the following Development Schedule will be reviewed at each Annual Review: Developer shall endeavor to complete the Project by 2019, but no later than 2021. Developer shall endeavor to submit the Phase 1 Plans and Drawings (as defined below) by January 1, 2016, but no later than January 1, 2017. Developer shall endeavor to submit the Phase 2 Plans and Drawings (as defined below) by January 1, 2018, but no later than January 1, 2019.

3.4.1 Phase 1 Development Schedule. The Development Schedule for Phase 1 is as follows:

| Submission to City and other agencies of any required plans, drawings and specifications necessary to obtain building permits for Phase | • Within ninety (90) days of the date that Developer has executed leases for tenants covering sixty-five percent (65%) of the building space in Phase 1 |

-12- DEVELOPMENT AGREEMENT
Speedway Outlets Shopping Center
<table>
<thead>
<tr>
<th>Event</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start of Demolition</td>
<td>2 months from the dates that the Phase 1 Plans are approved by the City or other agencies</td>
</tr>
<tr>
<td>Commencement of grading and work on Public Improvements</td>
<td>2 months from the Start of Demolition for Phase 1</td>
</tr>
<tr>
<td>Commencement of Phase 1 vertical construction.</td>
<td>Commencing 7 months from the Commencement of grading and work on Public Improvements for Phase 1, completed no later than 31 months from the Commencement of grading and work on Public Improvements for Phase 1</td>
</tr>
<tr>
<td>Project Completion for Phase 1.</td>
<td>25 months from the Commencement of Phase 1 vertical construction</td>
</tr>
</tbody>
</table>

The trigger for submission of the Phase 1 Plans and Drawings, and all subsequent Development Schedules, shall be subject to the provisions of Section 9.

### 3.4.2 Phase 2 Development Schedule

The Development Schedule for Phase 2 is as follows:

<table>
<thead>
<tr>
<th>Event</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission to City or other agencies of any required plans, drawings and specifications necessary to obtain building permits for Phase 2 (&quot;Phase 2 Plans and Drawings&quot;).</td>
<td>Within ninety (90) days of the date that Developer has executed leases for tenants covering sixty-five percent (65%) of the building space in Phase 2</td>
</tr>
<tr>
<td>Commencement of on-site Public Improvements for Phase 2.</td>
<td>2 months from the approval of all Phase 2 Plans and Drawings.</td>
</tr>
<tr>
<td>Commencement of Phase 2 vertical construction.</td>
<td>Commencing 12 months from the commencement of on-site Public Improvements for Phase 2, completed no later than 36 months from the commencement of on-site Public Improvements for Phase 2</td>
</tr>
<tr>
<td>Project Completion for Phase 2.</td>
<td>25 months from the Commencement of Phase 2 vertical construction</td>
</tr>
</tbody>
</table>

The trigger for submission of the Phase 2 Plans and Drawings, and all subsequent Development Schedules, shall be subject to the provisions of Section 9.
3.4.3 Design Guidelines Exemption. This Project shall be exempt from the City’s “Design Guidelines” (as defined in Article 17 of the Irwindale Municipal Code) pursuant to Irwindale Municipal Code Section 17.70.010(B)(3), which exempts from Design Guidelines, “[n]ew or renovated buildings in a development subject to a development agreement where the development contains at least fifty percent of the square footage committed to retail establishments on one or more parcels tied together and having at least 500,000 square feet of retail space.” Notwithstanding the exemption from the City’s Design Guidelines, the Developer shall endeavor to incorporate as many elements of the Design Guidelines as reasonably possible, except that City may not delay approval of any of the Project Approvals based on inconsistency with the Design Guidelines, subject to the following standards:

(a) The Project design shall be of a modern aesthetic consistent with, and commemorative to, the Property’s prior usage as a top-class, automotive speedway;

(b) The Project design shall be consistent with all other zoning standards and codes in the Irwindale Municipal Code; and

(c) The Project design shall facilitate the public health, safety and welfare.

3.4.4 Times of Economic Distress. Development Schedules can be extended up to five (5) years for each Phase (a total of ten (10) years for the Project) — but in no event less than one year—due to the occurrence of an “Economically Distressed Year”. In any year in which Developer believes conditions exist to warrant declaration of an Economically Distressed Year, within 30 days before any anniversary of the Effective Date, Developer shall submit its request therefore. In support thereof, Developer shall provide City with a report including the following: (i) a written analysis of County-wide data supporting the declaration; (ii) publicly available reports concerning general market conditions affecting commercial retail building and tenancy; (iii) analysis as to how general market conditions have affected the Project including demand, costs and financing; and (iv) forecasts concerning the next two (2) years. In addition to general market conditions, Developer’s inability to achieve a tenant occupancy rate at or exceeding 65% of the tenant-occupied building space in any Project phase shall be deemed a basis for declaring an Economically Distressed Year, in which case the aforementioned report shall include a description of the efforts made by Developer to obtain tenants and any market analysis supporting Developer’s inability to attract tenants. The report is for informational purposes only and the City shall not be permitted to disapprove the declaration of Economically Distress Year if the data submitted supports either one of the following set of findings:

i. In the prior calendar year, the number of building permits for commercial retail development in the San Gabriel Valley region of Los Angeles County, California (including all cities and unincorporated county territory) are less than 50% of the average number of building permits issued during the prior 25 years, based
on the annual report of the California Construction Industry Research Board. If the number of building permits issued in any calendar year are not available from the California Construction Industry Research Board, then the City shall obtain them from any other reliable source measuring the same data over the period; or

ii. Developer has made all commercially reasonable efforts, as demonstrated by evidence submitted to the City, to secure tenancy rates at or above 65% of the tenant-occupied building space.

The determination as to the existence of an Economically Distressed Year shall be made by the City Manager within sixty (60) days of Developer's request for such a declaration and shall be appealable in accordance with Irwindale Municipal Code Section 17.90.130. In determining how long the Development Schedule will be extended in the event of an Economically Distressed Year, the City shall consider any economic and market forecast information provided in Developer's report and by staff.

3.5 Development Plan; Subsequent Development Approvals. The Development Plan for the Project will require the processing of Subsequent Development Approvals. The City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition, except that (i) the Subsequent Development Approvals shall be generally consistent with the attached Public Improvements, and Development Plan, and (ii) the density of the Project shall not be increased by more than three percent (3%). However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in the Development Approvals or Development Plan made pursuant to Developer's application shall not require an amendment to this Agreement.

This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

3.6 Reservation of Authority.

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

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications
for Subsequent Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, or other such Uniform Codes, and also adopted by City as Subsequent Land Use Regulations, if applicable City-wide.

(d) Regulations that may be in conflict with the Development Plan or this Agreement, but which City determines are materially necessary to protect the public health, safety, and welfare.

(e) Regulations that are not in conflict with the Development Plan or this Agreement.

(f) Regulations that are in conflict with the Development Plan or this Agreement, provided Developer has given written consent to the application of such regulations to Development of the Property.

(g) Federal, State, County, and multi-jurisdictional laws and regulations (the “Additional Regulations”) which City is required to enforce as against the Property or the Development of the Property, except if the Additional Regulations are for the purpose of mitigating a significant or potentially significant impact that has already been mitigated pursuant to the EIR.

(h) Subsequent Land Use Regulations applicable to regional or other non-City development impact fees.

3.6.2 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law. In the event that Federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

3.7 Regulation by Other Public Agencies.

3.7.1 It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the
Development of the Property, and this Agreement does not limit the authority of such other public agencies.

3.7.2 The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the Development of, or provision of services to, the Project. The City shall provide the Developer reasonable cooperation in Developer's efforts to obtain such permits and approvals. The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

3.8 **Energy Efficient and Sustainable Building Design.** All Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24. In addition, the Project shall maintain highest standards of Development, including without limitation Developer's best efforts to design the Project to meet or exceed the standards for a LEED Gold Certified building (or equivalent techniques or designed used for the purpose of reduction of energy use as approved by the Community Development Director in writing). Systems which may be utilized would include solar panels and other alternative energy technologies. Additionally, to reduce emissions, at all truck loading locations, power plug-in stations shall be provided to reduce emissions from idling trucks.

3.9 **Employment Outreach for Local Residents.** A goal of the City with respect to this Project and other major projects within the City is to foster employment opportunities for Irwindale residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, the Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to target local City residents and shall make other reasonable efforts at local employment outreach as the City shall approve. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Developer will inform its purchasers and lessees of the provisions of these requirements. Nothing in this paragraph shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 3.9 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

3.10 **Project Signage and Marketing.** The parties intend that the Project will become a regional facility and to this end exposure to nearby freeway corridors is critical, and freeway signage will significantly increase sales. Accordingly, the City will cooperate with Developer in a reasonable manner to locate and develop freeway sign easements and signage, if reasonably available, for the purposes of advertising the Project and/or any retail business occupying the Project. Nothing herein constitutes a guarantee or warranty of the availability or location for such signage. Nor do any terms of this Agreement limit or waive the City's discretion to approve/disapprove or condition...
any application for signage. Any applications for signage that may be submitted by Developer shall be subject to all City codes and procedures and shall be processed in a manner reasonably concurrent with Developer’s final plans and entitlements for the Project. Further Developer acknowledges that it may be required to secure approvals and permits from other agencies that may have jurisdiction over freeway signage, such as the California Department of Transportation (“CalTrans”). Developer shall be solely responsible for securing any such approvals at its cost and City will reasonably cooperate with Developer’s efforts to secure same.

All proposed signage shall not adversely impact traffic circulation or create a hazard to vehicular or pedestrian traffic, and measures shall be undertaken to construct and maintain signage in an aesthetically attractive manner and reduce potential impacts upon the visual character of the Property.

3.10.1 Monument Signage; Public Service Announcements. In addition to other permitted Project signage, including 6 signs along Live Oak Avenue, Developer shall install up to five “main” pylon signs advertising the Project and businesses located within the Project, which sign(s) shall have overall or total dimensions of no less than 25’ x 46’-10” (the “Main Sign(s)”). The Main Sign(s) shall be freeway-oriented or oriented towards the planned major thoroughfares passing, or entry-points to, the Project. Developer will dedicate at least 10% of the copy of the Main Sign(s) to the word “Irwindale” in some iteration. At least 20% of the Main Sign shall be dedicated as a digital, auto-changeable, full-color display (the “Digital Display”). Four times per month, Developer shall allow the City to utilize 20% of the daily advertising throughout the day of the Digital Display, meaning that out of every five messages digitized onto the Digital Display at least one shall be dedicated to the City. Alternatively, if the Main Sign(s) contain(s) multiple Digital Displays, the Developer has the option of dedicating one such Display to the City, the area of which must be at least 10% of the total Main Sign face. Acceptable Main Sign designs shall be substantially similar to those depictions at Exhibit “F”, particularly with respect the use of the word “Irwindale” on the Main Sign. The logo for marketing materials shall include similar use of the word “Irwindale”. Modifications to the signage shall be subject to Section 9 of this Agreement.

Time dedicated on the Digital Display to the City shall be used for non-law enforcement related Public Service announcements throughout. “Public Service Announcements” pursuant to this Agreement shall be limited to City, City-related, or other local agency social, ceremonial or governmental event announcements. The City shall submit to Developer the text of the Public Service Announcements at least ten (10) business days prior to the display of the Public Service Announcement. Developer, in its sole discretion, shall determine design the Public Service Announcement to be displayed. Nothing herein shall be deemed as requiring Developer to post any advertisement for non-Project businesses or messages that would negatively impact Project marketing. The Public Service Announcements shall be planned and designed at City’s sole cost, yet produced and installed on the Main Sign at Developer’s sole cost, in cooperation with City. City shall have sole discretion to approve the Public Service Announcements.
3.10.2 **Light & Glare.** Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in further reducing such maximum light level standard given the lighting environment upon request by the City’s Development Services Director, the obligation to have automatic diming capabilities, as well as providing the City’s Development Services Director or designee with a designated Developer employee’s phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City’s Planning Officer or designee, Developer shall perform a brightness measurement of the display using OAAA standards, or such lower level given the lighting environment, and provide City with the results of same within 5 days of the City’s complaint. Developer shall dim the display to the appropriate setting immediately upon the conclusion of any such measurement that concluding that the light standards were exceeded.

3.10.3 **Historical Plaque.** Developer agrees to place one stand-alone and free-standing historical plaque at a central location in the Project. Said plaque shall commemorate the Property’s prior dedication to the Irwindale Speedway, conversion to the Project, and all City Council members involved in such developments. The final message and design of the historical plaque shall be mutually-agreed upon between the City Council and the Developer, and approved at a City Council meeting, prior to installation. The parties agree to set an objective of completing the historical plaque process no later than sixty (60) days following issuance of the Certificate of Completion.

3.11 **Development Costs & Fees.** Developer shall be solely responsible for all Development costs associated with the Project, including without limitation design, land use entitlements, permitting, CEQA review, construction, rolling stock, equipment, operational costs, advertising and public relations and information and City staff and consultant expenses related to the Project. Project Development and operations will entail extensive, significant costs and capital expenditures due, without limitation, to the Project’s size, the magnitude of necessary environmental mitigation measures, need for heavy equipment and complex design and infrastructural elements. Currently, Project costs are expected to approximate one-hundred, thirty four million Dollars ($134,000,000). Further, Developer shall be responsible for paying all of the customary and ordinary fees and costs imposed by the City on the development of a commercial facility like the Project as set forth on the “Schedule of Estimated City Fees” attached hereto as Exhibit “E”.

3.11.1 **Administrative Costs.** Developer has agreed to pay the City twenty-thousand dollars ($20,000.00) towards the City’s staff time and legal fees for the preparation and negotiation of this Development Agreement (“Administrative Cost Reimbursement”). Developer has paid the City three thousand dollars ($3,000) of this Administrative Cost Reimbursement, and Developer will pay the balance of the Administrative Cost Reimbursement within no later than fifteen (15) days of this Agreement’s approval by the City Council.
3.12 **Prevailing Wages.** Developer’s purchase price for the Property and cost of Developing the Project and constructing all of the on-site and off-site improvements, if any, at or about the Property required to be constructed for the Project shall be borne by Developer. Developer is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will indemnify City in the event Developer fails to do so. As the City is not providing any direct or indirect financial assistance to Developer, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720. Accordingly, it is believed by the parties that Developer is not required to pay prevailing wages in connection with any aspect of the Development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend and hold the City (which, for purposes of this Section, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City’s liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

3.13 **Public Improvements.** Off-site Public Improvements shall be constructed or paid for by Developer as further described in Exhibit "C". In addition, and notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to dedicate necessary land and/or to pay for the required Public Improvements ("Exactions") at such time as City shall determine subject to the following conditions:

3.13.1 The dedication, payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project;

3.13.2 The timing of the Exaction should be reasonably related to the phasing of the Development of the Project and said Public Improvements shall be phased to be commensurate with the logical progression of the Project Development as well as the reasonable needs of public; and

3.13.3 If Developer is required by this Agreement and/or the Development Plan to construct any Public Improvements that will be dedicated to the City or any other public agency upon completion, Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work. The City desires that required Public Improvements generally be
constructed in the early portion of the Development cycle, with work on such Public Improvements commencing not later than the start of on-site Project grading.

3.14 Fees, Taxes and Assessments. During the term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Development Plan. This Development Agreement shall not prohibit the application of fees, taxes or assessments as follows:

3.14.1 Developer, or Developer’s Project tenants, shall be obligated to pay those fees, taxes or City assessments which exist as the Effective Date or are included in the Development Plan and any increases in same, as provided herein;

3.14.2 Developer, or Developer’s Project tenants, shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as business license fees or taxes, sales or use taxes, transient occupancy taxes, utility taxes, and public safety taxes;

3.14.3 Developer, or Developer’s Project tenants, shall be obligated to pay any future fees or assessments imposed on an area-wide basis (such landscape and lighting assessments and community services assessments), provided that Developer reserves its right to protest the establishment or amount of any such fees or assessments through the method prescribed by law;

3.14.4 Developer, or Developer’s Project tenants, shall be obligated to pay any fees imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Developer;

3.14.5 Developer, or Developer’s Project tenants, shall be obligated to pay any fees imposed pursuant to any Uniform Code.

3.14.6 Developer, or Developer’s Project tenants, shall be obligated to pay any utility fees and charges, including amended rates thereof, for City services such as electrical utility charges, water rates, and sewer rates.

3.15 Inconsistencies. It is expressly agreed that in the event of any inconsistency between the provisions or conditions of the Existing Land Use Regulations and the provisions of this Agreement, the provisions of this Agreement shall govern. The conditions of such Existing Land Use Regulations shall be interpreted insofar as possible to prevent such inconsistency, and in the event this Agreement is silent concerning an issue, the conditions of the Existing Land Use Regulations shall govern. As between several instruments and regulations governing the Project, in the event of a clear and explicit conflict which cannot be resolved through interpretation, the following interpretive priorities shall apply: (i) the terms of this Agreement shall prevail over the provisions of the Existing Land Use Regulations; (ii) the terms of the Existing Development Approvals shall prevail over the terms of the Existing Land Use Regulations, except where such Existing Land Use Regulations are legally preemptive;
and (iii) the terms of the Existing Development Approvals shall take priority over the provisions of the Environmental Impact Report ("EIR") approved in conjunction with the Project, except where the EIR is legally preemptive.

3.16 **Infrastructure Financing.** If the Developer undertakes public infrastructure financing, such as Mello-Roos or community facilities districts, City will cooperate fully in such endeavors and will process any related applications as expeditiously as possible.

4. **REVIEW FOR COMPLIANCE.**

4.1 **Annual Review.** The City Council shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). No failure on part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement, nor shall it be deemed a breach on the part of Developer. The cost of the Annual Review shall be borne by Developer and Developer shall pay the actual and reasonable costs incurred by the City for such review.

4.2 **Special Review.** The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such Special Reviews.

4.3 **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. The procedure for an Annual Review or Special Review shall be as follows:

4.3.1 As part of either an Annual Review or Special Review, within ten (10) days of a request for information by the City, the Developer shall deliver to the City all information and supporting documents reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement, and (ii) as required by the Existing Land Use Regulations.

4.3.2 The City Manager, or his/her designee, shall prepare and submit to Developer a written report on the performance of the Project and identify any perceived deficiencies in Developer's performance of this Agreement. The Developer may submit written responses to the report and Developer's written response shall be included in the City Manager's report. If the City Manager determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual or Special Review shall be concluded.
4.3.3 If any deficiencies are noted, or if requested by a Councilmember, a public hearing shall be held before the City Council at which the Council will review the City Manager's report. The report to Council shall be made at a regularly-scheduled City Council meeting occurring as soon as possible, subject to the requirements of the Brown Act, after the commencement of the Annual or Special Review process outlined in Section 4.3.1. If the City Council finds and determines, based on substantial evidence, that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Article 5.

4.3.4 Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 10.10.

4.4 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (i) this Agreement remains in effect and (ii) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

4.5 Review Process Not a Prerequisite to Declaring a Default. Neither the Annual Review nor Special Review procedure is a prerequisite to either party declaring a default and initiating the default and cure procedure in Article 5. In other words, either party may declare a default at any time without first undertaking the Annual Review or Special Review process.

4.6 Public Hearings. The public hearing prescribed by Section 4.3.3 is independent of, and in addition to, any further hearing procedures prescribed in Article 5. Thus, if the City Council finds that the Developer has not substantially complied with the terms and conditions of this Agreement as part of a review process pursuant to Section 4.3.3 and determines to declare a default, the City Council is still required to follow the notice/cure process (Section 5.2) and the termination hearing process (Section 5.4) before terminating this Agreement.

5. DEFAULT AND REMEDIES.

5.1 Specific Performance Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to Section 5.2, specific performance is the only remedy available for the enforcement of this Agreement and
knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the waiver made herein is made in consideration of the obligations assumed by the City hereunder. The Developer's waiver of the right to recover monetary damages shall not apply to any damages or injuries to a third party caused by the City's negligence.

5.2 Declaration of Default & Opportunity to Cure.

5.2.1 Rights of Non-Defaulting Party after Default. The parties acknowledge that both parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein except as provided in Section 5.1 above. Before this Agreement may be terminated or action may be taken to obtain judicial relief the party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Section 5.2.

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

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

2. Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the default;
3. Promptly commences to cure the default within the thirty (30) day period;

4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

5. Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

5.3 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may seek termination of this Agreement, in which case the Nondefaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement (“Termination Notice”). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default or a copy of the Default Notice) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party’s election to terminate this Agreement will only be rescinded if so determined by the City Council pursuant to Section 5.4, below.

5.4 Hearing Opportunity Prior to Termination. If Developer is the Defaulting Party pursuant to Section 5.3 above, then the City’s Termination Notice to Developer shall additionally specify that Developer has the right to a hearing prior to the City’s termination of any Agreements (“Termination Hearing”). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

1. Decide to terminate this Agreement; or

2. Determine that Developer is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

3. Impose conditions on a finding of default and a time for cure, such that Developer’s fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has caused or will cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, or such other interests that the City and public may have in the Project.
5.5 Rights and Duties Following Termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (iii) the indemnification provisions of Article 6. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

5.6 Waiver of Breach. By not challenging any Development Approval within 90 days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

5.7 Interest on Monetary Default. In the event Developer fails to perform any monetary obligation under this Agreement, Developer shall pay interest thereon at the rate of ten percent (10%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

6. THIRD PARTY LITIGATION & INDEMNITIES.

6.1 Indemnity Obligations on Third-Party Claims or Litigation.

6.1.1 The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will defend, hold and save them and each of them harmless from any and all third-party Claims or Litigation (including but not limited to attorneys' fees and costs) related to the Project or construction activities in furtherance of the Project against the City and shall be responsible for any judgment arising therefrom.

6.1.2 The City shall provide the Developer with notice of the pendency of such Claims or Litigation within ten (10) days of being served or otherwise notified of such Claims or Litigation and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney’s office in any legal action. The Developer shall provide a deposit in the amount of 100% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorney's fees. If the Developer fails to provide the deposit, and after compliance with the provision of Section 5, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. City agrees that it shall fully cooperate with the Developer in the defense of any matter in which the Developer is defending and/or holding the City harmless.
6.1.3 The Developer shall have the right, within the first 30 days of the service of the complaint, in its reasonable discretion, to determine that it does not want to defend the Claims or Litigation, in which case the City shall allow the Developer to settle the Claims or Litigation on whatever terms the Developer determines, in its reasonable discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the parties shall confer in good faith as to how to proceed. Notwithstanding the Developer's indemnity for Claims or Litigation, the City retains the right to settle any Claims or Litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope, density or intensity of the Project by 5% or more, and (ii) the settlement would reduce more than one retail operation (i.e., retail space) planned for the Project. In such case the City may still settle the Claims or Litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

6.2 Hold Harmless: Developer's Construction and Other Activities. The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' Project construction activities and operations under this Agreement, whether such Project construction activities and operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein shall be construed to mean that the Developer shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

6.3 Loss and Damage. City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature. Nothing herein shall be construed to mean that the Developer shall bear liability for the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

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

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

6.6 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than a default by City.

7. MORTGAGEE PROTECTION.

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

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer’s obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

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

8. **INSURANCE.**

8.1 Types of Insurance.

8.1.1 *Public Liability Insurance.* Prior to commencement and until completion of construction by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage. Such policy shall provide protection of at least Five Million Dollars ($5,000,000) for bodily injury or death to any one person, at least Five Million Dollars ($5,000,000) for any one accident or occurrence, and at least Five Million Dollars ($5,000,000) for property damage, which limits shall be subject to such increases in amount as City may reasonably require from time to time.

8.1.2 *Builder’s Risk Insurance.* Prior to commencement and until completion of construction by Developer on the Property, Developer shall procure and shall maintain in force, or caused to be maintained in force, “all risks” builder’s risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor’s, subcontractor’s, and construction manager’s tools and equipment and property owned by contractor’s or subcontractor’s employees, with limits in accordance with Section 8.1.1 above.

8.1.3 *Worker’s Compensation.* Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers’ compensation insurance as required by law.

8.1.4 *Automobile liability insurance.* Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage
for any owned, hired, non-owned or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

8.1.5 Other Insurance. Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance and shall be for the benefit of City and Developer.

8.2 Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. In the event the City's Risk Manager determines that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies required by Section 8.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

8.3 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(a) For insurance required above, within thirty (30 days) after the Effective Date.

(b) For any renewal or replacement of a policy already in existence, at least ten (10) days before the expiration or termination of the existing policy.
If Developer fails or refuses to procure or maintain insurance as required hereby
or fails or refuses to furnish City with required proof that that insurance has been
procured and is in force and paid for, such failure or refusal shall be a default
hereunder.

8.4 Waiver of Subrogation. Developer agrees that it shall not make any
claim against, or seek to recover from City or its agents, servants, or employees, for any
loss or damage to Developer or to any person or property, except as specifically
provided hereunder and Developer shall give notice to any insurance carrier of the
foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to
recovery against City, its agents and employees.

9. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

9.1 Initiation of Amendment. Either party may propose an amendment to
this Agreement.

9.2 Procedure. Except as set forth in Section 9.4 below, the procedure for
proposing and adopting an amendment to this Agreement shall be the same as the
procedure required for entering into this Agreement in the first instance, and meet the
requirements of the Development Agreement Statute § 65867.

9.3 Consent. Except as expressly provided in this Agreement, no
amendment to all or any provision of this Agreement shall be effective unless set forth in
writing and signed by duly authorized representatives of each of the parties hereto and
recorded in the Official Records of Los Angeles County.

9.4 Minor Modifications.

9.4.1 Flexibility Necessary. The provisions of this Agreement require
a close degree of cooperation between the City and the Developer. Implementation of
the Project may require minor modifications of the details of the Development Plan and
affect the performance of the parties under this Agreement. The anticipated refinements
to the Project and the Development of the Property may demonstrate that clarifications to
this Agreement and the Existing Land Use Regulations are appropriate with respect to
the details of performance of the City and the Developer. The parties desire to retain a
certain degree of flexibility with respect to those items covered in general terms under
this Agreement. Therefore, non-substantive and procedural modifications, as described
in Section 9.4.2 below, of the Development Plan shall not require amendment of this
Agreement.

9.4.2 Non-Material Changes. A modification will be deemed non-
substantive, non-material, and/or procedural if it does not result in a material change in
fees, maximum building density, maximum intensity of use, permitted uses, the
maximum height and size of buildings, the reservation or dedication of land for public
purposes, or the improvement and construction standards and specifications for the
Project. A "non-material change" is generally one that does not change the standard by
ten percent (10%) or more. For example, for a height limit of 20 feet, a change of less than two feet is deemed non-material. Where it is unclear if a change is non-material, the Community Development Director may, in light of all Building Code standards and the relative physical impact of the proposed change to the overall Project, make the determination as to whether the proposed change is material or non-material. For example, subject to Building Code requirements, design changes to color, facade finish textures or surfaces, minor changes to height, landscaping or building configuration, or type of construction materials will generally be deemed "non-material" because they do not impact the overall character of the Project or adversely affect adjacent properties. The Developer may appeal the determination of the Community Development Director pursuant to this subsection 9.4.2 to the City Council within 20 days of receiving such determination in writing, in accordance with the provisions of 17.90.130.

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

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

10. MISCELLANEOUS PROVISIONS.

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

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

10.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

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

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

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

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

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

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

10.10 **Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than one (1) year.

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

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

10.13 **Estoppel Certificates.** Either party (or a Mortgagee under Article 7) may at any time deliver written notice to the other party requesting an Estoppel Certificate stating:
A. The Agreement is in full force and effect and is a binding obligation of the parties;

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

C. There are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate.

A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees.

10.14 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

10.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property and as future holder of fee title to such property, on the other hand. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the public improvements set forth herein.

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

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

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

10.19 **Corporate Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

10.20 **Notices.** All notices under this Agreement shall be effective when delivered by (i) personal delivery, or (ii) reputable same-day or overnight courier or messenger service, (iii) overnight United States Postal Service Express Mail, postage prepaid, or (iv) by United States Postal Service mail, registered or certified, postage prepaid; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City:  City of Irwindale 5050 N. Irwindale Ave. Irwindale, CA 91706 Attn: John Davidson

With copy to:  Aleshire & Wynder 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Attn: Fred Galante
To Developer:  Irwindale Outlet Partners, LLC
              202 South Lake Ave., Suite 300
              Pasadena, CA 91101
              Attn: James Chou

With copy to:  Glaser Weil
              10250 Constellation Blvd., Suite 1900
              Los Angeles, CA 90067
              Attn: Timothy McOsker

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

10.22 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying party to pay any commission or finder's fee.

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

City: CITY OF IRWINDALE, a municipal corporation

By: _____________________________
    Mark A. Breceda, Mayor+

ATTEST:

By ________________________________
    City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By ________________________________
    Fred Galante, City Attorney

Developer: IRWINDALE OUTLET PARTNERS, LLC, a Delaware limited liability corporation

By: ________________________________
    Haixigo Lin, Majority Owner

By: ________________________________
    Its:

[End of Signatures]
1. STATE OF CALIFORNIA
2. COUNTY OF LOS ANGELES

3. On __________ before me, __________ Notary Public

4. personally appeared ____________________________________________

5. who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature(s) on the instrument the person(s), or the entities upon behalf of which the person(s) acted, executed the instrument.

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

7. WITNESS my hand and official seal.

8. Place Notary Seal Above ____________________________________________

Signature of Notary Public

________________________

OPTIONAL

9. Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

10. Title or Type of Document: ____________________________________________

11. Document Date: _____________________________________________________ Number of Pages: _________

12. Signer(s) Other Than Named Above: __________________________________

Capacity(ies) claimed by Signer(s)

13. Signer's Name: _______________________________________________________

14. □ Individual
15. □ Corporate Officer – Title(s): _________________________________________
16. □ Partner – □ Limited □ General
17. □ Attorney in Fact
18. □ Trustee
19. □ Guardian or Conservator
20. □ Other: ____________________________________________________________

21. Signer is Representing: ____________________________________________

DEVELOPMENT AGREEMENT
Speedway Outlets Shopping Center

1017711.1
EXHIBIT “A”

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INSERTED]
EXHIBIT "A"

PARCEL 1:

Parcel 1, in the City of Irwindale, County of Los Angeles, State of California, as shown on Parcel Map No. 21968, filed in Book 237 Pages 26 and 27 of Parcel Maps, in the office of the County Recorder of said County.

PARCEL 2:

That area shown as "Remainder Parcel 50.30 Acres" on Parcel Map No. 21968, in the City of Irwindale, County of Los Angeles, State of California, as per Parcel Map filed in Book 237 Pages 26 and 27 of Parcel Maps, in the office of the County Recorder of said County.

APN: 8532-004-022, 8532-004-025, 8532-004-026
EXHIBIT “B”

DEVELOPMENT PLAN, CONCEPTUAL AND SITE PLANS, CONDITIONS OF APPROVAL

Development Plan:
The Project site is approximately 63.5 acres in size. The proposed Project includes the construction and occupancy of an approximately 702,000-square foot shopping center and associated parking. In addition to the primary function of the shopping center to provide “retail” commercial space for shopping opportunities, the Project includes ancillary amenities including a central plaza for public gatherings, entryway features, an outdoor entertainment/performance area, police substation, and a food court. The proposed Project will include related improvements, including, but not limited to parking, landscape planters, fencing, and walls.

Regular hours of operation of the shopping center are expected to be Monday through Saturday from 10 a.m. to 9 p.m. and Sundays from 10 a.m. to 9 p.m. It is anticipated that extended hours of operation will occur during holidays.

Access and Circulation
Access to the Project would be from three driveways on Live Oak Avenue. Parking for customers and employees would exist on all sides of the proposed shopping center.

Major Utilities
Post-development, the Project site will be divided into three storm water drainage sub-areas. The three subareas will drain into three separate connections. All storm flows will be collected, treated and conveyed to the existing storm drain system in Live Oak Avenue via catch basins or trench drains. On each of the connection lines, the project proposes to install media filter devices. The filters will capture and retain sediment, oils, metals, and other targeted constituents. Curb inlets, if utilized, will also have media filters and curb guard installed. If roof drains are connected directly into the storm drain system, roof drain filters will be installed on the roof leaders. A trench drain will be constructed across the westerly driveway intercepting flows and directing the run-off into a drainage collection line. Trench drain filters will be installed in this feature. This storm drain system shall be designed in accordance with the National Pollution Discharge Elimination System (NPDES) requirements and Irwindale Municipal Code Chapter 8.28.

Wastewater from the Project site would be conveyed by the City’s local main sewer line located in Live Oak Avenue to a Los Angeles County Sanitation District (LACSD) wastewater treatment plant. The main sewer line connects to a primary sewer trunk line located to the west in Peck Road. The primary treatment plant servicing the City is LSCSD’s San Jose Creek Water Reclamation Plant (WRP), with excess sewage and all bio solids treated at LSCSD’s Joint Water Pollution Control Plant.

The Project is located in the water service area of Golden State Water Company (GSWC), with water delivered by the South Arcadia System. Water delivery to the project site will be accomplished by a connection to the existing water line located in Live Oak Avenue.

Construction and Phasing
The Project would be completed in two phases. Phase 1 of the project would start in 2015 and be completed in fall 2017 and would include demolition of the speedway and associated buildings, all site preparation and grading, and would develop approximately 455,000 square feet or 65 percent of the total project building space. Phase 2 would start in winter of 2017 and be completed in the fall of 2018 and...
would develop approximately 245,000 square feet or 35 percent of the total project space. Concrete, asphalt, and other acceptable demolition debris would be used on site as fill within the racetrack oval as well as other portions of the project as deemed necessary for proper preparation of the site's foundations.
Site & Conceptual Plans
[TO BE INSERTED]
Conditions of Approval for Project

A. General Conditions:

1. The uses authorized by this Site Plan and Design Review Permit allow for construction and operation of an approximately 700,000 square foot shopping center, consisting of buildings up to 20 feet tall with appurtenant open, on-surface parking areas providing approximately 3,250 onsite parking spaces on approximately 63.47 acres. Total lot coverage for the project will be approximately 25.4%.

2. Prior to the issuance of a business license and/or occupancy permit and/or final inspection by the City, all applicable conditions of approval (except those involving construction permits) shall be completed to the reasonable satisfaction of the City.

3. The Applicant shall defend, indemnify and hold harmless the City of Irwindale, its agents, officers, or employees from any claims, damages, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul, any approval of the City, its advisory agencies, appeal boards, or legislative body concerning Site Plan and Design Review Permit No. 01-2013; Development Agreement No. 01-2013; and Zone Change No. 03-2013. The City will promptly notify the permittee of any such claim, action, or proceeding against the City and will cooperate fully in the defense.

4. The use and improvements authorized by this Site Plan and Design Review Permit shall conform to the plans as finally approved by the City (date stamped on March 25, 2015) as conditioned herein, and any appreciable modification of the plans or mode of operation, as determined by the Community Development Director, shall require the prior approval of the City Council pursuant to the amendment of the Site Plan and Design Review Permit.

5. The Applicant agrees to allow City inspectors access to the site during normal working hours to assure compliance with these conditions and other codes. Any and all fees required to be paid to any public agency shall be paid prior to obtaining any permits for this project.

6. The Applicant shall maintain and use the project location and facility thereon in full compliance with all codes, standards, policies and regulations imposed by the City, County, State, or Federal agencies with jurisdiction over the facility.

7. It shall be required that the subject location, and its contents, including but not limited to; structures, fences or garden/block walls, and vehicles are
maintained free and clear of any graffiti. The Applicant shall be held responsible for the immediate removal of any and all graffiti found on-site within 48 hours of its application.

8. A sign program for the entire development shall be approved under a separate permit.

9. The premises will be secured with appropriate security lighting, to obtain a minimum of 1-foot candles over the entire site. A photometric lighting plan shall be submitted, subject to the review and approval of the Community Development Department and the Police Department.

10. Security lighting fixtures are to be shielded and shall not project above the fascia or roof line of the buildings. Security lighting fixtures shall not be substituted for parking lot or walkway lighting fixtures.

11. In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this project are subject to protest by the applicant at the time of approval or conditional approval of the project, or within 90 days after the date of imposition of the fees, dedications, reservations, or exactions imposed on the project.

12. In order to maintain compatibility with existing uses, the project applicant shall:

   (a) Construct and maintain a solid wall to minimize noise, vibration and dust impacts at the border between the project site and the adjacent Hanson Inwindale Quarry, to the extent feasible. Such wall shall be a minimum of six feet in height but shall otherwise be built in accordance with the plans and specifications approved by the City Engineer.

   (b) Disclose, in writing, on all leases, subleases, rental agreements, sales contracts, assignments, or other similar contractual agreement, the existence of adjacent surface mining and construction material uses that, even when operating within regulatory standards, may create noise, vibration, and dust.

13. At no cost to the City, Irwindale Outlet Partners LLC shall grant to the City a perpetual forty (40) foot wide road and underground utility easement running along and parallel to the westerly property line of the project as shown in Attachment "B-2" to these conditions, along with all necessary temporary construction easements using a Grant of Easement Form as approved by the City. Developer shall not be responsible for any improvements or infrastructure within the easement.
B. Community Development Department Conditions:

14. All landscaping for the project shall consist of native plants, with the exception of palm trees, which shall be featured in the landscape plan. At the discretion of the Community Development Director, portions of the landscaping shall serve as a demonstration garden for visitors to the site and will include the common and botanical names of plants, and interpretive signs with information about native plants and water conservation.

15. Landscape and irrigation plans shall be prepared by a licensed landscape architect, and are subject to the approval of the Community Development Director and the City Engineer. Vision clearance shall be maintained at all vehicle entrances and exits.

16. A complete, permanent, automatic irrigation system shall be provided for all landscaped areas.

17. All landscaped planters shall be surrounded by a six (6) inch horizontal concrete curb.

18. The following invasive plants shall not be used in landscaping:
   - Carpobrotus edulis (ice plant)
   - Hedera helix, H. Hibernica, H. caneriensis (English ivy, Irish ivy, Algerian ivy)
   - Vinca Major (periwinkle)
   - Pennisetum setaceum and all cultivars and varieties (fountain grass)
   - Cortaderia selloana, C. jubata and all cultivars and varieties (pampas grass)
   - Retama monosperma, Genista monspessulana, Cytisus striatus, Cytisus scoparius, and Spartium junceum (broom – bridal, French, Portuguese, Scotch, Spanish)
   - Acacia Cyclops (acacia or western coastal wattle)
   - Myoporum laetum (myoporum)
   - Washingtonia robusta and Phoenix canariensis (Mexican fan palm and Canary Island date palm)
   - Schinus terebinthifolius (Brazilian pepper)
   - Eucalyptus globules, E. camaldulensis (eucalyptus, blue gum, and red gum)

19. At least 10 percent of the total gross land area of the site (in this case, 276,475 square feet) shall be landscaped.

20. At least 10 percent of the parking areas shall be landscaped. Trees shall be planted in the parking lot such that at maturity, 35 percent of the parking
space area shall be shaded. Landscape plans shall show the radius of each tree at maturity and the calculation of required shade coverage at maturity. At the discretion of the Community Development Director, this condition may be modified if solar collectors are installed in the parking lot over the parking spaces and over the pedestrian walkways.

21. All plant material, including trees, shall be maintained in good condition and replaced in the event they die or become diseased.

22. All perimeter fencing, block walls, etc. shall be maintained in satisfactory condition in accordance with all applicable codes.

23. All utility equipment such as backflow units, transformers shall be screened with native species as allowed.

24. All masonry walls and driveway gates shall be decorative. The design of the walls and gates shall be subject to the review and approval of the Community Development Department.

25. The entrance to all driveways will consist of river rock or be concrete color-mixed and stamped to simulate terracotta tiles.

26. All rooftop mechanical equipment, including heating and air conditioning units, antennas and other electronic devices, will be completely and decoratively screened from view from all public rights of way and adjacent properties, and will be integrated into the design and construction of the buildings[1]. The decorative screening wall or parapet shall be at least 12 inches taller than the equipment being screened. All rooftop equipment and screening shall be shown on the plans and elevations, and shall be consistent with the building design and construction materials in texture and color. Such rooftop equipment screening shall be subject to the review and approval of the Community Development Department.

27. All rooftop wireless telecommunications antennas operated by third parties or subject to the provisions of Chapter 17.90 of the Irwindale Municipal Code shall require a separate permit in accordance with the provisions of the Municipal Code.

28. The street numbers for the development will be painted on the rooftop of each building in such a manner that it is clearly visible to public safety personnel, with minimum five (5) foot long numbers and with minimum one (1) foot wide brush strokes. Rooftop numbers shall be shown on the plans submitted for plan check.

[1] Rooftop photo voltaic systems are exempt from this requirement.
29. A chain link fence with green screening shall be installed and maintained throughout the perimeter of the site at all times during construction.

30. Applicant shall at all times comply with the Irwindale Municipal Code Noise Standards as measured at the Site boundary. Additionally, if noise impacts exceed the applicable noise standard contained in the Irwindale Municipal Code, Applicant shall take necessary actions and implement procedures to bring the operations into compliance with this Code.

31. All existing asphalt and concrete on the site shall be re-used on site so that there is no export of these materials from the site. All nonhazardous demolished materials shall be either be reused on site or recycled. These specifications shall be included in the Construction Waste Management Plan required by Section 5.408 of the 2013 California Green Building Standards Code.

32. The project shall maintain highest standards of development, including without limitation applicant’s best efforts to design the Project to meet or exceed the standards for a LEED Gold Certified building (or equivalent techniques or designed used for the purpose of reduction of energy use as approved by the Community Development Director in writing). Systems which may be utilized would include solar panels and other alternative energy technologies. Additionally, to reduce emissions, at all truck loading locations, power plug-in stations shall be provided to reduce emissions from idling trucks.

33. Individual monuments exemplifying the City’s history and heritage shall be created and placed along each interior plaza where four building corners come together. Design of the monuments shall take into account pedestrian safety including, but not limited to, location, access, and touch. Said monuments shall be approved separately by the City Council at a future meeting under “new business”.

C. Fire Department Conditions:

34. Projects associated with a land development permit such as a tract or parcel map, conditional use permit, zone change or other such permits, shall submit plans to the Land Development Unit (LDU) for review and approval prior to submitting to Fire Prevention Engineering for building plan review. To contact LDU please call (323) 890-4243 or submit to our office located at 5823 Rickenbacker Road, Commerce, CA 90040.

35. Submit two sets of architectural plans to the Fire Prevention Engineering Office located at 231 W. Mountain Avenue, Glendora CA 91741. Plan sets shall contain a minimum of a site plan, floor plan(s), elevations, door and...
window schedules, wall details, and appropriate section details. Please provide architectural sheets only. No civil, electrical, mechanical, plumbing, etc.

36. Indicate on plans the project address, assessor's parcel number, type of construction, occupancy classification, area of each floor level and building area increase modifications in accordance with the Building Code.

37. Provide a minimum unobstructed width of 26 feet, clear to the sky, Fire Department vehicular access to within 150 feet of all portions of exterior walls. Dead-end access roadways greater than 150 feet in length, shall be provided with an approved fire apparatus turnaround. The access width shall be increased to 28 feet when proposed buildings, or portions of buildings, are more than 3 stories, or more than 35 feet in height. A 32 foot centerline turning radius is required at each change of direction in vehicle travel regardless of the required width.

38. On the site plan, show the location of all existing public fire hydrants within 300 feet of all property lines and call out the hydrant size and dimensions to property lines. Additionally, show all existing on-site fire hydrants.

39. The required fire flow for public fire hydrants at this location is 4000 gallons per minute at 20 psi for a duration of 4 hours over and above daily domestic demand in accordance with Fire Code Appendix B, Table B105.1. A 50% reduction in required fire flow may be applied for the installation of automatic fire sprinklers. The minimum reduced fire flow shall not be less than 2000 gallons per minute at 20 psi.

40. Complete and return the original “Fire Flow Availability” Form No. 196.

41. Indicate on the site plan the location of high voltage transmission lines near the property. Structures proposed to be constructed adjacent to high voltage transmission lines, within 100 feet of the drip line, shall be subject to additional review by the Fire Marshal with regard to Fire Department operational procedures. Based on the Fire Marshal review additional building construction requirements may be imposed on the project in accordance with Regulation #27.

42. Indicate existing or proposed photovoltaic systems on the building rooftop or within the Fire Department access route.

43. Additional Requirements, including the installation of additional fire hydrants, may be imposed, in accordance with applicable codes, regulations, standards and policies after the above information is reviewed. Fire Department requirements are based on the information provided on the plans submitted for review.
44. Additional Fire Department Conditions attached hereto as Attachment B-1

D. Public Works/Engineering Conditions:

Streets:

45. That the owner shall pay the cost of design, engineering, installation and inspection to resurface the existing street frontage of Live Oak Avenue in front of the project site.

46. The owner/developer shall pay the costs associated with the installation of an Emergency Vehicle Preemption System (OPTICOM) at the intersection of Arrow Hwy and Live Oak Avenue (West), Live Oak Avenue and Rivergrade Road, and Arrow Highway and Live Oak Avenue (East) as determined by the City Engineer and Fire Chief.

47. That the owner shall design and construct a 5-foot wide meandering sidewalk along the Live Oak Avenue street frontage, consistent with City standards.

48. Street right-of-way easements shall be dedicated as follows:

   a. Corner cutoffs or radii as required by the Engineer.
   b. Traffic Signal Maintenance Easement at intersection of Live Oak Avenue and Driveway 1 and 3.
   c. Five foot strip along the property frontage on Live Oak Avenue.

49. All monitoring wells, pipelines, tanks, and related lines within the public right-of-way shall be removed from the right-of-way unless otherwise approved by the City Engineer.

50. That the owner shall execute an affidavit agreeing to continue its participation to the existing Landscape Maintenance District on Live Oak Avenue. Annual cost shall be based on the City’s cost to maintain the landscaping on Live Oak Avenue.

51. That the owner shall execute an affidavit agreeing to participate in a future street maintenance district or other type of benefit assessment district to slurry seal, resurface and reconstruct the street frontage on regular intervals (5-year, 10-year and 20-year intervals, respectively, as determined by the City Engineer). The owner shall retain the right to challenge the costs and method of spreading future assessments.
52. That adequate "on-site" parking shall be provided per City requirements, and streets abutting the development shall be posted "No Stopping Any Time." The City will cause the offsite signs to be installed. The owner shall pay the actual cost of sign installation.

53. The owner/developer shall reimburse the City for the actual cost for the installation, replacement or modification of street name signs, traffic control signs, striping and pavement markings required in conjunction with the development.

54. That common driveway shall not be allowed unless approved by the City Engineer. Proposed driveways shall be located to clear existing fire hydrants, street lights, water meters, etc.

55. The owner and/or developer shall pay for the design, installation, and inspection of undergrounding overhead utilities, if any, on the south side of Live Oak Avenue and any other utilities on the project site.

56. Planting of new trees on the Live Oak Avenue frontage of subject property per the direction of the City Engineer.

City Utilities:

57. Storm drains, catch basins, connector pipes, retention basin and appurtenances built for this project shall be constructed in accordance with City specifications in Live Oak Avenue. Storm drain plans shall be approved by the City Engineer.

58. Fire hydrants shall be installed as required by the Fire Department. Existing public fire hydrants adjacent to the site, if any, shall be upgraded if required by the City Engineer and/or Fire Department.

59. That sanitary sewers shall be constructed in accordance with City specifications to serve the subject development. The plans for the sanitary sewers shall be approved by the City Engineer. A sewer study shall be submitted along with the sanitary sewer plans.

60. All existing buildings shall be connected to the sanitary sewers.

61. Install landscape irrigation system along the Live Oak Avenue frontage, subject to the City Engineer's approval. Separate meter(s) shall be installed to accommodate connection of irrigation system for the landscaping on Live Oak Avenue.

62. That the owner/developer shall obtain a Storm Drain Connection Permit for any connection to the storm drain system.
63. The owner/developer shall have an overall site utility master plan prepared by a Registered Civil Engineer showing proposed location of all public water mains, sanitary sewers and storm drains. This plan shall be approved by the City Engineer prior to the preparation of any construction plans for the aforementioned improvements.

Traffic:

64. The owner/developer shall pay for the entire cost for design, engineering, construction and inspection of all improvements and/or mitigation measures as identified in the Project EIR including installation of traffic signals and/or modifications, the installation of additional turn lanes or deceleration lanes, the lengthening of left turn lanes or other median modifications, etc. that are warranted based on the project traffic study report. The owner and/or developer shall pay to the City the full cost of design engineering, installation and inspection of the improvements. The City will design and cause construction of the improvements within the public right-of-way.

65. That a deceleration lane shall be constructed at Driveway 1 to the proposed development. The owner/developer shall pay for the entire cost to the City the full cost of design engineering, installation and inspection of the improvements. The City will design and cause construction of the improvements within the public right-of-way.

Parcel/Tract Maps:

66. A Lot Line Adjustment to combine all three parcels shall be processed. The Lot Line Adjustment application shall be prepared and submitted to the Public Works Department for review and approval. The applicant shall be responsible for all fees associated with the processing of the Lot Line Adjustment.

Fees:

67. That the owner/developer shall comply with all requirements of the County Sanitation District, make application for and pay the sewer connection/maintenance fee.

Miscellaneous:

68. That a grading plan shall be submitted for drainage approval by the City Engineer. The owner shall pay drainage review fees in conjunction with this submittal. A professional civil engineer registered in the State of California shall prepare the grading plan.
69. That a hydrology study shall be submitted to the City if requested by the City Engineer. The study shall be prepared by a Professional Civil Engineer.

70. That upon completion of public improvements constructed by developer, the developer's civil engineer shall submit mylar record drawings and AutoCAD 2014 drawing files to the office of the City Engineer.

71. That the owner/developer shall comply with the National Pollutant Discharge Elimination System (NPDES) permit, and shall require the general contractor to implement storm water/urban runoff pollution prevention controls and Best Management Practices (BMPs) on all construction sites in accordance with the City Code. The owner/developer will also be required to submit a Certification for the project and may be required to prepare a Storm Water Pollution Prevention Plan (SWPPP). Projects over five acres in size will be required to file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). The owner/developer can obtain the current application packet by contacting the SWRCB, Division of Water Quality, at (916) 657-1977 or by downloading the forms from their website at http://www.swrcb.ca.gov/stormwtr/construction.html. The project shall also conform to Ordinance 915 regarding the requirements for the submittal of a Standard Urban Storm Water Mitigation Plan ("SUSMP"). The SUSMP includes a requirement to implement Post Construction BMPs to infiltrate the first 3/4" of runoff from all storm events and to control peak-flow discharges. Unless exempted by the Los Angeles Regional Water Quality Control Board, a Covenant and Restriction ensuring the provisions of the approved SWPPP shall also be required.

Building & Safety:

72. Building permits shall be obtained from the Building and Safety Division and all construction shall be in compliance with the Irwindale Building Code and all applicable regulations.

E. Police Department Conditions:

73. Provide for a police substation as part of the development that will consist of an office space that is approximately 25 feet by 15 feet with a restroom facility included. The location of the substation shall be mutually agreed upon between the applicant and the Chief of of the Police Department.

74. A surveillance system shall be provided which covers the entire property, including cameras to cover entry / exits of driveways, parking lots, walkways, hallways outside of restrooms, subject to the review and approval of the Police Department.
75. Provide reserved parking stalls available for law enforcement vehicles throughout the parking lots and near the substation. Locations of the parking stalls shall be subject to the review and approval of the Police Department.
ATTACHMENT B-1
Additional Fire Department Conditions

COUNTY OF LOS ANGELES
FIRE DEPARTMENT

DARYL L. OSBY
FIRE CHIEF
FORESTER & FIRE WARDEN

January 20, 2015

Paula Kelly, Senior Planner
City of Irwindale
Planning Department
5050 North Irwindale Avenue
Irwindale, CA 91706

Dear Ms. Kelly:

NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT,
"IRWINDALE REGIONAL SHOPPING CENTER," PROPOSED A SHOPPING CENTER CONSISTS OF AN APPROXIMATELY 700,000 SQUARE FOOT TO PROVIDE COMMERCIAL SPACE AND FOR SHOPPING OPPORTUNITIES, TO BE COMPLETED IN TWO PHASES, 500 SPEEDWAY DRIVE, IRWINDALE (FFER 201400247)

The Notice of Availability of a Draft Environmental Impact Report has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department. The following are their comments:

PLANNING DIVISION

1. We have no comments at this time.

LAND DEVELOPMENT UNIT

The development of this project must comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows, and fire hydrants. Specific Fire and Life Safety requirements will be addressed during the site plan review and building plan check review.
Submit a minimum of four (4) copies of the site plan and a minimum of one (1) copy of the elevations to the Land Development Unit for review.

ACCESS REQUIREMENTS

1. Prior to the issuance of any building permits, the required Fire Apparatus Access Roads and the public and private fire hydrants shall be inspected for compliance by the County of Los Angeles Fire Department.

2. All on-site Fire Department vehicular access roads shall be labeled as "Private Driveway and Fire Lane" on the site plan along with the widths clearly depicted on the plan. Labeling is necessary to assure the access availability for Fire Department use. The designation allows for appropriate signage prohibiting parking.

2. Fire Department vehicular access roads must be installed and maintained in a serviceable manner prior to and during the time of construction. Fire Code 501.4.

4. All fire lanes shall be clear of all encroachments and shall be maintained in accordance with the Title 32, County of Los Angeles Fire Code.

5. The edge of the fire access roadway shall be located a minimum of 5 feet from the building or any projections there from.

6. The Fire Apparatus Access Roads and designated fire lanes shall be measured from flow line to flow line.

7. If the proposed buildings are less than 30 feet in height provide a minimum unobstructed width of 26 feet exclusive of shoulders and an unobstructed vertical clearance "clear to sky" Fire Department vehicular access to within 150 feet of all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building. Fire Code 503.1.1 and 503.2.2.

   a) The Fire Apparatus Access Road shall be cross-hatch on the site plan, and the width shall be clearly noted.

8. If the proposed buildings are 30 feet or greater in height provide a minimum unobstructed width of 28 feet exclusive of shoulders and an unobstructed vertical clearance "clear to sky" Fire Department vehicular access to within 150 feet of all
portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building when the height of the building above the lowest level of the Fire Department vehicular access road is more than 30 feet high or the building is more than three stories. The access roadway shall be located a minimum of 15 feet and a maximum of 30 feet from the building and shall be positioned parallel to one entire side of the building. The side of the building on which the aerial fire apparatus access road is positioned shall be approved by the fire code official. Fire Code 503.1.1 and 503.2.2.

a) The Fire Apparatus Access Road shall be cross-hatch on the site plan and the width shall be clearly noted.

9. If the Fire Apparatus Access Road is separated by island, provide a minimum unobstructed width of 20 feet exclusive of shoulders and an unobstructed vertical clearance "clear to sky" Fire Department vehicular access to within 150 feet of all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building. Fire Code 503.1.1 and 503.2.2.

a) The Fire Apparatus Access Road shall be cross-hatch on the site plan and the width shall be clearly noted.

10. The dimensions of the approved Fire Apparatus Access Roads shall be maintained as originally approved by the fire code official. Fire Code 503.2.2.1.

11. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved Fire Department turnaround. Fire Code 503.2.5.

a) Include: The dimensions of the turnaround with the orientation of the turnaround shall be properly placed in the direction of travel of the access roadway.

12. Fire Department vehicular access roads shall be provided with a 32-foot centerline turning radius. Fire Code 503.2.4.

a) Indicate the centerline, inside, and outside turning radii for each change in direction on the site plan.

13. Fire Apparatus Access Roads shall be designed and maintained to support the imposed load of fire apparatus weighing 37 ½ tons and shall be surfaced so as to
provide all-weather driving capabilities. Fire apparatus access roads having a grade of 10 percent or greater shall have a paved or concrete surface. Fire Code 503.2.3.

14. The gradient of Fire Department vehicle access roads shall not exceed 15 percent unless approved by the fire code official. Fire Code 503.2.7.

15. Provide approved signs or other approved notices or markings that include the words "NO PARKING - FIRE LANE". Signs shall have a minimum dimension of 12 inches wide by 18 inches high and have red letters on a white reflective background. Signs shall be provided for fire apparatus access roads to clearly indicate the entrance to such road or prohibit the obstruction thereof and at intervals as required by the Fire Inspector. Fire Code 503.3.

16. A minimum 5 foot wide approved firefighter access walkway leading from the fire department access road to all required openings in the building's exterior walls shall be provided for firefighting and rescue purposes. Fire Code 504.1.

   a) Clearly identify firefighter walkway access routes on the site plan. Indicate the slope and walking surface material. Clearly show the required width.

17. Security barriers, visual screen barriers, or other obstructions shall not be installed on the roof of any building in such a manner as to obstruct firefighter access or egress in the event of fire or other emergency. Parapets shall not exceed 48 inches from the top of the parapet to the roof surface on more than two sides. Fire Code 504.5.

   a) Clearly indicate the height of all parapets in an elevation view.

18. Approved building address numbers, building numbers, or approved building identification shall be provided and maintained so as to be plainly visible and legible from the street fronting the property. The numbers shall contrast with their background, be Arabic numerals or alphabet letters and be a minimum of 4-inches high with a minimum stroke width of ½ inch. Fire Code 505.1.

19. Multiple residential and commercial buildings having entrances to individual units not visible from the street or road shall have unit numbers displayed in groups for all units within each structure. Such numbers may be grouped on the wall of the structure or mounted on a post independent of the structure and shall be positioned to be plainly visible from the street or road as required by
Fire Code 505.3 and in accordance with Fire Code 505.1.

20. Fire Apparatus Access Roads shall be identified with approved signs. Temporary signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles. Signs shall be of an approved size, weather resistant, and be maintained until replaced by permanent signs. Fire Code 505.2.

21. An approved key box, listed in accordance with UL 1037 shall be provided as required by Fire Code 506. The location of each key box shall be determined by the Fire Inspector.

22. The proposed development may necessitate multiple ingress/egress access for the circulation of traffic and emergency response issues. The fire code official is authorized to require more than one Fire Apparatus Access Road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access. Such additional access must comply with Title 21 of the Los Angeles County Code. Fire Code 503.1.2.

23. Fire Apparatus Access Roads shall not be obstructed in any manner including by the parking of vehicles or the use of traffic calming devices including but not limited to speed bumps or speed humps. The minimum widths and clearances established in Section 503.2.1 shall be maintained at all times. Fire Code 503.4.

24. Traffic Calming Devices including but not limited to speed bumps and speed humps shall be prohibited unless approved by the fire code official. Fire Code 503.4.1.

25. When security gates are provided maintain a minimum access width of the Fire Apparatus Access Road. The security gate shall be provided with an approved means of emergency operation and shall be maintained operational at all times and replaced or repaired when defective. Electric gate operators where provided shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed, and installed to comply with the requirements of ASTM F220. Gates shall be of the swinging or sliding type. Construction of gates shall be of materials that allow manual operation by one person. Fire Code 503.6.
WATER SYSTEM REQUIREMENTS

1. All fire hydrants shall measure 6"x 4"x 2-1/2" brass or bronze conforming to current AWWA standard C503 or approved equal and shall be installed in accordance with the County of Los Angeles Fire Department Regulation 8.

2. All required PUBLIC fire hydrants shall be installed, tested, and accepted prior to beginning construction. Fire Code 501.4.

3. All on-site fire hydrants shall be installed a minimum of 25 feet from a structure or protected by a two (2)-hour rated firewall. Indicate compliance prior to the approval of this project. Fire Code Appendix C106.

4. All private on-site fire hydrants shall be installed, tested, and approved prior to building occupancy. Fire Code 901.5.1.
   
   a) Plans showing underground piping for private on-site fire hydrants shall be submitted to the Sprinkler Plan Check Unit for review and approval prior to installation. Fire Code 901.2 and County of Los Angeles Fire Department Regulation 7.

5. Fire hydrant spacing shall be 300 feet and shall meet the following requirements:

   a) No portion of lot frontage shall be more than 200 feet via vehicular access from a public fire hydrant.

   b) No portion of a building shall exceed 400 feet via vehicular access from a properly spaced public fire hydrant.

   c) Additional hydrants will be required if hydrant spacing exceeds specified distances.

   d) When cul-de-sac depth exceeds 200 feet on a commercial street, hydrants shall be required at the corner and mid-block.

   e) A cul-de-sac shall not be more than 500 feet in length when serving land zoned for commercial use.

6. The specific fire flow will be determined based on the type of construction of each building the square footage of each building and if there is an automatic fire sprinkler system is installed.
a) The required fire flow for the public fire hydrants for this project is 5000 gpm at 20 psi residual pressure for 5 hours. Three (3) public fire hydrants flowing simultaneously may be used to achieve the required fire flow. Fire Code 507.3 and Appendix B105.1.

b) The required fire flow for the on-site private fire hydrants for this project is 5000 gpm at 20 psi residual pressure for 5 hours. Three (3) on-site fire hydrants flowing simultaneously may be used to achieve the required fire flow.

7. For the existing public fire hydrants, submit the completed original copy of the Fire Flow Availability Form (Form 196). The fire flow data shall be submitted to the County of Los Angeles Fire Department's Land Development Unit prior to the issuance for clearance of this project. A fire hydrant upgrade is not necessary if existing hydrants meet the fire flow requirements.

If there are any questions regarding the Land Development Unit's comments, please contact FPEA Claudia Soiza or Wally Collins at (323) 890-4243.

FORESTRY DIVISION - OTHER ENVIRONMENTAL CONCERNS

1. The statutory responsibilities of the County of Los Angeles Fire Department's Forestry Division include erosion control, watershed management, rare and endangered species, vegetation, fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources, and the County Oak Tree Ordinance. Potential impacts in these areas should be addressed.

HEALTH HAZARDOUS MATERIALS DIVISION

1. The Health Hazardous Materials Division has no additional comments than those already provided.
ATTACHMENT B-2
Road and Underground Utility Easement

[TO BE INSERTED]
March 9, 2015

Mr. William Tam
Public Works Director/City Engineer
City of Irwindale
5050 North Irwindale Avenue
Irwindale, CA 91706

RE: Irwindale Regional Shopping Center
Vic. LA-605, PM 23.52
SCH # 2014071042
Ref. IGR/CEQA No. 140729NY-NOP
Ref. IGR/CEQA No. 150114AL-DEIR
IGR/CEQA No. No. 150313AL-FEIR

Dear Mr. Tam:

This is a follow up to Caltrans’ comment letter dated February 6, 2015. After review of the Response to Comment, prepared on March 5, 2015 from the City, Caltrans has the following comments.

Caltrans concurs with the City’s Response to Caltrans Comment letter dated February 6, 2015. Caltrans is delighted that the City understands the potential traffic issues created by the development of the shopping center. Caltrans notes that the City has proposed improvements on the I-605 off-ramps at Arrow Highway and Live Oak Avenue, per Exhibit “A” in your letter, with a fair share contribution to be paid by the Irwindale Regional Shopping Center developer. It is also noted that the City will secure sufficient funding to complete the construction of these improvement projects.

With the City’s proposal, Caltrans traffic concerns have been addressed and satisfied. Caltrans looks forward to working with the City to improve the operation of the State transportation facilities in this area. If you have any questions, please feel free to contact Mr. Alan Lin the project coordinator at (213) 897-8391 and refer to IGR/CEQA No. 150313AL.

Sincerely,

DIANNA WATSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse

"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"
EXHIBIT "C"

PUBLIC IMPROVEMENTS

The project improvements shall be funded by the Developer, Irwindale Outlet Partners, LLC. The City will design and cause construction of the project improvements.

(a) I-605 Freeway N/B Off-Ramp at Live Oak Avenue (Table C-1, Item 1).
(b) I-605 Freeway S/B Off-Ramp at Arrow Highway (Table C-1, Item 2).
(c) I-605 Feasibility Study for cumulative projects improvements between I-10 and I-210.

For improvements to I-605 Freeway as stated above (a) through (c), Developer shall pay Two Million Five Hundred Fifty Three Thousand and 00/100 Dollars ($2,533,000.00). Such payment shall be made as follows:

a. The first payment of One Million Dollars ($1,000,000.00) shall be made twelve (12) months after the effective date of the Agreement.
b. The second payment of One Million and Two Hundred Thousand Dollars ($1,200,000.00) shall be made twelve (12) months after completion of Phase 1 of the development.
c. The third payment of Three Hundred and Thirty Three Thousand Dollars ($333,000.00) shall be made twelve (12) months after the commencement of Phase 2 development.

TABLE C-1
IMPROVEMENT PROJECTS AT I-605

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Location of Improvement</th>
<th>Description of Improvement</th>
<th>Construction Schedule</th>
<th>Project Fair Share Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I-605 Freeway N/B Off-Ramp at Live Oak Avenue</td>
<td>Construct a 390 feet(+-) long second N/B Off-Ramp Lane to E/B Live Oak Avenue; install two new traffic signals at I/S of I-605 N/B Off-Ramp at Live Oak Avenue; and to resurface and restripe Live Oak Avenue at this intersection per Caltrans approved Plans and Specifications.</td>
<td>Construction to be completed prior to the issuance of Certification of Occupancy for the first phase of development.</td>
<td>33-1/3% of the total cost for the construction, and construction management and inspection of this improvement.</td>
</tr>
<tr>
<td>2</td>
<td>I-605 Freeway S/B Off-Ramp at Arrow</td>
<td>Construct a 500 feet(+-) long second S/B Off-Ramp Lane to Arrow</td>
<td>Construction to be completed prior to the</td>
<td>33-1/3% of the total cost for the</td>
</tr>
<tr>
<td>Item No.</td>
<td>Location of Improvement</td>
<td>Description of Improvement</td>
<td>Construction Schedule</td>
<td>Project Fair Share Cost</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------</td>
<td>----------------------------</td>
<td>-----------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td></td>
<td>Highway</td>
<td>Highway; install new traffic signal modification at I/S of I-605 S/B Off-Ramp at Arrow Highway; and to resurface and restripe Arrow Highway at this intersection per Caltrans approved Plans and Specifications.</td>
<td>issuance of Certification of Occupancy for the second phase of development.</td>
<td>Design, construction, and construction management and inspection of this improvement.</td>
</tr>
</tbody>
</table>

For all other required public improvements, Developer, at its sole cost, shall implement per construction schedule listed in Table C-2 below. The improvements as described in Table C-2 shall be designed and constructed to City’s standards and/or other applicable State and County standards. All improvements shall be based on construction plans and specifications prepared by professional consultants retained by the City. Developer shall deposit sufficient funds to the City, based on cost estimates prepared by the City Engineer’s office, prior to the City awarding contract for the design and construction services for these improvements.

**TABLE C-2**

**TRAFFIC CIRCULATION MITIGATION IMPROVEMENT**
**IRWINDALE REGIONAL SHOPPING CENTER**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Location of Improvement</th>
<th>Description of Improvement</th>
<th>Construction Schedule</th>
<th>Project Fair Share Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Intersection of Live Oak Avenue and Project Driveway 1</td>
<td>Construct a new traffic signal and to resurface and restripe Live Oak Avenue at this intersection.</td>
<td>Construction to be completed prior to the issuance of Certification of Occupancy for the first phase of development.</td>
<td>100% of the total cost for the Design, construction, and construction management and inspection of this improvement.</td>
</tr>
<tr>
<td>2</td>
<td>Intersection of Live Oak Avenue and Project Driveway 3</td>
<td>Construct a new traffic signal and to resurface and restripe Live Oak Avenue at this intersection.</td>
<td>Construction to be completed prior to the issuance of Certification of Occupancy for the first phase of development.</td>
<td>100% of the total cost for the Design, construction, and construction management and inspection of this improvement.</td>
</tr>
<tr>
<td>Item No.</td>
<td>Location of Improvement</td>
<td>Description of Improvement</td>
<td>Construction Schedule</td>
<td>Project Fair Share Cost</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------</td>
<td>----------------------------</td>
<td>-----------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>3</td>
<td>East Intersection of Arrow Highway and Live Oak Avenue</td>
<td>Construct a third E/B through lane and to resurface and restripe the intersection.</td>
<td>Construction to be completed prior to the issuance of Certification of Occupancy for the first phase of development.</td>
<td>50% of the total cost for the Design, construction, and construction management and inspection of this improvement.</td>
</tr>
<tr>
<td>4</td>
<td>Intersection of Avenida Barbosa and Arrow Highway</td>
<td>Construct a 200 feet long dual left turn lane for E/B traffic and to resurface and restripe the intersection.</td>
<td>Construction to be completed prior to the issuance of Certification of Occupancy for the first phase of development.</td>
<td>50% of the total cost for the Design, construction, and construction management and inspection of this improvement.</td>
</tr>
<tr>
<td>5</td>
<td>Live Oak Avenue Between Arrow Highway and I-605 S/B On-Ramp</td>
<td>Resurface the entire Live Oak Avenue in front of the project site.</td>
<td>Construction to be completed prior to the issuance of Certification of Occupancy for the first phase of development.</td>
<td>100% of the total cost for the Design, construction, and construction management and inspection of this improvement.</td>
</tr>
<tr>
<td>6</td>
<td>Intersection of Live Oak Avenue and Driveway 1</td>
<td>Construct a 100 feet deceleration lane for E/B traffic.</td>
<td>Construction to be completed prior to the issuance of</td>
<td>100% of the total cost for the Design, construction,</td>
</tr>
<tr>
<td>Item No.</td>
<td>Location of Improvement</td>
<td>Description of Improvement</td>
<td>Construction Schedule</td>
<td>Project Fair Share Cost</td>
</tr>
<tr>
<td>---------</td>
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<td>-----------------------</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Certification of Occupancy for the first phase of development.</td>
<td>and construction management and inspection of this improvement.</td>
</tr>
</tbody>
</table>
EXHIBIT "D"

CC&Rs

[TO BE ATTACHED]
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&Rs") is made and entered into this [●] day of [●], 2015, by IRWINDALE OUTLET PARTNERS, LLC, a Delaware limited liability company ("Owner" or "IOP"). These CC&Rs are declared for the benefit of the CITY OF IRWINDALE, a California Charter municipality ("City"). Owner and City are occasionally referred to herein each as a “party” and collectively as the “parties”.

RECITALS:

A. IOP is the owner of that certain real property located in the City of Irwindale, County of Los Angeles, State of California, more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Site”).

B. IOP and the City of Irwindale are parties to that certain Development Agreement entered into on ________________ (the “DA”) regarding the development of the Site as a commercial retail, outlet shopping center (the Project”). Pursuant to the DA, Owner shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the Site to ensure compliance with the Project construction, maintenance, and operation requirements set forth in the DA.

D. City has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City. That portion of the City’s interest in real property most directly affected by these CC&Rs are public rights of way surrounding the Site.

E. City and Owner now desire to place restrictions upon the use and operation of the Site in order to ensure that the Site shall be developed and operated in accordance with the requirements set forth in the DA.

F. It is the intent of City and Owner that these CC&Rs shall be recorded on title to the Site in the Office of the County Recorder for the County of Los Angeles, and that the terms
hereof shall be binding on the Owner and its successors in interest in the Site for so long as the CC&Rs shall remain in effect.

**AGREEMENT:**

NOW, THEREFORE, Owner declares, covenants and agrees, by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of City, the residents of the City of Irwindale, and every person buying an interest in the Site.

1. **MAINTENANCE.**

1.1 **General Maintenance Obligations.** Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. In addition, Owner shall be required to maintain the Property or cause the Property to be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

1.2 **Parking and Driveways.** The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction to vehicular or pedestrian traffic shall project into any of such driveways or traffic aisles.

1.3 **Tenant Compliance.** All commercial lease agreements shall be in writing and shall contain provisions which acknowledge the tenant's lease is subject to the terms and conditions of these CC&Rs.

1.4 **Right of Entry.** In the event Owner, or its successor or assign, fails to maintain the common area of the Site in the above-described condition, and satisfactory progress is not made in correcting the condition within sixty (60) days from the date of written notice from City, City may, at its option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, City, its employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary
landscaping and/or maintenance. The City shall give Owner reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out these CC&Rs. The Owner, or its successors and assigns owning the affected portion of the Site, shall pay such costs as are reasonably incurred by City for such maintenance, including attorneys' fees and costs.

1.5 **Lien.** If such costs incurred by City pursuant to Section 1.4 above are not reimbursed within thirty (30) days after Owner's, or such successor's, receipt of notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate equal to the lesser of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of the Owner or such successor as well as a lien and charge, with power of sale, upon the property interests of Owner or such successor, and the rents, issues and profits of such property. City may bring an action at law against Owner or such successor obligated to pay any such sums or foreclose the lien against Owner's or such successor's property interests. Any such lien shall be created by recordation of a Notice of Claim of Lien against the affected portion of the Site and may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, *et seq.*, of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to the Site or the applicable portion thereof, and any purchaser at any foreclosure or trustee's sale (as well as the transferee under any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any monetary lien created by these CC&Rs, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure and are assessed hereunder to the purchaser at the foreclosure sale, as Owner of the subject Site after the date of such foreclosure sale, shall become a lien upon the affected portion of the Site upon recordation of a Notice of Claim of Lien as hereinabove provided.

2. **COMPLIANCE WITH LAWS.**

2.1 **State and Local Laws.** Owner or its successors and assigns shall comply with all ordinances, regulations and standards of the State or City applicable to the Site. Owner or its successors and assigns shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

2.2 **Environmental Conditions; Compliance with Soil State and Local Soils Conditions Requirements.** The Site consists of a former landfill. The fill of the former landfill comprising the Site is not adequately compacted and will require remediation to the extent and in the manner as may be required by the County of Los Angeles, the City's contract building department. Such fill and remediation shall be undertaken at the sole cost, and responsibility, of Owner or any successor owner of the Site. Owner and its successor shall defend, save and hold
the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the conditions described in the Section 2.2. Owner and its successors take the Site AS-IS with respect to all environmental conditions thereon, and shall be responsible for any defects in the Site, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, hazardous materials, underground storage tanks, vaults, debris, pipelines or other structures located on, under or about the Site, excepting that nothing herein shall be construed to require Owner or its successors to hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City’s officers, employees, agents, contractors of subcontractors.

3. **INSURANCE.**

   3.1 **Duty to Procure Insurance During Construction.** Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site, that during construction of the improvements on the Site (the “Project”), Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to Executive Director and the City’s Risk Manager of the existence of, insurance policies meeting all requirements for insurance set forth in the DA.

   a. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

      (1) Commercial general liability insurance to include products and completed operations, independent contractors, broad form property damage, fire, legal, and personal injury.

      (2) Comprehensive automobile liability insurance to include all autos owned, hired, and non-owned.

      (3) Workers' Compensation as required by the Labor Code of the State of California and employers' liability insurance.

   b. **Minimum Limits of Insurance.** Owner shall maintain or cause to be maintained limits no less than:

      (1) Commercial General Liability: __________ Million Dollars ($__________) combined single limit per occurrence for bodily injury, personal injury, and property damage. This may be satisfied by a blanket policy, or a program that includes General Liability and Excess and/or Umbrella Liability policies.

      (2) Automobile Liability: __________ Million Dollars ($__________) combined single limit per occurrence for bodily injury and property damage.

      (3) Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the Labor Code of the State of California and employers' liability limits of __________ ($__________) per accident.
Such other policies and coverage required by the DA.

c. General Requirements Pertaining to Insurance. All the policies of insurance required by these CC&Rs and the DA shall be subject to the general insurance requirements contained in Sections 8.2 through 8.4 of the DA.

4. OBLIGATION TO REPAIR.

4.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If a portion of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner, or its successor with respect to the affected portion of the Project, shall either (i) promptly proceed to obtain any available insurance proceeds and take all steps necessary to begin reconstruction and, upon receipt of insurance proceeds, to promptly and diligently commence and to thereafter pursue the repair or replacement of the affected portion of the Project to substantially the same condition as existed prior to such damage or destruction, or (ii) if Owner, or such successor with respect to the affected portion of the Project, elects not to restore or replace such improvements, such Owner or successor shall promptly remove all debris from the affected portion of the Site and place the affected portion of the Site in a clear and secure condition. City shall cooperate with Owner, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration of any improvements. Following any such event of damage or destruction, Owner, or its successor with respect to the affected portion of the Site, may also reconstruct such other improvements on the Site as are consistent with applicable land use regulations provided it shall obtain all legally required approvals from the City and other governmental agency or agencies with jurisdiction with respect to those improvements.

5. ENFORCEMENT.

In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to these CC&Rs, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City, or, in the event said default cannot reasonably be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then City may declare an “Event of Default” to have occurred hereunder, and, at its option, may take one or more of the following steps:

5.1 By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of these CC&Rs; or

5.2 Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or

5.3 Enter the Site and cure the Event of Default.

Except as otherwise expressly stated in these CC&Rs, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies
shall not preclude the exercise by it; at the same or different times, of any other rights or remedies for the same default or any other default by another party.

6. **NONDISCRIMINATION.**

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site, or any part thereof (except as permitted by these CC&Rs).

7. **COVENANTS TO RUN WITH THE LAND.**

Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in these CC&Rs. City and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site; provided, however, that on the termination of these CC&Rs said covenants, reservations and restrictions shall expire. All covenants without regard to technical classification or designation shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire term of these CC&Rs, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land. City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Site by the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes of protecting the public health, safety and welfare.

Owner hereby agrees to hold, sell, and convey the Site subject to the terms of these CC&Rs. Owner also grants to the City, as a third party beneficiary hereof, the right and power to enforce the terms of these CC&Rs against the Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

All covenants, if any, set forth herein concerning construction and development of any improvements on the Site, the insurance requirements set forth in Section 3 and any rights to satisfy liens shall cease and terminate upon issuance of a certificate of occupancy for the Project. The covenants against discrimination set forth herein shall remain in effect in perpetuity. All other covenants shall cease and terminate concurrent with the termination or expiration of the
DA. The term "Owner" as used herein shall initially mean and refer to IOP and shall thereafter mean and refer to the then owner of fee title to the affected portion of the Site from time to time. Upon transfer of fee title to a portion of the Site to a successor Owner, the prior Owner shall be released from any further liability under these CC&Rs first arising with respect to the transferred portion of the Site after the date of such transfer.

8. EMPLOYMENT OF LOCAL RESIDENTS.

Owner and its successors and assigns shall comply with all requirements for the employment outreach for local residents that are set forth in the DA, which requirements are deemed incorporated herein by this reference.

9. INDEMNIFICATION.

Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of any property taxes and assessments applicable to its interest in the Site. Owner, and its successors and assigns, shall indemnify, defend and hold harmless Agency and City from and against any loss, liability, claim or judgment arising from their breach of the foregoing covenant. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

Further, all terms of indemnity set forth in the DA, including but not limited to DA Section 3.11 and Article 6, are incorporated into the terms of these CC&Rs by this reference and deemed terms hereof.

10. ATTORNEY'S FEES.

In the event that a party to these CC&Rs brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in these CC&Rs, or otherwise arising out of the DA, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

11. AMENDMENTS.

These CC&Rs shall be amended only by a written instrument executed by both the Owner and City or their successors in title, and duly recorded in the real property records of the County of Los Angeles.

12. NOTICES.

Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:
To City: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Manager

With copy to: Aleshire & Wynder
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Fred Galante

To Owner: Irwindale Outlet Partners, LLC
202 South Lake Ave., Suite 300
Pasadena, CA 91101
Attn: ________________

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

13. SEVERABILITY/WAIVER/INTEGRATION/LENDER PROTECTION.

13.1 Severability. If any provision of these CC&Rs shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

13.2 Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate these CC&Rs nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

13.3 Owner's Breach Does Not Defeat Mortgage Lien. Owner's breach of any of the covenants or restrictions contained in these CC&Rs shall not defeat or render void or invalid the lien of any mortgage, deed of trust or other security interest encumbering the Site made in good faith and for value but, unless otherwise provided herein, the terms, covenants, conditions, restrictions, easements and reservations of these CC&Rs shall be binding and effective against the holder of such encumbrance whose interest is acquired by foreclosure, trustee's sale, deed or assignment in lieu thereof, or otherwise.

15. GOVERNING LAW.

These CC&Rs shall be governed by the laws of the State of California.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the Owner has executed these CC&Rs by its duly authorized representative on the date first written hereinabove.

“OWNER”

Developer: IRWINDALE OUTLET PARTNERS, LLC, a Delaware limited liability corporation

By: ________________________________
    Haixigo Lin, Majority Owner

By: ________________________________


APPROVED BY CITY OF IRWINDALE as third-party beneficiary to the CC&Rs:

City: CITY OF IRWINDALE, a municipal corporation

By: Mark A. Breceda, Mayor+

ATTEST:

By
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By
Fred Galante, City Attorney
STATE OF ____________________  
COUNTY OF ____________________

On ____________________, before me, ____________________, a Notary Public in and for said state, personally appeared ____________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

__________________________________________
Notary Public in and for said State

(SEAL)
EXHIBIT “A”

LEGAL DESCRIPTION OF SITE
EXHIBIT "A"

PARCEL 1:

Parcel 1, in the City of Irwindale, County of Los Angeles, State of California, as shown on Parcel Map No. 21968, filed in Book 237 Pages 26 and 27 of Parcel Maps, in the office of the County Recorder of said County.

PARCEL 2:

That area shown as "Remainder Parcel 50.30 Acres" on Parcel Map No. 21968, in the City of Irwindale, County of Los Angeles, State of California, as per Parcel Map filed in Book 237 Pages 26 and 27 of Parcel Maps, in the office of the County Recorder of said County.

APN: 8532-004-022, 8532-004-025, 8532-004-026
EXHIBIT "E"
SCHEDULE OF ESTIMATED CITY FEES
[TO BE ATTACHED]
EXHIBIT “F”

SIGN DESIGN DEPICTIONS

[TO BE ATTACHED]
Date: April 8, 2015

To: Honorable Mayor and Members of the City Council

From: Eva Carreon, Acting City Manager

Issue: APPROVAL OF PARCEL MAP NO. 72936 - BACA AVENUE

City Manager's Recommendation:

It is recommended that the City Council:

1) Approve Parcel Map No. 72936 and authorize the City Clerk, City Treasurer and the City Engineer to sign the map on behalf of the City.

2) Direct the City Clerk to submit Parcel Map No. 72936 to the Los Angeles County Registrar Recorder's office for recordation and return a recorded copy of this Parcel Map to the City Engineer's office.

Analysis:

1) On September 24, 2014, the City Council approved Tentative Parcel Map No. 72936 allowing the subdivision of one parcel into two parcels on property located at 4832 and 4838 Baca Avenue.

2) The owner has agreed to the final conditions of approval of this Parcel Map, as outlined in Resolution No. 2014-41-2701. The Planning Department and the Public Works Department final conditions of approval, which are required for the approval of this parcel map, have been met with the exception of all development related requirements and the Fire Department conditions of approval that will be constructed concurrently with the development of these parcels. As such, the two required bonds, faithful performance and labor and materials, will not be required for this final map approval process.

3) The City's contract surveyor has checked and approved this Parcel Map for mathematical accuracy, survey analysis, title information and compliance with the State Map Act.

Fiscal Impact: (Initial of CFO) None.

Legal Impact: _________ (Initial of Legal Counsel) None.

Contact Person/Prepared By: William K. Tam, Public Works Director/City Engineer
Phone (626) 430-2212.

Eva Carreon, Acting City Manager
AGENDA REPORT

Date: April 8, 2015

To: Honorable Mayor and Members of the City Council

From: Eva Carreon, Acting City Manager  
Fred Galante, City Attorney

Issue: EXCLUSIVE NEGOTIATING AGREEMENT FOR THE ACQUISITION  
AND DEVELOPMENT OF THE 4342 ALDERSON AVENUE/14808 LOS  
ANGELES STREET SITE

City Manager’s Recommendation:

That the City Council adopt the attached Resolution No. 2015-18-2747 authorizing the execution of an exclusive negotiation agreement (“ENA”) with Seventh Street Development, Inc. (“Developer”) for acquisition and development of a light industrial project at the 1.94-acre site located at 4342 Alderson Avenue and 14808 Los Angeles Street (“Site”). The Site is currently improved with an approximately 11,952-square foot building in which City archives are stored, which would need to be relocated as part of the redevelopment project. The proposed development is one light industrial/manufacturing building with ancillary office totaling approximately 50,000 square feet.

Background:

For the purpose of redevelopment and public benefit, the City of Irwindale (“City”) desires to sell the 1.94-acre site located at 4342 Alderson Avenue and 14808 Los Angeles Street. The Developer is concurrently pursuing the acquisition of two adjacent Successor Agency parcels that would be developed in conjunction with the Site and seeks to close and develop all 4 parcels for the most efficient reuse of the area.

The Irwindale Charter, at Section 607, provides that “The City Council may provide for a system for the sale, disposal or exchange of real and/or personal property which is surplus to the needs of the City.” Although the Site is needed for the governmental purpose of storing City archives and equipment, the development of the surrounding property would be hampered by continuing to use this Site for such storage. As such, the desire is to transfer the governmental purposes served by this site to another property, with proceeds of such sale available for the relocation of this use. It is therefore recommended that the City Council deem this site as surplus to allow for the sale and that the storage functions on the Site be relocated to another location in the City before the sale so as to best allow for economic development in the area of the Site.

The Site is currently improved with an +/- 11,952-square foot storage building which houses the City archives. The City’s real estate advisor Rosenow Spevacek Group (“RSG”) has received five (5) separate purchase offers for the Site. Based on a thorough review of all five offers, RSG considers Seventh Street Development’s offer the strongest of the five offers based on development feasibility and readiness, purchase price, the
number and wages of jobs expected to be generated by the proposed development, the level of specificity provided regarding development programming, and the development experience of the offeror. Seventh Street Development offered to purchase the Site for $4,988,252 and develop a light industrial development that includes one light industrial/manufacturing building with ancillary office totaling approximately 50,000 square feet. Three additional offerers proposed to develop light industrial/manufacturing projects; one offeror did not provide specificity regarding proposed use.

Seventh Street Development has extensive experience in industrial development, particularly in the development of smaller industrial buildings in infill markets that accommodate manufacturing and distribution operations for small companies. Seventh Street Development’s completed projects include the 85,000-square foot Speedway Business Park and the 655,000-square foot Huy Fong Foods headquarters and manufacturing facility both located in Irwindale.

The proposed ENA, prepared by the City’s attorney and RSG, is attached as Exhibit A for the City Council’s consideration. Following the 90-day exclusive negotiation period prescribed in the ENA, if Seventh Street Development and City representatives agree on a draft Purchase and Sale Agreement (“PSA”), the agreement will be presented to the City Council for approval prior to execution. This would be expected to necessitate a development agreement between the City and Developer for the entitlements for Site improvements.

**Analysis:**

The sale and development of the Site would be prescribed by the PSA and a City-Developer development agreement. The ENA is proposed to delineate the specific actions required by both parties as conditions precedent to consideration of the PSA. The PSA will be significantly more detailed as to the transaction and development program. The ENA essentially establishes the ground rules for proceeding towards a PSA, including the following:

- **Negotiation Period.** The ENA sets forth a number of dates for performance by both parties (see Exhibit A), including an overall termination date of 90 days from the date of approval, except as extended at the discretion of the City Manager for up to an additional 90 days only for the purpose of completing the Development Agreement for Site development entitlements.

- **Basis of Negotiation.** The ENA establishes that the intent is for the Developer to purchase the Site from the City at the proposed price of $4,988,252 and develop an attractive light industrial development project that is approved by the City.

- **Actions during the Negotiation Period.** The ENA establishes that actions during the 90-day ENA period include the Developer’s site conditions investigations, the finalization of the development program, and the drafting of the PSA and development agreement.

The potential sale and redevelopment of the Site would increase economic growth and investment in the City, providing direct and indirect public benefits including additional employment opportunities, additional tax revenues to help mitigate the structural deficit in the General Fund, and enable the City to have the means to maintain essential public services. Proceeds from the sale of the Site would accrue to the General Fund, and
would be used in part for future needs of the City, including relocation of the archives and equipment to a new permanent location elsewhere in the City.

**Fiscal Implications:**

The purpose of the ENA (see Exhibit A) is to facilitate the negotiation of the development program, scope of the design and development, development schedule, and entitlement milestones to ensure that the Developer will adhere to a specific timeline to complete the development project. Fiscal impacts will occur for the ongoing negotiations, financial analysis, legal consultation and real estate surveys, and reports needed to complete negotiations until the transfer of the Site. The ENA requires the Developer to provide a $10,000 deposit to the City to cover legal and related consultation costs. The Developer will bear the cost of surveys and reports as necessary as a part of their normal due diligence, and the financial analysis costs will be performed within the scope of the existing Agreement with RSG for consulting services.

**Fiscal Impact: [Initial of CFO]**

**Legal Impact: [Initial of Legal Counsel]**

**Contact Person:**
- Gustavo Romo, Community Development Director
  626-430-2206
gromo@ci.irwindale.ca.us
- Jim Simon, Economic & Redevelopment Consultant, RSG, Inc.
  714-316-2120
jsimon@webrsg.com
- Andrew Gee, Economic & Redevelopment Consultant, RSG, Inc.
  714-316-2106
agee@webrsg.com

**Approving Resolution with Exhibits:**

(A) Exclusive Negotiation Agreement

Eva Carreon, Acting City Manager

Attachments:
RESOLUTION NO. 2015-18-2747

A RESOLUTION OF THE CITY OF IRWINDALE AUTHORIZING THE EXECUTION OF AN EXCLUSIVE NEGOTIATION AGREEMENT WITH SEVENTH STREET DEVELOPMENT, INC. FOR ACQUISITION AND DEVELOPMENT OF THE 4342 ALDERSON AVENUE/14808 LOS ANGELES STREET SITE

WHEREAS, the City of Irwindale ("City") desires to sell the approximately 1.94-acre property located at 4342 Alderson Avenue and 14808 Los Angeles Street for the purpose of redevelopment and public benefit; and

WHEREAS, Irwindale Charter, at Section 607, provides that "The City Council may provide for a system for the sale, disposal or exchange of real and/or personal property which is surplus to the needs of the City"; and

WHEREAS, the City Council finds that the subject property, although needed for governmental purposes of storing City archives and equipment, the development of the surrounding property would be hampered by continuing to use this site for such storage and the storage functions on the subject property should be relocated to another location in the City so as to best allow for economic development in the area of the subject property;

WHEREAS, the City's real estate advisor Rosenow Spevacek Group ("RSG") received five (5) separate purchase offers for the Site; and

WHEREAS, RSG considers the strongest of the five offers to be Seventh Street Development, Inc.'s ("Developer") offer to purchase the Site for $4,988,252 and develop a light industrial development; and

WHEREAS, RSG and the City's attorney prepared an Exclusive Negotiation Agreement ("ENA") between the Developer and the City in order to commence a period of ninety (90) days during which actions required by the Developer and the City may be delineated as conditions precedent to consideration of a Purchase and Sale Agreement, which would be presented to the City Council for approval prior to execution; and

WHEREAS, the ENA establishes that the 90-day ENA period may be extended by the written mutual consent of the City and the Developer up to ninety (90) additional days only for the purpose of completing the Development Agreement for Site development entitlements, and the City Manager shall be authorized to grant such extension for and on behalf of the City in his sole and absolute discretion; and

WHEREAS, the ENA establishes that the intent is for the Developer to purchase the Site from the City at the proposed price of $4,988,252 and develop an attractive light industrial development project that is approved by the City; and

WHEREAS, the ENA requires the Developer to provide a $10,000 deposit to the City to cover the legal and other consultation costs that will be incurred during the negotiation period leading up to the potential transfer of the Site.
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Relocation of Governmental Use. Per Irwindale Charter Section 607, the City Council finds that although, the subject site is vital to serve the governmental use of storing City archives and equipment, such use should be relocated to a more suitable facility, with funds accruing and needed from the sale of the subject site, to another location in the City so as not to hamper the development and economic vitality of the area surrounding the subject site. As such, the Council finds the site located at 4342 Alderson Avenue and 14808 Los Angeles Street to be surplus and the sale per the process outlined above to be consistent with Irwindale Charter Section 607; provided that the governmental use being served by the subject site be transferred, with proceeds from the sale of the subject site, to another location in the City before final approval of the sale of the subject site.

Section 3. Approval of ENA. The City Council hereby approves the Exclusive Negotiation Agreement with Seventh Street Development, Inc. for the acquisition and development of the site located at 4342 Alderson Avenue and 14808 Los Angeles Street.

PASSED AND ADOPTED, this 8th day of April, 2015.

Mark Breceda, Mayor

ATTEST:

Laura M. Nieto, CMC
Deputy City Clerk
STATE OF CALIFORNIA  }  
COUNTY OF LOS ANGELES  } ss.  
CITY OF IRWINDALE  } 

I, Laura M. Nieto, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2015-18-2747 as duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 8th day of April 2015, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

__________________________________________
Laura M. Nieto, CMC
Deputy City Clerk
EXHIBIT "A"

Exclusive Negotiation Agreement
EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement"), dated as of this 8th day of April, 2015 ("Effective Date"), is made by and between the City of Irwindale, a California Municipal Corporation ("City") and Seventh Street Development, Inc., a California corporation ("Developer"). For and in consideration of the mutual covenants and promises set forth herein, the Parties agree as set forth below, with reference to the following facts:

RECITALS

A. For public benefit, the City desires to redevelop certain real property consisting of approximately 1.94 acres commonly known as 4342 Alderson Avenue and 14808 Los Angeles Street ("Site").

B. Developer desires to acquire the Site and develop it with a light industrial/manufacturing building totaling approximately 50,000 square feet, as further described in Exhibit 2 ("Project").

C. The development of the Project shall be subject to, and processed in accordance with the California Environmental Quality Act, at California Public Resources Code Section 21000 et seq. and regulations promulgated pursuant thereto ("CEQA"), which must be reviewed by the City for its potential environmental impacts ("CEQA Review") at such time.

D. The parties wish to enter into this Agreement to delineate the key deal points the parties wish to implement in their negotiations of a purchase and sale agreement and development agreement (collectively "Development Agreements") to accomplish the sale and future development of the Site by Developer consistent with the City’s Zoning Code and General Plan, as may be amended. Additionally, the parties wish to provide for the reimbursement of City by Developer for certain expenses to be incurred by City in undertaking the CEQA Review and preparation of the Development Agreement or similar entitlement (collectively, "Development Agreement") to undertake the Project.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Obligations of City. During the Exclusive Negotiating Period as described in Article 4 of this Agreement, the City shall not negotiate, discuss or otherwise communicate with any person or entity, other than Developer regarding Development Agreements or any other agreement for the development of the Project and/or the acquisition of the Site or any portion thereof. Throughout the Exclusive Negotiating Period, City staff shall be available to meet with Developer to discuss the Project, the Site Plan and architectural renderings, and any other issues pertinent to the preparation of Development Agreements pertaining to the development of the Project.

2. Obligations of Developer.

(a) Financial Information. Within the time periods set forth in the negotiated Development Agreements and provided financing will be obtained by Developer from an institutional
lender(s) approved by the City in its reasonable discretion for the acquisition of the Site and/or development of the Project, Developer shall provide City with a letter evidencing a commitment ("Commitment Letter") from such lender(s) (in form and substance reasonably acceptable to City), indicating that such lender(s), has a definitive interest in financing the acquisition, construction and/or development of the Project by Developer, as the case may be. The Commitment Letter shall also outline the financial terms pursuant to any proposed financing for the Project as well as specifically identify the sources of all equity financing ("Equity Commitment") to be used by Developer in the development of the Project. In the event the Project is to be financed exclusively by equity financing, the Equity Commitment shall evidence an amount sufficient to provide for the net acquisition costs of the Site and development of the Project by Developer, as the case may be. The Equity Commitment may be in the form of letters of intent from credit worthy investors.

(b) Site Plan and Architectural Renderings. The Development Agreements shall require Developer to provide a Site Plan and basic architectural renderings of the Project. The Site Plan and basic architectural renderings shall include a well-defined architectural concept for the Project showing vehicular circulation and access points, amounts and location of parking, location and size of all buildings (including height and perimeter dimensions) pedestrian circulation, landscaping and architectural character of the Project. Notwithstanding the foregoing, no such Site Plan or architectural renderings shall be deemed final until approved by the City, pursuant to the Development Agreements.

(c) Project. The Project to be developed per the terms of the Development Agreements is anticipated to include the components and layout as described in Exhibit 2.

(d) Site Conditions Approval. Developer shall complete its due-diligence inspection period investigations of and approve all Site conditions including, but not limited to, soils, geologic, environmental and other conditions that may impact its ability to construct the improvements identified in the Site Plan and architectural renderings.

(d) Purchase and Sale of Site. The Development Agreements shall provide that consideration for the Site is (1) Four Million Nine Hundred Eighty-Eight Thousand Two Hundred Fifty-Two and 00/100 Dollars ($4,988,252), and (2) the conveyance of a 91,180-square foot portion of the real property commonly known as 14910 Alderson Avenue that is currently occupied by a veterans’ hall, which the City and the Developer agree to be a reasonable estimate of the fair market value of the Site (collectively (1) and (2), “Purchase Price”). Notwithstanding the foregoing, in no event shall the City be required to sell the Site for less than the Purchase Price nor shall the Developer be obligated to buy the Site for an amount in excess of the Purchase Price.

3. Exclusive Negotiation Period/Effectiveness of Agreement. The “Exclusive Negotiating Period” shall commence as of the Effective Date and shall terminate on the date that is Ninety (90) days after the Effective Date, notwithstanding holidays unless the date that is 90 days after the Effective Date shall fall on a weekend or holiday, in which case the Exclusive Negotiating Period shall be extended to the next business day. The Exclusive Negotiating Period may be extended by the written mutual consent of the City and the Developer up to ninety (90) additional days only for the purpose of completing the Development Agreement for Site development entitlements. The Executive Director of City shall be authorized to grant such extension for and on behalf of City in his sole and absolute discretion. Any officer of Developer shall be authorized to grant such extension for and on behalf of
Developer. If the Parties have mutually consented to an extension of the term of this Agreement as provided hereinabove, then the Parties shall, within such extended term, continue to negotiate in good faith Development Agreements with respect to the proposed development of the Project.

4. Development Agreements.

(a) Negotiations of Development Agreements. The parties hereby acknowledge and agree that, during the term of this Agreement, as such term may be extended pursuant to Section 3 above, the Parties shall use their respective good faith efforts to negotiate and enter into Development Agreements which shall include (but not be limited to) agreement on and implementation of the following: (i) the design of the Project by Developer, (ii) the construction of the Project by Developer in accordance with final plans and specifications to be provided by Developer and approved by the City, pursuant to a detailed schedule of performance by Developer, (iii) the operation and management of the Project by Developer in a good and professional manner, and subject to the covenants required by law; (iv) the maintenance of landscaping, buildings and improvements in good condition and satisfactory state of repair so as to be attractive to local residents and to the community, (v) the operation of the Project by Developer in compliance with all equal opportunity standards established by Federal, State and local law, (vi) the right of City to inspect the Project from time to time to assure compliance with the foregoing provisions, (vii) certain provisions made by Developer to the City as required by the City with respect to concepts, schematics, the final plans and working drawings for the Project and participation in presentations with respect thereto, (viii) certain provisions required by individual contractors and/or subcontractors performing work on the Project with respect to performance, labor and materials payment bonds required to be obtained by such contractors or subcontractors assuring completion of the Project free of mechanics’ liens, (ix) that the Project shall be of the highest quality and standard comparable to the other developments submitted by Developer by way of its January 16, 2015 response to the OM, (x) the terms and conditions upon which Developer shall acquire the Site in fee simple, (xi) the terms and conditions upon which the City or the Developer may terminate the Development Agreements (e.g., the discovery of environmental issues/hazardous substances on the Site, unexpected development or construction costs, inability to acquire the Site or any portion thereof), and (xii) the establishment of minimum cost levels for the improvements of the Project.

(b) DOF Approval. Developer acknowledges that the duty of Developer to negotiate and enter into the Development Agreements shall be expressly contingent upon and subject to the approval by the DOF of the sale of the Site as contemplated in this Agreement. Successor Agency shall use commercially reasonable good faith efforts to obtain DOF approval.

(c) Failure of Developer to Negotiate in Good Faith. In the event Developer has not continued to negotiate diligently and in good faith, City shall give written notice thereof to Developer, who shall then have ten (10) business days to commence negotiating in good faith. Following the receipt of such notice and the failure of Developer to thereafter commence negotiating in good faith within such ten (10) business days, this Agreement may be terminated by City’s Executive Director.

(d) Failure of City to Negotiate in Good Faith. In the event City has not continued to negotiate diligently and in good faith Developer shall give written notice thereof to City which shall then have ten (10) business days to commence negotiating in good faith. Following the receipt of such notice
and the failure of City to thereafter commence negotiating in good faith within such ten (10) business days, this Agreement may be terminated by Developer.

(e) **Termination of this Agreement.** Subject to Section 5 below, upon termination of this Agreement at the expiration of the Exclusive Negotiating Period (or such extension thereof) and provided Development Agreements have not been executed by the City and Developer, no party shall have any further duty or obligation to any other party. If Development Agreements have been executed by the City and the Developer, the Development Agreements shall supersede this Agreement and thereafter govern the rights and obligations of the parties with respect to the development of the Project.

5. **Deposit.** Concurrent with the execution of this Agreement by City, Developer shall submit to City a good faith deposit ("Deposit") in the amount of Ten Thousand Dollars ($10,000) to cover the actual reasonable documented out-of-pocket third party legal and other expenses to negotiate and prepare the Development Agreements and conduct studies related to the project for the CEQA analysis ("Expenses"). The Deposit shall be in the form of cash. City shall deposit the Deposit in an interest-bearing account and such interest, when received by City, shall become part of the Deposit. If City and Developer subsequently determine that the Deposit is insufficient, which determination shall be based on the reasonable Expenses incurred by City hereunder, then upon the later to occur of (i) receipt of twenty (20) days written notice from City or (ii) execution of the Development Agreement by both parties, Developer shall deposit with Agency a lump sum deposit in the amount reasonably estimated by Agency and Developer to be sufficient to cover the excess (each a "Supplemental Deposit"). If Developer defaults in the payment of any Supplemental Deposit to City under this Section 5 beyond any applicable cure period, work by City or its consultants on the project shall be suspended until the applicable Supplemental Deposit is made to Agency. If the parties do not proceed with Development Agreements, the City shall refund any unused amount of the Deposit, or if applicable, Supplemental Deposit, within forty-five (45) days after termination of this Agreement; provided that if the failure to enter into Development Agreements is (i) due to City disapproving any potential use of the Site consistent with the description of the Project herein, or (ii) due to a City default under this Agreement, the entire Deposit, and if applicable, Supplemental Deposit, shall be refunded to Developer. City shall provide Developer with an accounting of City's use of the Deposit to pay the Expenses within a reasonable time after Developer's request therefor.

6. **Schedule of Performance.** It is the intention of City and Developer that the redevelopment of the Site be completed in a timely and expeditious manner. Accordingly, the Development Agreements shall provide in reasonable detail the tasks to be completed by the City and the Developer during the development process and the projected date of completion for each such task.

7. **Environmental.** Execution of Development Agreements by City shall be subject to compliance by the City with CEQA. Developer hereby agrees to provide all reasonable assistance to City necessary for City to carry out its obligations under CEQA but shall be under no obligation to incur any costs or expenses outside the scope of Developer's proposed Project under this Agreement. Any and all costs outside the scope of the obligations under this Agreement will be identified as costs to each party under executed Development Agreements between City and Developer.
8. **Governing Law.** This Agreement and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California. Hence, for any action by either party shall be in Los Angeles County.

9. **No Other Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings between the parties. There are no agreements or understandings between the parties and no representations by either party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. Notwithstanding anything provided herein to the contrary, whether expressed or implied, the City and the Developer shall have no obligation to enter into Development Agreements with the other and neither the City or the Developer (nor its officers, members, staff or agents) have made any promises to the other than to exclusively negotiate Development Agreements for the Site in good faith during the Exclusive Negotiating Period, and no statements of City or Developer (or its officers, members, staff or agents) as to future obligations shall be binding upon either party unless and until Development Agreements have been approved and executed by the City and the Developer.

10. **Assignment.** This Agreement shall not be assigned by any party hereto to any person or entity without the express written consent of City; provided, however, that Developer may assign the Agreement to a California business entity that is formed for the purpose of carrying out the Project and for which Developer is a member and the manager thereof. Any assignment does not release Developer from any of its obligation hereunder.

11. **Notices.** Any notice which is required or which may be given hereunder may be delivered or mailed to the party to be notified, as follows:

   **If to Developer:** Seventh Street Development, Inc.
   3780 Kilroy Airport Way, Suite 520
   Long Beach, California 90806
   Attention: Craig Furniss

   With a copy to:

   Davis Wright Tremaine, LLP
   1300 SW 5th Ave., Suite 2400
   Portland, OR 97201-5630
   Attention: Stephen Ledoux, Esq.

   **If to City:**

   City of Irwindale
   5050 N. Irwindale Ave.
   Irwindale, CA 91706
   Attention: City Manager

   With a copy to City’s Counsel:

   Aleshire & Wynder, LLP
   18881 Von Karman Avenue, Suite 1700
   Irvine, CA 92612
Attention: Fred Galante, Esq.

12. Public Hearing. Any Development Agreements that may be negotiated is subject to consideration and discretion at a public hearing or hearings by City. Nothing in this Agreement shall commit or be construed as committing City to approve any Development Agreements.

13. Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

14. Attorney's Fees. In the event that either party hereto brings action or proceeding against the other party to enforce or interpret any of the conditions or provisions of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses and court costs associated with such action or proceeding.

15. Effect of Agreement. Notwithstanding any other provision of this Agreement to the contrary, the parties expressly acknowledge and agree as follows: (a) except as expressly required under Section 1(d), no matter described in this Agreement as a purported commitment or obligation of City or Developer with respect to the development of the Project shall have any effect unless and only to the extent such matters are expressly set forth in Development Agreements or other subsequent written agreement duly authorized and approved by City; (b) City and Developer shall promptly commence the good faith negotiation of Development Agreements upon execution of this Agreement; and (c) upon the execution of Development Agreements by the Parties, this Agreement shall be null and void and of no effect and shall be superseded by the terms and conditions of the Development Agreements.

Notwithstanding any other provision of this Agreement to the contrary, Developer acknowledges and expressly agrees as follows: (a) that this Agreement does not obligate City in any way to approve, in whole or in part, any of the matters described in this Agreement, including, (without limitation) matters pertaining to land use entitlements or approvals, permits, waivers or reduction of fees, development or financing of the Site or any other matters to be acted on by City, as applicable; (b) that all such matters shall be considered and processed by City in accordance with all otherwise applicable City requirements and procedures; and (c) that City reserves all rights to approve, disapprove or approve with conditions all such matters in their sole discretion. Except as expressly provided herein to the contrary as to any deposit made hereunder, Developer acknowledges that all expenditures made by it are not recoverable by Developer in the event that a Development Agreement is not approved. Developer further acknowledges and agrees that, during the term of this Agreement, the Parties shall conduct such economic analyses and re-use studies as may be necessary to comply with the requirements of Section 33433 of the Redevelopment Law, if applicable. The parties acknowledge that it may be necessary or expedient for Developer, in seeking Project entitlements or approvals, to submit applications to other governmental agencies with jurisdiction, including, without limitation, the San Gabriel Basin Water Quality Authority, the County Department of Environmental Health or otherwise, and Successor Agency agrees to execute any such applications as landowner.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“City”

CITY OF IRWINDALE

ATTEST:

By: __________________________
   City Secretary

By: __________________________
   Executive Director

Approved as to form:

ALESHERE & WYNDER

By: __________________________
   City Counsel

“Developer”

Seventh Street Development, Inc., a California Corporation

By: Craig Furniss

Its: President
EXHIBIT 1

DESCRIPTION OF SITE

The Site is that certain real property located in the City of Irwindale, County of Los Angeles, State of California, and is described as follows:

PARCEL 1: APN: 8437-019-901

LOTS 11 AND 12 OF EDWIN ALDERSON'S ACRE LOT TRACT, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAPRecorded IN BOOK 13, PAGE 28 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2: APN: 8437-019-902

LOT 10 OF EDWIN ALDERSON'S ACRE LOT TRACT, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAPRecorded IN BOOK 13, PAGE 28 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
EXHIBIT 2

DESCRIPTION OF THE PROJECT

The parties desire the Project to be consistent with the following description:

The Project will be an approximately 50,000-square foot light industrial/manufacturing building with ancillary office for occupancy by a light industrial or manufacturing user. The Project will include the required parking, landscaping and improvements.

Final specifications and footages will be determined during the term of the Exclusive Negotiation Period and will be specified in the Development Agreements.
## Accounts Payable

### Checks by Date - Summary By Check Number

**City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency**

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Accounts Payable

Checks by Date - Summary By Check Number

City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency

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Report Total: 393.49
AGENDA REPORT

Date: April 8, 2015

To: Honorable Chairman and Members of the Successor Agency to the Irwindale Community Redevelopment Agency

From: Eva Carreon, Acting Executive Director
Fred Galante, Successor Agency Attorney

Issue: EXCLUSIVE NEGOTIATING AGREEMENT FOR THE ACQUISITION AND DEVELOPMENT OF THE 242 LIVE OAK AVENUE SITE

**Executive Director's Recommendation:**

That the Successor Agency to the Irwindale Community Redevelopment Agency ("Successor Agency") adopt the attached Resolution No. SA 2015-20-2749 authorizing the execution of an exclusive negotiation agreement ("ENA") with Panattoni Development Company ("Developer" or "Panattoni") for acquisition and development of a light industrial project at the 3.36-acre site located at 242 Live Oak Avenue ("Site"), pursuant to the Long-Range Property Management Plan ("LRPMP"). The Site is currently improved with a monopine cell phone tower leased by SBA and vacant buildings built between 1954 and 1955 that total approximately 16,972 square feet. The proposed development includes a 46,400 to 61,000 square-foot light industrial warehouse with ancillary offices.

**Background:**

Pursuant to the dissolution of redevelopment agencies per Assembly Bill ("AB") ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), and subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012) (altogether, "Dissolution Act"), the City of Irwindale ("City") adopted Resolution No. 2012-08-2547 on January 11, 2012, electing to serve as Successor Agency to the former Irwindale Community Redevelopment Agency ("Redevelopment Agency") during the wind-down of the Redevelopment Agency’s activities.

At the time of redevelopment dissolution, the Site was one of 25 properties owned by the Redevelopment Agency, all of which were included in the Successor Agency’s LRPMP. The LRPMP was prepared pursuant to the Dissolution Act and described the proposed plans for disposition of the properties owned by the Redevelopment Agency. The LRPMP, approved by the State Department of Finance ("DOF") on August 8, indicated that the Successor Agency would sell the Site.

On December 10, 2014, the Successor Agency’s real estate advisor/broker Rosenow Spevacek Group ("RSG") began marketing properties available for sale as outlined in the LRPMP. RSG informed all parties who communicated interest in the sale of the properties that "best and final offers" were to be submitted by February 9, 2015. RSG received five (5) separate purchase offers for the Site. Based on a thorough review of all
development feasibility and readiness, purchase price, the number and wages of jobs expected to be generated by the proposed development, the level of specificity provided regarding development programming, and the development experience of the offeror. These development criteria were outlined in the marketing material provided to interested parties. Panattoni offered to purchase the Site for $2.5 million and develop a light industrial development that includes either one 46,400 square-foot warehouse with ancillary office or two warehouses with ancillary office totaling 61,000 square feet. The other developments proposed by offerors included light industrial/manufacturing warehouses, a building materials sales yard, and a heavy equipment storage yard. One offeror did not provide specificity regarding proposed uses.

Panattoni is one of the largest private industrial developers in the world, having developed industrial, office, and retail projects in more than 240 markets and completed over 200 million square feet of development throughout the United States, Canada and Europe. Currently, Panattoni is developing an industrial project located at 16203 Arrow Highway in the City. Exhibit B shows two conceptual plans provided by the Developer, one of which will be refined and adopted by the Developer and City under the ENA.

The proposed ENA, prepared by the Successor Agency’s attorney and RSG, is attached as Exhibit A for the Successor Agency’s consideration. Following the 90-day exclusive negotiation period prescribed in the ENA, if Panattoni and Successor Agency representatives agree on a draft Purchase and Sale Agreement (“PSA”), the agreement will be presented to the Successor Agency for approval prior to execution. This would be expected to necessitate a development agreement between the Successor Agency and Developer for the entitlements for Site improvements.

**Analysis:**

The sale and development of the Site would be prescribed by the PSA and a Successor Agency-Developer development agreement. The ENA is proposed to delineate the specific actions required by both parties as conditions precedent to consideration of the PSA. The PSA will be significantly more detailed as to the transaction and development program. The ENA essentially establishes the ground rules for proceeding towards a PSA, including the following:

- **Negotiation Period.** The ENA sets forth a number of dates for performance by both parties (see Exhibit A), including an overall termination date of 90 days from the date of approval, except as extended at the discretion of the Successor Agency’s Executive Director for up to an additional 90 days only for the purpose of completing the Development Agreement for Site development entitlements.

- **Basis of Negotiation.** The ENA establishes that the intent is for the Developer to purchase the Site from the Successor Agency at the proposed price of $2,500,000 and develop an attractive light industrial development project that is approved by the City and the Successor Agency.

- **Actions during the Negotiation Period.** The ENA establishes that actions during the 90-day ENA period include the Developer’s site conditions investigations, the finalization of the development program, and the drafting of the PSA and development agreement.
Fiscal Implications:

The purpose of the ENA (see Exhibit A) is to facilitate the negotiation of the development program, scope of the design and development, development schedule, and entitlement milestones to ensure that the Developer will adhere to a specific timeline to complete the development project. Fiscal impacts will occur for the ongoing negotiations, financial analysis, legal consultation and real estate surveys, and reports needed to complete negotiations until the transfer of the Site. The ENA requires the Developer to provide a $10,000 deposit to the Successor Agency to cover legal and related consultation costs. The Developer will bear the cost of surveys and reports as necessary as a part of their normal due diligence, and the financial analysis costs will be performed within the scope of the existing Agreement with RSG for consulting and real estate broker services.

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Fiscal Impact: (Initial of CFO)
Legal Impact: (Initial of Legal Counsel)

Contact Person:
- Gustavo Romo, Community Development Director
  626-430-2206
gromo@ci.irwindale.ca.us
- Jim Simon, Economic & Redevelopment Consultant, RSG, Inc.
  714-316-2120
jsimon@webrsg.com
- Andrew Gee, Economic & Redevelopment Consultant, RSG, Inc.
  714-316-2106
agee@webrsg.com

Eva Carreon, Acting Executive Director

Attachments:

APPROVING RESOLUTION WITH EXHIBITS:
  (A) Exclusive Negotiation Agreement
  (B) Panattoni's Conceptual Site Plans
SUCCESSOR AGENCY RESOLUTION NO. SA 2015-20-2749

A RESOLUTION OF THE CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY AUTHORIZING THE EXECUTION OF AN EXCLUSIVE NEGOTIATION AGREEMENT WITH PANATTONI DEVELOPMENT COMPANY, INC. FOR ACQUISITION AND DEVELOPMENT OF THE 242 LIVE OAK AVENUE SITE

WHEREAS, pursuant to the dissolution of redevelopment agencies per Assembly Bill ("AB") ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), and subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012) (altogether, "Dissolution Act"), the City of Irwindale ("City") adopted Resolution No. 2012-08-2547 on January 11, 2012, electing to serve as Successor Agency to the Irwindale Community Redevelopment Agency ("Successor Agency"); and

WHEREAS, the property located at 242 Live Oak Avenue ("Site") was included in the Successor Agency’s Long-Range Property Management Plan ("LRPMP"), which was prepared pursuant to the Dissolution Act and described the proposed plans for disposition of all 25 properties owned by the Irwindale Community Redevelopment Agency at the time of redevelopment dissolution; and

WHEREAS, the LRPMP indicated that the Successor Agency would sell the Site; and

WHEREAS, on August 8, 2014, the City received notification from the California Department of Finance ("DOF") approving the Successor Agency’s LRPMP; and

WHEREAS, on December 10, 2014, the Successor Agency’s real estate advisor/broker Rosenow Spevacek Group ("RSG") began marketing properties available for sale as outlined in the LRPMP and informed all parties who communicated interest in the sale of the properties that "best and final offers" were to be submitted by February 9, 2015; and

WHEREAS, RSG received five (5) separate purchase offers for the Site; and

WHEREAS, RSG considers the strongest of the five offers to be Panattoni Development Company, Inc.’s ("Developer") offer to purchase the Site for $2,500,000 and develop a light industrial development; and

WHEREAS, RSG and the Successor Agency’s attorney prepared an Exclusive Negotiation Agreement ("ENA") between the Developer and the Successor Agency in order to commence a period of ninety (90) days during which actions required by the Developer and the Successor Agency may be delineated as conditions precedent to consideration of a Purchase and Sale Agreement, which would be presented to the Successor Agency for approval prior to execution; and

WHEREAS, the ENA establishes that the 90-day ENA period may be extended by the written mutual consent of the Successor Agency and the Developer up to ninety (90) additional days only for the purpose of completing the Development Agreement for Site development entitlements, and the Executive Director of Successor Agency shall be authorized to grant such extension for and on behalf of Successor Agency in his sole and absolute discretion; and
WHEREAS, the ENA establishes that the intent is for the Developer to purchase the Site from the Successor Agency at the proposed price of $2,500,000 and develop an attractive light industrial development project that is approved by the City and Successor Agency; and

WHEREAS, the ENA requires the Developer to provide a $10,000 deposit to the Successor Agency to cover the legal and other consultation costs that will be incurred during the negotiation period leading up to the potential transfer of the Site.

NOW, THEREFORE, THE SUCCESSOR AGENCY TO THE IRWIN DALE COMMUNITY REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Approval of ENA. The Successor Agency hereby approves the Exclusive Negotiation Agreement with Panattoni Development Company, Inc. for the acquisition and development of the site located at 242 Live Oak Avenue, authorizes the Executive Director to execute same, in a form approved by Successor Agency Counsel.

PASSED AND ADOPTED at a regular meeting of the Successor Agency to the Irwindale Community Redevelopment Agency, on the 8th day of April, 2015.

Mark Breceda, Mayor

ATTEST:

Laura Nieto, CMC
Deputy City Clerk/Successor Agency Secretary
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF IRWINDALE

I, Laura M. Nieto, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. SA 2015-20-2749 as duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 8th of April 2015, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

Laura M. Nieto, CMC
Deputy City Clerk
EXHIBIT “A”

Exclusive Negotiation Agreement
EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement"), dated as of this 8th day of April, 2015 ("Effective Date"), is made by and between the City of Irwindale, as Successor to the Irwindale Community Redevelopment Agency ("Successor Agency") and PDC LA/SD LLC, a Delaware limited liability company ("Developer"). For and in consideration of the mutual covenants and promises set forth herein, the Parties agree as set forth below, with reference to the following facts:

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law, the former Irwindale Community Redevelopment Agency ("ICRA") owned approximately 3.36 acres commonly known as 242 Live Oak Avenue in the City of Irwindale ("Site"). The Site, as described in Exhibit 1, was acquired pursuant to and in furtherance of the Redevelopment Plan for the former Industrial Development Project Area.

B. In December 2011, a California State Supreme Court ruling on the constitutional validity of two 2011 legislative budget trailer bills, Assembly Bill ("AB") X1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), resulted in the outright elimination of all 425 redevelopment agencies in the State of California. The dissolution procedures under ABX1 26 include a process for the disposition and/or transfer of assets, including property holdings of former redevelopment agencies. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, made significant changes to the provisions of ABX1 26, including the process for asset management/disposition/transfers.

C. Under AB 1484, the Site is subject to the disposition process requiring the State Department of Finance ("DOF") to approve a Long-Range Property Management Plan ("PMP") prepared by the Successor Agency describing the proposed sale of properties owned by the Successor Agency, including the Site. The DOF has approved the Successor Agency’s PMP, which compels the Successor Agency to dispose of the Site for development consistent with the Redevelopment Plan for the former Industrial Development Project Area.

D. To effectuate the Redevelopment Plan for redevelopment of the former City Industrial Development Project Area by providing for the future development of the Site, the Successor Agency on December 10, 2014, issued an Offering Memorandum ("OM") subject soliciting developer interest and purchase offers for the Site. Developer, by way of its February 9, 2015 response to the OM, proposed to develop the site with an industrial warehouse with ancillary office of approximately 46,400 to 61,000 square feet, as further described in Exhibit 2 and depicted in the two Conceptual Site Plans at Exhibit 2-1 attached thereto and incorporated herein, as such proposed development may be modified by the parties ("Project").

E. The Successor Agency wishes to plan for the disposition of the Site, in a manner that furthers the original redevelopment goals of the ICRA and in accordance with the approved PMP.
F. The development of the Project shall be subject to, and processed in accordance with the California Environmental Quality Act, at California Public Resources Code Section 21000 et seq. and regulations promulgated pursuant thereto (“CEQA”), which must be reviewed by the City of Irwindale (“City”) for its potential environmental impacts (“CEQA Review”) at such time.

G. The parties wish to enter into this Agreement to delineate the key deal points the parties wish to implement in their negotiations of a purchase and sale agreement and development agreement (collectively “Development Agreements”) to accomplish the sale and future development of the Site by Developer consistent with the City’s Zoning Code and General Plan, as may be amended. Additionally, the parties wish to provide for the reimbursement of Successor Agency by Developer for certain expenses to be incurred by Successor Agency in undertaking the CEQA Review and preparation of the Development Agreement or similar entitlement (collectively, “Development Agreement”) to undertake the Project.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Obligations of Successor Agency. During the Exclusive Negotiating Period as described in Article 4 of this Agreement, Successor Agency shall not negotiate, discuss or otherwise communicate with any person or entity, other than Developer regarding Development Agreements or any other agreement for the development of the Project and/or the acquisition of the Site or any portion thereof. Throughout the Exclusive Negotiating Period, Successor Agency staff shall be available to meet with Developer to discuss the Project, the Site Plan and architectural renderings, and any other issues pertinent to the preparation of Development Agreements pertaining to the development of the Project.

2. Obligations of Developer.

(a) Financial Information. Within the time periods set forth in the negotiated Development Agreements and provided financing will be obtained by Developer from an institutional lender(s) approved by the Successor Agency in its reasonable discretion for the acquisition of the Site and/or development of the Project, Developer shall provide Successor Agency with a letter evidencing a commitment (“Commitment Letter”) from such lender(s) (in form and substance reasonably acceptable to Successor Agency), indicating that such lender(s), has a definitive interest in financing the acquisition, construction and/or development of the Project by Developer, as the case may be. The Commitment Letter shall also outline the financial terms pursuant to any proposed financing for the Project as well as specifically identify the sources of all equity financing (“Equity Commitment”) to be used by Developer in the development of the Project. In the event the Project is to be financed exclusively by equity financing, the Equity Commitment shall evidence an amount sufficient to provide for the net acquisition costs of the Site and development of the Project by Developer, as the case may be. The Equity Commitment may be in the form of letters of intent from credit worthy investors. To the extent Developer wants such Commitment Letter or Equity Commitment or financial terms or financial statements to remain confidential, they shall be supplied to and maintained by the Successor Agency in confidence to the extent permitted by law. Subject to its reserved rights set
forth the in Section 2 herein, the Developer acknowledges that it may be requested to make certain confidential financial disclosures to the Successor Agency, its staff or legal counsel, as part of the financial due diligence investigations of the Successor Agency relating to the potential development of the Project. The parties recognize that such financial disclosures may contain sensitive information relating to other business transactions of the Developer, that the disclosure of such information to third parties could impose commercially unreasonable and/or anti-competitive burdens on the Developer. Accordingly, the Successor Agency agrees to maintain the confidentiality of any business records described in Government Code Section 6254.15, as may be provided by the Developer to the Successor Agency or its consultants, as permitted by law. The Successor Agency shall advise the Developer of any Public Records Act requests for such business records, and the proposed response of the Successor Agency thereto, a reasonable time prior to the Successor Agency’s delivery of such response and, if the Successor Agency proposes to disclose any such business records, the Successor Agency shall first agree to confer with the Developer to consider any objections that the Developer may have to such disclosure.

(b) **Site Plan and Architectural Renderings.** The Development Agreements shall require Developer to provide a Site Plan and basic architectural renderings of the Project. The Site Plan and basic architectural renderings shall include a well-defined architectural concept for the Project showing vehicular circulation and access points, amounts and location of parking, location and size of all buildings (including height and perimeter dimensions) pedestrian circulation, landscaping and architectural character of the Project. Notwithstanding the foregoing, no such Site Plan or architectural renderings shall be deemed final until approved by the Successor Agency and City, pursuant to the Development Agreements.

(c) **Project.** The Project to be developed per the terms of the Development Agreements is anticipated to include the components and layout as described in Exhibit 2 and depicted in one of the two Conceptual Site Plans at Exhibit 2-1.

(d) **Site Conditions Approval.** Developer shall complete its due-diligence inspection period investigations of and approve all Site conditions including, but not limited to, soils, geologic, environmental and other conditions that may impact its ability to construct the improvements identified in the Site Plan and architectural renderings. Developer acknowledges that portions of the Site are subject to agreements to be provided by the Successor Agency during Developer’s due-diligence inspection period, including but not limited to a Lease between the ICRA and Nextel of California, which was assigned to SBA for the use of a portion of the site for a cell phone tower.

(e) **Purchase and Sale of Site.** The Development Agreements shall provide for the sale of the Site for Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000) (“Purchase Price”), which the Successor Agency and the Developer agree to be a reasonable estimate of the fair market value of the Site. Notwithstanding the foregoing, in no event shall the Successor Agency be required to sell the Site for less than the Purchase Price nor shall the Developer be obligated to buy the Site for an amount in excess of the Purchase Price.

3. **Exclusive Negotiation Period/Effectiveness of Agreement.** The “Exclusive Negotiating Period” shall commence as of the Effective Date and shall terminate on the date that is Ninety (90) days after the Effective Date, notwithstanding holidays unless the date that is 90
days after the Effective Date shall fall on a weekend or holiday, in which case the Exclusive Negotiating Period shall be extended to the next business day. The Exclusive Negotiating Period may be extended by the written mutual consent of the Successor Agency and the Developer up to ninety (90) additional days only for the purpose of completing the Development Agreement for Site development entitlements. The Executive Director of Successor Agency shall be authorized to grant such extension for and on behalf of Successor Agency in his sole and absolute discretion. Any officer of Developer shall be authorized to grant such extension for and on behalf of Developer. If the Parties have mutually consented to an extension of the term of this Agreement as provided hereinabove, then the Parties shall, within such extended term, continue to negotiate in good faith Development Agreements with respect to the proposed development of the Project.

4. Development Agreements.

(a) Negotiations of Development Agreements. The parties hereby acknowledge and agree that, during the term of this Agreement, (as such term may be extended pursuant to Section 3 above), the Parties shall use their respective good faith efforts to negotiate and enter into Development Agreements which shall include (but not be limited to) agreement on and implementation of the following: (i) the design of the Project by Developer, (ii) the construction of the Project by Developer in accordance with final plans and specifications to be provided by Developer and approved by the Successor Agency and City, pursuant to a detailed schedule of performance by Developer, (iii) the operation and management of the Project by Developer in a good and professional manner, and subject to the covenants required by law; (iv) the maintenance of landscaping, buildings and improvements in good condition and satisfactory state of repair so as to be attractive to local residents and to the community, (v) the operation of the Project by Developer in compliance with all equal opportunity standards established by Federal, State and local law, (vi) the right of Successor Agency or City to inspect the Project from time to time to assure compliance with the foregoing provisions, (vii) certain provisions made by Developer to the Successor Agency or City as required by the Successor Agency or City with respect to concepts, schematics, the final plans and working drawings for the Project and participation in presentations with respect thereto, (viii) certain provisions required by individual contractors and/or subcontractors performing work on the Project with respect to performance, labor and materials payment bonds required to be obtained by such contractors or subcontractors assuring completion of the Project free of mechanics’ liens, (ix) that the Project shall be of the highest quality and standard, (x) the terms and conditions upon which Developer shall acquire the Site, (xi) the terms and conditions upon which the Successor Agency or the Developer may terminate the Development Agreements (e.g., the discovery of environmental issues/hazardous substances on the Site, unexpected development or construction costs, inability to acquire the Site or any portion thereof), and (xii) the establishment of 1) minimum cost levels for the improvements and 2) guarantees for sales tax generation, if applicable, of the Project.

(b) DOF Approval. Developer acknowledges that the duty of Developer to negotiate and enter into the Development Agreements shall be expressly contingent upon and subject to the approval by the DOF of the sale of the Site as contemplated in this Agreement.

(c) Failure of Developer to Negotiate in Good Faith. In the event Developer has not continued to negotiate diligently and in good faith, Successor Agency shall give written
notice thereof to Developer, who shall then have ten (10) business days to commence negotiating in good faith. Following the receipt of such notice and the failure of Developer to thereafter commence negotiating in good faith within such ten (10) business days, this Agreement may be terminated by Successor Agency’s Executive Director.

(d) Failure of Successor Agency to Negotiate in Good Faith. In the event Successor Agency has not continued to negotiate diligently and in good faith Developer shall give written notice thereof to Successor Agency which shall then have ten (10) business days to commence negotiating in good faith. Following the receipt of such notice and the failure of Successor Agency to thereafter commence negotiating in good faith within such ten (10) business days, this Agreement may be terminated by Developer.

(e) Termination of this Agreement. Subject to Section (e) above, upon termination of this Agreement at the expiration of the Exclusive Negotiating Period (or such extension thereof) and provided Development Agreements have not been executed by the Successor Agency and Developer, no party shall have any further duty or obligation to any other party. If Development Agreements have been executed by the Successor Agency and the Developer, the Development Agreements shall supersede this Agreement and thereafter govern the rights and obligations of the parties with respect to the development of the Project.

5. Deposit. Concurrent with the execution of this Agreement by Successor Agency, Developer shall submit to Successor Agency a good faith deposit (“Deposit”) in the amount of Ten Thousand Dollars ($10,000) to cover the actual legal and other expenses to negotiate and prepare the Development Agreements and conduct studies related to the project for the CEQA analysis (“Expenses”). The Deposit shall be in the form of cash. Successor Agency shall deposit the Deposit in an interest-bearing account and such interest, when received by Successor Agency, shall become part of the Deposit. If Successor Agency and Developer subsequently determine that the Deposit is insufficient, which determination shall be based on the reasonable Expenses incurred by Successor Agency hereunder, then upon receipt of twenty (20) days written notice from Successor Agency, Developer shall deposit with Agency a lump sum deposit in the amount reasonably estimated by Agency and Developer to be sufficient to cover the excess (each a “Supplemental Deposit”). If Developer defaults in the payment of any Supplemental Deposit to Successor Agency under this Section 5 beyond any applicable cure period, work by Successor Agency or its consultants on the project shall be suspended until the applicable Supplemental Deposit is made to Agency. If the parties do not proceed with Development Agreements, the Successor Agency shall refund any unused amount of the Deposit, or if applicable, Supplemental Deposit, within forty-five (45) days after termination of this Agreement; provided that if the failure to enter into Development Agreements is (i) due to Successor Agency disapproving any potential use of the Site consistent with the description of the Project herein, or (ii) due to an Successor Agency default under this Agreement, the entire Deposit, and if applicable, Supplemental Deposit, shall be refunded to Developer. Successor Agency shall provide Developer with an accounting of Successor Agency’s use of the Deposit to pay the Expenses within a reasonable time after Developer’s request therefor. If the Development Agreements are timely signed and submitted by Developer and are thereafter approved, then any remaining balance of the Deposit and the Supplemental Deposit, if applicable, shall be applied toward any deposits required under the Development Agreements.
6. **Schedule of Performance.** It is the intention of Successor Agency and Developer that the redevelopment of the Site be completed in a timely and an expeditious manner. Accordingly, the Development Agreements shall provide in reasonable detail the tasks to be completed by the Successor Agency and the Developer during the development process and the projected date of completion for each such task.

7. **Environmental.** Execution of Development Agreements by Successor Agency shall be subject to compliance by the Successor Agency and City with CEQA. Developer hereby agrees to provide all reasonable assistance to Successor Agency and City necessary for Successor Agency and City to carry out its obligations under CEQA but shall be under no obligation to incur any costs or expenses outside the scope of Developer’s proposed Project under this Agreement. Any and all costs outside the scope of the obligations under this Agreement will be identified as costs to each party under executed Development Agreements between Successor Agency and Developer.

8. **Governing Law.** This Agreement and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California. Hence, for any action by either party shall be in Los Angeles County.

9. **No Other Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings between the parties. There are no agreements or understandings between the parties and no representations by either party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. Notwithstanding anything provided herein to the contrary, whether expressed or implied, the Successor Agency and the Developer shall have no obligation to enter into Development Agreements with the other and neither the Successor Agency or the Developer (nor its officers, members, staff or agents) have made any promises to the other than to exclusively negotiate Development Agreements for the Site in good faith during the Exclusive Negotiating Period, and no statements of Successor Agency or Developer (or its officers, members, staff or agents) as to future obligations shall be binding upon either party unless and until Development Agreements have been approved and executed by the Successor Agency and the Developer.

10. **Assignment.** This Agreement shall not be assigned by any party hereto to any person or entity without the express written consent of Successor Agency; provided, however, that Developer may assign the Agreement without Successor Agency’s consent as follows: (a) to a California qualified business entity that is formed for the purpose of carrying out the Project and for which Developer is a member or the manager or affiliated with; or (b) for the sale or transfer of 50% or more of ownership or control interest between members of the same family; or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist of solely of members of the trustor’s family; or transfers to a corporation or partnership or other legal entity in which the members of the transferor’s family have a controlling majority interest of 51% or more; or (c) for the sale or transfer to an end user and/or to a Tenant so long as Developer or its affiliate remains the developer of the Property. Any assignment does not release Developer from any of its obligation hereunder.
11. **Notices.** Any notice which is required or which may be given hereunder may be delivered or mailed to the party to be notified, as follows:

If to Developer:  
PDC LA/SD LLC  
c/o Panattoni Development Company, Inc.  
20411 SW Birch Street, Suite 200  
Newport Beach, California 92660  
Attention: Mark D. Payne

With a copy to Developer’s Counsel:  
CVM Law Group, LLP  
20411 SW Birch Street, Suite 200  
Newport Beach, California 92660  
Attention: Fredric Albert, Esq.

If to Successor Agency or City:  
City of Irwindale  
5050 N. Irwindale Ave.  
Irwindale, California 91706  
Attention: City Manager

With a copy to Successor Agency’s and City’s Counsel:  
Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
Attention: Fred Galante, Esq.

12. **Public Hearing.** Any Development Agreements that may be negotiated is subject to consideration and discretion at a public hearing or hearings by Successor Agency or City. Nothing in this Agreement shall commit or be construed as committing Successor Agency to approve any Development Agreements.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

14. **Attorney’s Fees.** In the event that either party hereto brings action or proceeding against the other party to enforce or interpret any of the conditions or provisions of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney’s fees and expenses and court costs associated with such action or proceeding.

15. **Effect of Agreement.** Notwithstanding any other provision of this Agreement to the contrary, the parties expressly acknowledge and agree as follows: (a) except as expressly required under Section 1(d), no matter described in this Agreement as a purported commitment or obligation of Successor Agency or Developer with respect to the development of the Project shall have any effect unless and only to the extent such matters are expressly set forth in
Development Agreements or other subsequent written agreement duly authorized and approved by Successor Agency; (b) Successor Agency and Developer shall promptly commence the good faith negotiation of Development Agreements upon execution of this Agreement; and (c) upon the execution of Development Agreements by the Parties, this Agreement shall be null and void and of no effect and shall be superseded by the terms and conditions of the Development Agreements.

Notwithstanding any other provision of this Agreement to the contrary, Developer acknowledges and expressly agrees as follows: (a) that this Agreement does not obligate Successor Agency in any way to approve, in whole or in part, any of the matters described in this Agreement, including, (without limitation) matters pertaining to land use entitlements or approvals, permits, waivers or reduction of fees, development or financing of the Site or any other matters to be acted on by Successor Agency, as applicable; (b) that all such matters shall be considered and processed by Successor Agency in accordance with all otherwise applicable Successor Agency and City requirements and procedures; and (c) that Successor Agency reserves all rights to approve, disapprove or approve with conditions all such matters in their sole discretion. Developer acknowledges that any expenditures made by it are not recoverable by Developer in the event that a subsequent Agreement is not approved. Developer further acknowledges and agrees that, during the term of this Agreement, the Parties shall conduct such economic analyses and re-use studies as may be necessary to comply with the requirements of Section 33433 of the Redevelopment Law, if applicable.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ATTEST:

By: ____________________________
Successor Agency Secretary

By: ____________________________
Executive Director

Approved as to form:

ALESHIRE & WYNDER

By: ____________________________
Successor Agency Counsel

“Successor Agency”

CITY OF IRWINDALE,
as Successor to the Irwindale
Community Redevelopment Agency

“Developer”

PDC LA/SD LLC,
a Delaware limited liability company

By: ____________________________
Mark D. Payne
Local Partner
EXHIBIT 1

DESCRIPTION OF SITE

The Site is that certain real property located in the City of Irwindale, County of Los Angeles, State of California, and is described as follows:

PARCEL 1:

THOSE PORTIONS OF LOTS 5 AND 7 OF TRACT NO. 1888, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 21, PAGE(S) 183 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 7; THENCE NORTH 22° 09’ 45” EAST ALONG THE SOUTHEASTERLY LINE THEREOF, 328.49 FEET; THENCE NORTH 67° 54’ 40” WEST PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 7, 149.09 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF PROPOSED LIVE OAK AVENUE, AS SAID AVENUE IS DESCRIBED IN THE FINAL DECREES OF CONDEMNATION, UNDER LOS ANGELES COUNTY SUPERIOR COURT CASE No. 269,622 RECORDED IN BOOK 12289, PAGE 277, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 80° 09’ 15” WEST ALONG SAID SOUTHERLY LINE, 621.02 FEET, MORE OR LESS, TO THE SOUTHWESTERLY LINE OF SAID LOT 5; THENCE SOUTH 67° 54’ 40” EAST ALONG THE SOUTHWESTERLY LINES OF SAID LOTS 5 AND 7, A DISTANCE OF 675.71 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PORTION OF THE NORTHEASTERLY 18 FEET OF LOT A OF TRACT NO. 1888, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 21, PAGE(S) 183 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING BETWEEN THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF LOT 7 OF SAID TRACT NO. 1888, AND THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF LIVE OAK AVENUE, AS SAID AVENUE IS DESCRIBED IN FINAL DECREE OF CONDEMNATION SUPERIOR COURT CASE No. 269,622, RECORDED IN BOOK 12289, PAGE 277, OFFICIAL RECORDS OF SAID COUNTY.

APN: 8532-004-900
EXHIBIT 2

DESCRIPTION OF THE PROJECT

The parties desire the Project to be consistent with the following description:

The Project will be an approximately 46,400 to 61,000-square foot light industrial warehouse with ancillary office for occupancy by a light industrial or manufacturing user. The Project will include the required parking, landscaping and improvements.

Final specifications and footages will be determined during the term of the Exclusive Negotiation Period and will be specified in the Development Agreements.
EXHIBIT “B”

Panattoni Development Company’s
Conceptual Site Plans for 242 Live Oak Avenue
EXHIBIT 2-1
CONCEPTUAL SITE PLANS
(SCHEME 1)
EXHIBIT 2-2

CONCEPTUAL SITE PLANS

(SCHEME 2)
AGENDA REPORT

Date: April 8, 2015
To: Honorable Chairman and Members of the Successor Agency to the Irwindale Community Redevelopment Agency
From: Eva Carreon, Acting Executive Director
Fred Galante, Successor Agency Attorney
Issue: EXCLUSIVE NEGOTIATING AGREEMENT FOR THE ACQUISITION AND DEVELOPMENT OF THE 4224 ALDERSON AVENUE/14910 LOS ANGELES STREET SITE

Executive Director's Recommendation:

That the Successor Agency to the Irwindale Community Redevelopment Agency ("Successor Agency") adopt the attached Resolution No. SA 2015-19-2748 authorizing the execution of an exclusive negotiation agreement ("ENA") with Seventh Street Development, Inc. ("Developer") for acquisition and development of a light industrial project at the 9.82-acre site located at 4224 Alderson Avenue and 14910 Los Angeles Street ("Site"), pursuant to the Long-Range Property Management Plan ("LRPMP"). The Site is improved with an approximately 9,771-square foot meeting hall facility currently leased by AMVETS Post 113, an approximately 25,250-square foot landscaped area, and an approximately 36,650-square foot parking lot. The proposed development includes four light industrial/manufacturing buildings with ancillary office totaling 120,800 square feet.

Background:

Pursuant to the dissolution of redevelopment agencies per Assembly Bill ("AB") ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), and subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012) (altogether, "Dissolution Act"), the City of Irwindale ("City") adopted Resolution No. 2012-08-2547 on January 11, 2012, electing to serve as Successor Agency to the former Irwindale Community Redevelopment Agency ("Redevelopment Agency") during the wind-down of the Redevelopment Agency’s activities.

At the time of redevelopment dissolution, the Site was one of 25 properties owned by the Redevelopment Agency, all of which were included in the Successor Agency's LRPMP. The LRPMP was prepared pursuant to the Dissolution Act and described the proposed plans for disposition of the properties owned by the Redevelopment Agency. The LRPMP, approved by the State Department of Finance ("DOF") on August 8, indicated that the Successor Agency would sell the Site.

On December 10, 2014, the Successor Agency's real estate advisor/broker Rosenow Spevacek Group ("RSG") began marketing properties available for sale as outlined in the LRPMP. RSG informed all parties who communicated interest in the sale of the
properties that "best and final offers" were to be submitted by February 9, 2015. RSG received nine (9) separate purchase offers for the Site. Based on a thorough review of all nine offers, RSG considers Seventh Street Development's offer the strongest of the nine offers based on development feasibility and readiness, purchase price, the number and wages of jobs expected to be generated by the proposed development, the level of specificity provided regarding development programming, and the development experience of the offeror. These development criteria were outlined in the marketing material provided to interested parties. Seventh Street Development offered to purchase the Site for $5,411,748 and develop a light industrial development that includes four light industrial/manufacturing buildings with ancillary office totaling 120,800 square feet. The other developments proposed by offerors included light industrial/manufacturing projects (proposed by five additional offerors), ownership residential, and a thrift store in conjunction with the meeting hall facility currently on the property. One offeror did not provide specificity regarding proposed use.

Seventh Street Development has extensive experience in industrial development, particularly in the development of smaller industrial buildings in infill markets that accommodate manufacturing and distribution operations for small companies. Seventh Street Development's completed projects include the 85,000-square foot Speedway Business Park and the 655,000-square foot Huy Fong Foods headquarters and manufacturing facility both located in Irwindale.

The proposed ENA, prepared by the Successor Agency's attorney and RSG, is attached as Exhibit A for the Successor Agency's consideration. Following the 90-day exclusive negotiation period prescribed in the ENA, if Seventh Street Development and Successor Agency representatives agree on a draft Purchase and Sale Agreement ("PSA"), the agreement will be presented to the Successor Agency for approval prior to execution. This would be expected to necessitate a development agreement between the Successor Agency and Developer for the entitlements for Site improvements.

Analysis:

The sale and development of the Site would be prescribed by the PSA and a Successor Agency-Developer development agreement. The ENA is proposed to delineate the specific actions required by both parties as conditions precedent to consideration of the PSA. The PSA will be significantly more detailed as to the transaction and development program. The ENA essentially establishes the ground rules for proceeding towards a PSA, including the following:

- **Negotiation Period.** The ENA sets forth a number of dates for performance by both parties (see Exhibit A), including an overall termination date of 90 days from the date of approval, except as extended at the discretion of the Successor Agency’s Executive Director for up to an additional 90 days only for the purpose of completing the Development Agreement for Site development entitlements.

- **Basis of Negotiation.** The ENA establishes that the intent is for the Developer to purchase the Site from the Successor Agency at the proposed price of $5,411,748 and develop an attractive light industrial development project that is approved by the City and the Successor Agency.

- **Actions during the Negotiation Period.** The ENA establishes that actions during the 90-day ENA period include the Developer's site conditions investigations, the
finalization of the development program, and the drafting of the PSA and development agreement.

**Fiscal Implications:**

The purpose of the ENA (see Exhibit A) is to facilitate the negotiation of the development program, scope of the design and development, development schedule, and entitlement milestones to ensure that the Developer will adhere to a specific timeline to complete the development project. Fiscal impacts will occur for the ongoing negotiations, financial analysis, legal consultation and real estate surveys, and reports needed to complete negotiations until the transfer of the Site. The ENA requires the Developer to provide a $10,000 deposit to the Successor Agency to cover legal and related consultation costs. The Developer will bear the cost of surveys and reports as necessary as a part of their normal due diligence, and the financial analysis costs will be performed within the scope of the existing Agreement with RSG for consulting and real estate broker services.

Fiscal Impact: 
  (Initial of CFO)

Legal Impact: ___
  (Initial of Legal Counsel)

Contact Person:  
  Gustavo Romo, Community Development Director  
  626-430-2206  
  gromo@ci.irwindale.ca.us
  
  Jim Simon, Economic & Redevelopment Consultant, RSG, Inc.  
  714-316-2120  
  jsimon@webrsg.com
  
  Andrew Gee, Economic & Redevelopment Consultant, RSG, Inc.  
  714-316-2106  
  agee@webrsg.com

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Eva Carreon, Acting Executive Director

Attachments:

APPROVING RESOLUTION WITH EXHIBITS:  
  (A) Exclusive Negotiation Agreement
SUCCESSOR AGENCY RESOLUTION NO. SA 2015-19-2748

A RESOLUTION OF THE CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY AUTHORIZING THE EXECUTION OF AN EXCLUSIVE NEGOTIATION AGREEMENT WITH SEVENTH STREET DEVELOPMENT, INC. FOR ACQUISITION AND DEVELOPMENT OF THE 4224 ALDERSON AVENUE/14910 LOS ANGELES STREET SITE

WHEREAS, pursuant to the dissolution of redevelopment agencies per Assembly Bill ("AB") ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), and subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012) (altogether, "Dissolution Act"), the City of Irwindale ("City") adopted Resolution No. 2012-08-2547 on January 11, 2012, electing to serve as Successor Agency to the Irwindale Community Redevelopment Agency ("Successor Agency"); and

WHEREAS, the property located at 4224 Alderson Avenue and 14910 Los Angeles Street ("Site") was included in the Successor Agency’s Long-Range Property Management Plan ("LRPMP"), which was prepared pursuant to the Dissolution Act and described the proposed plans for disposition of all 25 properties owned by the Irwindale Community Redevelopment Agency at the time of redevelopment dissolution; and

WHEREAS, the LRPMP indicated that the Successor Agency would sell the Site; and

WHEREAS, on August 8, 2014, the City received notification from the California Department of Finance ("DOF") approving the Successor Agency’s LRPMP; and

WHEREAS, on December 10, 2014, the Successor Agency’s real estate advisor/broker Rosenow Spevacek Group ("RSG") began marketing properties available for sale as outlined in the LRPMP and informed all parties who communicated interest in the sale of the properties that “best and final offers” were to be submitted by February 9, 2015; and

WHEREAS, RSG received nine (9) separate purchase offers for the Site; and

WHEREAS, RSG considers the strongest of the nine offers to be Seventh Street Development, Inc.’s ("Developer") offer to purchase the Site for $5,411,748 and develop a light industrial development; and

WHEREAS, RSG and the Successor Agency’s attorney prepared an Exclusive Negotiation Agreement ("ENA") between the Developer and the Successor Agency in order to commence a period of ninety (90) days during which actions required by the Developer and the Successor Agency may be delineated as conditions precedent to consideration of a Purchase and Sale Agreement, which would be presented to the Successor Agency for approval prior to execution; and

WHEREAS, the ENA establishes that the 90-day ENA period may be extended by the written mutual consent of the Successor Agency and the Developer up to ninety (90) additional days only for the purpose of completing the Development Agreement for Site development entitlements, and the Executive Director of Successor Agency shall be authorized to grant such extension for and on behalf of Successor Agency in his sole and absolute discretion; and
WHEREAS, the ENA establishes that the intent is for the Developer to purchase the Site from the Successor Agency at the proposed price of $5,411,748 and develop an attractive light industrial development project that is approved by the City and Successor Agency; and

WHEREAS, the ENA requires the Developer to provide a $10,000 deposit to the Successor Agency to cover the legal and other consultation costs that will be incurred during the negotiation period leading up to the potential transfer of the Site.

NOW, THEREFORE, THE SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Approval of ENA. The Successor Agency hereby approves the Exclusive Negotiation Agreement with Seventh Street Development, Inc. for the acquisition and development of the site located at 4224 Alderson Avenue/14910 Alderson Avenue, authorizes the Executive Director to execute same, in a form approved by Successor Agency Counsel.

PASSED AND ADOPTED at a regular meeting of the Successor Agency to the Irwindale Community Redevelopment Agency on the 8th day of April, 2015.

________________________________________
Mark Breceda, Mayor

ATTEST:

________________________________________
Laura Nieto, CMC
Deputy City Clerk/Successor Agency Secretary
I, Laura M. Nieto, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2015-19-2748 as duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 8th day of April 2015, by the following vote:

AYES: Councilmembers: 
NOES: Councilmembers: 
ABSENT: Councilmembers: 
ABSTAIN: Councilmembers: 

Laura M. Nieto, CMC
Deputy City Clerk
EXHIBIT "A"

Exclusive Negotiation Agreement
EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement"), dated as of this 8th day of April, 2015 ("Effective Date"), is made by and between the City of Irwindale, as Successor to the Irwindale Community Redevelopment Agency ("Successor Agency") and Seventh Street Development, Inc., a California corporation ("Developer"). For and in consideration of the mutual covenants and promises set forth herein, the Parties agree as set forth below, with reference to the following facts:

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law, the former Irwindale Community Redevelopment Agency ("ICRA") owned approximately 9.82 acres commonly known as 4224 Alderson Avenue and 14910 Los Angeles Street in the City of Irwindale ("Site"). The Site, as described in Exhibit 1, was acquired pursuant to and in furtherance of the Redevelopment Plan for the former Industrial Development Project Area.

B. In December 2011, a California State Supreme Court ruling on the constitutional validity of two 2011 legislative budget trailer bills, Assembly Bill ("AB") X1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), resulted in the outright elimination of all 425 redevelopment agencies in the State of California. The dissolution procedures under ABX1 26 include a process for the disposition and/or transfer of assets, including property holdings of former redevelopment agencies. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, made significant changes to the provisions of ABX1 26, including the process for asset management/disposition/transfers.

C. Under AB 1484, the Site is subject to the disposition process requiring the State Department of Finance ("DOF") to approve a Long-Range Property Management Plan ("PMP") prepared by the Successor Agency describing the proposed sale of properties owned by the Successor Agency, including the Site. The DOF has approved the Successor Agency’s PMP, which compels the Successor Agency to dispose of the Site for development consistent with the Redevelopment Plan for the former Industrial Development Project Area.

D. To effectuate the Redevelopment Plan for redevelopment of the former City Industrial Development Project Area by providing for the future development of the Site, the Successor Agency on December 10, 2014, issued an Offering Memorandum ("OM") subject soliciting developer interest and purchase offers for the Site. Developer, by way of its January 16, 2015 response to the OM, proposed to develop the Site with four light industrial/manufacturing buildings totaling approximately 120,800 square feet, as further described in Exhibit 2 ("Project").

E. The Successor Agency wishes to plan for the disposition of the Site, in a manner that furthers the original redevelopment goals of the ICRA and in accordance with the approved PMP.

F. The development of the Project shall be subject to, and processed in accordance with the California Environmental Quality Act, at California Public Resources Code Section 21000 et seq. and regulations promulgated pursuant thereto ("CEQA"), which must be reviewed by the City of Irwindale ("City") for its potential environmental impacts ("CEQA Review") at such time.
G. The parties wish to enter into this Agreement to delineate the key deal points the parties wish to implement in their negotiations of a purchase and sale agreement and development agreement (collectively “Development Agreements”) to accomplish the sale and future development of the Site by Developer consistent with the City’s Zoning Code and General Plan, as may be amended. Additionally, the parties wish to provide for the reimbursement of Successor Agency by Developer for certain expenses to be incurred by Successor Agency in undertaking the CEQA Review and preparation of the Development Agreement or similar entitlement (collectively, “Development Agreement”) to undertake the Project.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Obligations of Successor Agency. During the Exclusive Negotiating Period as described in Article 4 of this Agreement, Successor Agency shall not negotiate, discuss or otherwise communicate with any person or entity, other than Developer regarding Development Agreements or any other agreement for the development of the Project and/or the acquisition of the Site or any portion thereof. Throughout the Exclusive Negotiating Period, Successor Agency staff shall be available to meet with Developer to discuss the Project, the Site Plan and architectural renderings, and any other issues pertinent to the preparation of Development Agreements pertaining to the development of the Project.

2. Obligations of Developer.

(a) Financial Information. Within the time periods set forth in the negotiated Development Agreements and provided financing will be obtained by Developer from an institutional lender(s) approved by the Successor Agency in its reasonable discretion for the acquisition of the Site and/or development of the Project, Developer shall provide Successor Agency with a letter evidencing a commitment (“Commitment Letter”) from such lender(s) (in form and substance reasonably acceptable to Successor Agency), indicating that such lender(s), has a definitive interest in financing the acquisition, construction and/or development of the Project by Developer, as the case may be. The Commitment Letter shall also outline the financial terms pursuant to any proposed financing for the Project as well as specifically identify the sources of all equity financing (“Equity Commitment”) to be used by Developer in the development of the Project. In the event the Project is to be financed exclusively by equity financing, the Equity Commitment shall evidence an amount sufficient to provide for the net acquisition costs of the Site and development of the Project by Developer, as the case may be. The Equity Commitment may be in the form of letters of intent from credit worthy investors.

(b) Site Plan and Architectural Renderings. The Development Agreements shall require Developer to provide a Site Plan and basic architectural renderings of the Project. The Site Plan and basic architectural renderings shall include a well-defined architectural concept for the Project showing vehicular circulation and access points, amounts and location of parking, location and size of all buildings (including height and perimeter dimensions) pedestrian circulation, landscaping and architectural character of the Project. Notwithstanding the foregoing, no such Site Plan or architectural renderings shall be deemed final until approved by the Successor Agency and City, pursuant to the Development Agreements.
(c) Project. The Project to be developed per the terms of the Development Agreements is anticipated to include the components and layout as described in Exhibit 2.

(d) Site Conditions Approval. Developer shall complete its due-diligence inspection period investigations of and approve all Site conditions including, but not limited to, soils, geologic, environmental and other conditions that may impact its ability to construct the improvements identified in the Site Plan and architectural renderings. Developer acknowledges that portions of the Site are subject to agreements to be provided by the Successor Agency during Developer’s due-diligence inspection period, including but not limited to a Lease between the ICRA and AMVETS POST 113 and License Agreement No. 95-1 for the Installation, Maintenance and Operation of a Ground Water Monitoring Well and Appurtenances Under and In Those Certain Public Streets as the Same May Now or Hereafter Exist, Within the City of Irwindale with the San Gabriel Basin Water Quality Authority and that Successor Agency’s desire is for these agreements to continue to remain in effect following the sale of the Site.

(d) Purchase and Sale of Site. The Development Agreements shall provide for the sale of the Site for Five Million Four Hundred Eleven Thousand Seven Hundred Forty-Eight and 00/100 Dollars ($5,411,748) (“Purchase Price”), which the Successor Agency and the Developer agree to be a reasonable estimate of the fair market value of the Site. Notwithstanding the foregoing, in no event shall the Successor Agency be required to sell the Site for less than the Purchase Price nor shall the Developer be obligated to buy the Site for an amount in excess of the Purchase Price.

3. Exclusive Negotiation Period/Effectiveness of Agreement. The “Exclusive Negotiating Period” shall commence as of the Effective Date and shall terminate on the date that is Ninety (90) days after the Effective Date, notwithstanding holidays unless the date that is 90 days after the Effective Date shall fall on a weekend or holiday, in which case the Exclusive Negotiating Period shall be extended to the next business day. The Exclusive Negotiating Period may be extended by the written mutual consent of the Successor Agency and the Developer up to ninety (90) additional days only for the purpose of completing the Development Agreement for Site development entitlements. The Executive Director of Successor Agency shall be authorized to grant such extension for and on behalf of Successor Agency in his sole and absolute discretion. Any officer of Developer shall be authorized to grant such extension for and on behalf of Developer. If the Parties have mutually consented to an extension of the term of this Agreement as provided hereinafore, then the Parties shall, within such extended term, continue to negotiate in good faith Development Agreements with respect to the proposed development of the Project.

4. Development Agreements.

(a) Negotiations of Development Agreements. The parties hereby acknowledge and agree that, during the term of this Agreement, (as such term may be extended pursuant to Section 3 above), the Parties shall use their respective good faith efforts to negotiate and enter into Development Agreements which shall include (but not be limited to) agreement on and implementation of the following: (i) the design of the Project by Developer, (ii) the construction of the Project by Developer in accordance with final plans and specifications to be provided by Developer and approved by the Successor Agency and City, pursuant to a detailed schedule of performance by Developer, (iii) the
operation and management of the Project by Developer in a good and professional manner, and subject to the covenants required by law; (iv) the maintenance of landscaping, buildings and improvements in good condition and satisfactory state of repair so as to be attractive to local residents and to the community, (v) the operation of the Project by Developer in compliance with all equal opportunity standards established by Federal, State and local law, (vi) the right of Successor Agency or City to inspect the Project from time to time to assure compliance with the foregoing provisions, (vii) certain provisions made by Developer to the Successor Agency or City as required by the Successor Agency or City with respect to concepts, schematics, the final plans and working drawings for the Project and participation in presentations with respect thereto, (viii) certain provisions required by individual contractors and/or subcontractors performing work on the Project with respect to performance, labor and materials payment bonds required to be obtained by such contractors or subcontractors assuring completion of the Project free of mechanics' liens, (ix) that the Project shall be of the highest quality and standard comparable to the other developments submitted by Developer by way of its January 16, 2015 response to the OM, (x) the terms and conditions upon which Developer shall acquire the Site in fee simple, (xi) the terms and conditions upon which the Successor Agency or the Developer may terminate the Development Agreements (e.g., the discovery of environmental issues/hazardous substances on the Site, unexpected development or construction costs, inability to acquire the Site or any portion thereof), and (xii) the establishment of minimum cost levels for the improvements of the Project.

(b) DOF Approval. Developer acknowledges that the duty of Developer to negotiate and enter into the Development Agreements shall be expressly contingent upon and subject to the approval by the DOF of the sale of the Site as contemplated in this Agreement. Successor Agency shall use commercially reasonable good faith efforts to obtain DOF approval.

(c) Failure of Developer to Negotiate in Good Faith. In the event Developer has not continued to negotiate diligently and in good faith, Successor Agency shall give written notice thereof to Developer, who shall then have ten (10) business days to commence negotiating in good faith. Following the receipt of such notice and the failure of Developer to thereafter commence negotiating in good faith within such ten (10) business days, this Agreement may be terminated by Successor Agency’s Executive Director.

(d) Failure of Successor Agency to Negotiate in Good Faith. In the event Successor Agency has not continued to negotiate diligently and in good faith Developer shall give written notice thereof to Successor Agency which shall then have ten (10) business days to commence negotiating in good faith. Following the receipt of such notice and the failure of Successor Agency to thereafter commence negotiating in good faith within such ten (10) business days, this Agreement may be terminated by Developer.

(e) Termination of this Agreement. Subject to Section 5 below, upon termination of this Agreement at the expiration of the Exclusive Negotiating Period (or such extension thereof) and provided Development Agreements have not been executed by the Successor Agency and Developer, no party shall have any further duty or obligation to any other party. If Development Agreements have been executed by the Successor Agency and the Developer, the Development Agreements shall supersede this Agreement and thereafter govern the rights and obligations of the parties with respect to the development of the Project.
5. **Deposit.** Concurrent with the execution of this Agreement by Successor Agency, Developer shall submit to Successor Agency a good faith deposit ("Deposit") in the amount of Ten Thousand Dollars ($10,000) to cover the actual reasonable documented out-of-pocket third party legal and other expenses to negotiate and prepare the Development Agreements and conduct studies related to the project for the CEQA analysis ("Expenses"). The Deposit shall be in the form of cash. Successor Agency shall deposit the Deposit in an interest-bearing account and such interest, when received by Successor Agency, shall become part of the Deposit. If Successor Agency and Developer subsequently determine that the Deposit is insufficient, which determination shall be based on the reasonable Expenses incurred by Successor Agency hereunder, then upon the later to occur of (i) receipt of twenty (20) days written notice from Successor Agency, or (ii) execution of the Development Agreement by both parties, Developer shall deposit with Agency a lump sum deposit in the amount reasonably estimated by Agency and Developer to be sufficient to cover the excess (each a "Supplemental Deposit"). If Developer defaults in the payment of any Supplemental Deposit to Successor Agency under this Section 5 beyond any applicable cure period, work by Successor Agency or its consultants on the project shall be suspended until the applicable Supplemental Deposit is made to Agency. If the parties do not proceed with Development Agreements, the Successor Agency shall refund any unused amount of the Deposit, or if applicable, Supplemental Deposit, within forty-five (45) days after termination of this Agreement; provided that if the failure to enter into Development Agreements is (i) due to Successor Agency disapproving any potential use of the Site consistent with the description of the Project herein, or (ii) due to an Successor Agency default under this Agreement, the entire Deposit, and if applicable, Supplemental Deposit, shall be refunded to Developer. Successor Agency shall provide Developer with an accounting of Successor Agency's use of the Deposit to pay the Expenses within a reasonable time after Developer's request therefor.

6. **Schedule of Performance.** It is the intention of Successor Agency and Developer that the redevelopment of the Site be completed in a timely and an expeditious manner. Accordingly, the Development Agreements shall provide in reasonable detail the tasks to be completed by the Successor Agency and the Developer during the development process and the projected date of completion for each such task.

7. **Environmental.** Execution of Development Agreements by Successor Agency shall be subject to compliance by the Successor Agency and City with CEQA. Developer hereby agrees to provide all reasonable assistance to Successor Agency and City necessary for Successor Agency and City to carry out its obligations under CEQA but shall be under no obligation to incur any costs or expenses outside the scope of Developer’s proposed Project under this Agreement. Any and all costs outside the scope of the obligations under this Agreement will be identified as costs to each party under executed Development Agreements between Successor Agency and Developer.

8. **Governing Law.** This Agreement and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California. Hence, for any action by either party shall be in Los Angeles County.

9. **No Other Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings between the parties. There are no agreements or understandings between the parties and
no representations by either party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. Notwithstanding anything provided herein to the contrary, whether expressed or implied, the Successor Agency and the Developer shall have no obligation to enter into Development Agreements with the other and neither the Successor Agency or the Developer (nor its officers, members, staff or agents) have made any promises to the other than to exclusively negotiate Development Agreements for the Site in good faith during the Exclusive Negotiating Period, and no statements of Successor Agency or Developer (or its officers, members, staff or agents) as to future obligations shall be binding upon either party unless and until Development Agreements have been approved and executed by the Successor Agency and the Developer.

10. **Assignment.** This Agreement shall not be assigned by any party hereto to any person or entity without the express written consent of Successor Agency; provided, however, that Developer may assign the Agreement to a California business entity that is formed for the purpose of carrying out the Project and for which Developer is a member and the manager thereof. Any assignment does not release Developer from any of its obligation hereunder.

11. **Notices.** Any notice which is required or which may be given hereunder may be delivered or mailed to the party to be notified, as follows:

If to Developer: Seventh Street Development, Inc.
3780 Kilroy Airport Way, Suite 520
Long Beach, California 90806
Attention: Craig Furniss

With a copy to:
Davis Wright Tremaine, LLP
1300 SW 5th Ave., Suite 2400
Portland, OR 97201-5630
Attention: Stephen Ledoux, Esq.

If to Successor Agency or City:
City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attention: City Manager

With a copy to Successor Agency's and City's Counsel:
Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attention: Fred Galante, Esq.

12. **Public Hearing.** Any Development Agreements that may be negotiated is subject to consideration and discretion at a public hearing or hearings by Successor Agency or City. Nothing in
this Agreement shall commit or be construed as committing Successor Agency to approve any Development Agreements.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

14. **Attorney's Fees.** In the event that either party hereto brings action or proceeding against the other party to enforce or interpret any of the conditions or provisions of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses and court costs associated with such action or proceeding.

15. **Effect of Agreement.** Notwithstanding any other provision of this Agreement to the contrary, the parties expressly acknowledge and agree as follows: (a) except as expressly required under Section 1(d), no matter described in this Agreement as a purported commitment or obligation of Successor Agency or Developer with respect to the development of the Project shall have any effect unless and only to the extent such matters are expressly set forth in Development Agreements or other subsequent written agreement duly authorized and approved by Successor Agency; (b) Successor Agency and Developer shall promptly commence the good faith negotiation of Development Agreements upon execution of this Agreement; and (c) upon the execution of Development Agreements by the Parties, this Agreement shall be null and void and of no effect and shall be superseded by the terms and conditions of the Development Agreements.

Notwithstanding any other provision of this Agreement to the contrary, Developer acknowledges and expressly agrees as follows: (a) that this Agreement does not obligate Successor Agency in any way to approve, in whole or in part, any of the matters described in this Agreement, including, (without limitation) matters pertaining to land use entitlements or approvals, permits, waivers or reduction of fees, development or financing of the Site or any other matters to be acted on by Successor Agency, as applicable; (b) that all such matters shall be considered and processed by Successor Agency in accordance with all otherwise applicable Successor Agency and City requirements and procedures; and (c) that Successor Agency reserves all rights to approve, disapprove or approve with conditions all such matters in their sole discretion. Except as expressly provided herein to the contrary as to any deposit made hereunder, Developer acknowledges that all expenditures made by it are not recoverable by Developer in the event that a Development Agreement is not approved. Developer further acknowledges and agrees that, during the term of this Agreement, the Parties shall conduct such economic analyses and re-use studies as may be necessary to comply with the requirements of Section 33433 of the Redevelopment Law, if applicable. The parties acknowledge that it may be necessary or expedient for Developer, in seeking Project entitlements or approvals, to submit applications to other governmental agencies with jurisdiction, including, without limitation, the San Gabriel Basin Water Quality Authority, the County Department of Environmental Health or otherwise, and Successor Agency agrees to execute any such applications as landowner.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"Successor Agency"

CITY OF IRWINDALE, as Successor to the Irwindale Community Redevelopment Agency

ATTEST:

By: ________________________________
    Successor Agency Secretary

Approved as to form:

ALESHIRE & WYNDER

By: ________________________________
    Successor Agency Counsel

"Developer"

Seventh Street Development, Inc., a California Corporation

By: Craig Furniss

Its: President
EXHIBIT I

DESCRIPTION OF SITE

The Site is that certain real property located in the City of Irwindale, County of Los Angeles, State of California, and is described as follows:

PARCEL 1: APN: 8437-019-900

LOTS 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19 AND 20 OF EDWIN ALDERSON'S ACRE LOT TRACT, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13, PAGE 28 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE SOUTHEASTERLY 40 FEET OF LOT 6.

ALSO EXCEPT THEREFROM A STRIP OF LAND 40 FEET WIDE, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING THE SOUTHEASTERLY 40 FEET OF LOTS 20 AND 21. ALSO EXCEPT THEREFROM THE INTEREST IN THE FOLLOWING DESCRIBED PORTION OF SAID LAND AS CONDEMNED FOR RAILROAD RIGHT OF WAY PURPOSES BY THAT CERTAIN FINAL JUDGMENT OF CONDEMNATION ENTERED IN THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, CASE NO. B 51597 A CERTIFIED COPY OF WHICH WAS RECORDED SEPTEMBER 05, 1917 IN BOOK 6579 PAGE 338 OF DEEDS:

BEING PORTIONS OF LOTS 18 AND 19 OF THE EDWIN ALDERSON'S ACRE LOT TRACT AS PER MAP THEREOF RECORDED IN BOOK 13, OF MAPS, ON PAGE 28 RECORDS OF SAID LOS ANGELES COUNTY, SAID PIECE OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 18, AFORESAID, THENCE SOUTH ALONG THE EASTERLY LINES OF LOTS 18 AND 19, 56.48 FEET TO A POINT IN THE NORTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S 33 FEET RIGHT OF WAY. THENCE SOUTH 42° 14' WEST ALONG THE LAST MENTIONED RIGHT OF WAY LINE 58.77 FEET TO THE SOUTHEAST CORNER OF THE HEREINBEFORE MENTIONED LOT 19. THENCE WEST ALONG THE SOUTHERLY LINE OF THE SAID LOT 19, 54.02 FEET TO A POINT, THENCE NORTH 42° 14' EAST ALONG A LINE 40 FEET NORTHWESTERLY FROM AND PARALLEL TO THE AFORE-RECITED NORTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT OF WAY 135.05 FEET TO A POINT IN THE NORTHERLY LINE OF THE AFORESAID LOT 18. THENCE EAST ALONG THE LAST MENTIONED NORTHERLY LINE 2.75 FEET TO THE POINT OF BEGINNING.

PARCEL 2: APN: 8437-020-900 (PORTION)
THAT PORTION OF SECTION 17, TOWNSHIP 1 SOUTH, RANGE 10 WEST, S.B.M., IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF SAID SECTION DISTANT WESTERLY 44.785 CHAINS FROM THE NORTHEAST CORNER OF SAID SECTION 17; THENCE WESTERLY ALONG THE NORTH LINE OF SAID SECTION 4.04 CHAINS; THENCE SOUTH 10 CHAINS; THENCE EAST TO A POINT IN THE NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY AS DESCRIBED IN DEED RECORDED IN BOOK 1053, PAGE 254 OF DEEDS; THENCE NORTHEASTERLY ALONG SAID NORTHEASTERLY LINE TO A POINT WHICH IS DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH TO THE POINT OF BEGINNING.

EXCEPT THE NORTH 30 FEET THEREOF CONVEYED TO THE COUNTY OF LOS ANGELES FOR ROAD PURPOSES BY DEED RECORDED IN BOOK 1298, PAGE 246 OF DEEDS.

EXCEPT ALSO THAT PORTION OF SAID PREMISES CONVEYED TO THE PACIFIC ELECTRIC RAILWAY COMPANY BY DEED RECORDED IN BOOK 6544, PAGE 203 OF DEEDS, BEING A STRIP OF LAND 46 FEET WIDE ADJOINING THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY ON THE NORTHWEST.

PARCEL 3:

APN: 8437-020-900 (REMAINDER PORTION) THAT PORTION OF SECTION 17, TOWNSHIP 1 SOUTH, RANGE 10 WEST, S.B.M. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF SAID SECTION BEING THE NORTHWEST CORNER OF THE LAND DESCRIBED IN A DEED FROM THE LOS ANGELES TRUST COMPANY TO JOSEPH P. LONERGAN, RECORDED IN BOOK 2727, PAGE 115 OF DEEDS, RECORDS OF LOS ANGELES COUNTY AND DISTANT 2955.81 FEET WEST FROM THE NORTHEAST CORNER OF SAID SECTION; THENCE SOUTH PARALLEL WITH EAST LINE OF LOT 2 OF SAID SECTION, 502 FEET MORE OR LESS TO THE NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY; THENCE NORTHEASTERLY ALONG THE NORTHEASTERLY AND NORTHERLY LINES OF SAID RIGHT OF WAY TO ITS INTERSECTION WITH THE NORTH LINE OF SAID SECTION 17; THENCE WEST ALONG SAID NORTH LINE TO BEGINNING.

EXCEPTING THEREFROM THE NORTHERLY 30 FEET THEREOF CONVEYED TO THE COUNTY OF LOS ANGELES BY DEED RECORDED IN BOOK 1304, PAGE 109 OF DEEDS.
EXHIBIT 2

DESCRIPTION OF THE PROJECT

The parties desire the Project to be consistent with the following description:

The Project will be four light industrial/manufacturing buildings with ancillary office totaling approximately 120,800 square feet for occupancy by a light industrial or manufacturing user. The Project will include the required parking, landscaping and improvements.

Final specifications and footages will be determined during the term of the Exclusive Negotiation Period and will be specified in the Development Agreements.