

RECORDING REQUESTED BY:  
CITY OF COVINA

**\*\* DRAFT \*\***

WHEN RECORDED MAIL TO:

12/12/2023

City of Covina  
Attention: City Clerk  
125 East College Street  
Covina, CA 91723

**APN 8421-001-016 and  
APN 8421-001-061**

**SPACE ABOVE THIS LINE FOR  
RECORDER'S USE**

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF COVINA, A CALIFORNIA MUNICIPAL CORPORATION  
AND  
PKL INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between THE CITY OF COVINA, a California municipal corporation (the "City"), on the one hand, and PKL INVESTMENTS, LLC, a California Limited Liability Company ("Developer"), on the other hand. The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

**RECITALS**

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement.

A. Developer is the legal and beneficial owner of the real property located at 1000 North Azusa Avenue more fully described on Exhibit A hereto, in the City of Covina, which constitutes the "Property" (as hereafter further defined).

B. Developer desires to allow for the integrated redevelopment of the entire Property, through the adoption by the proposed Covina Village Covina Village Specific Plan (the "Covina Village Specific Plan"). The Property is being developed as part of the integrated development contemplated by the Covina Village Specific Plan, which is generally referred to as the "Project" (as hereafter further defined).

C. Developer has applied to the City for a development agreement, pursuant to the provisions of the Development Agreement Act (as hereafter defined) and other applicable laws.

D. In anticipation of the Project's development, Developer has made or will make application to the City (in its governmental capacity) for the following certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation:

- (1) an amendment to the Land Use Element of the Covina General Plan (GPA 22-1);
- (2) the Covina Village Specific Plan (SP 22-1);
- (3) Zoning Code Text Amendment (ZCH 22-7);
- (4) Zone Change and Zoning Map Amendment (ZCH 22-7 & GPA 22-1);
- (5) Lot Line Adjustment (LLA 23-2) to separate the commercial component to be developed by Developer on the Property from the residential component to be entitled and developed separately by Melia Homes, Inc. This Agreement only covers only the Property not the Melia Homes residential area. The recordation of Lot Line Adjustment (23-2) is necessary to enable Developer to convey the residential portion of the Project to Melia Homes. Therefore Developer shall process Lot Line Adjustment (23-2) with the City to allow such recordation.
- (6) Tentative Parcel Map No. 84018 (TPM 22-2) (the "Parcel Map");
- (7) Major Site Plan Review (SPR 22-226);
- (8) Conditional Use Permit (CUP 22-7) for an approximately 3,500 square foot drive-through restaurant, on a 34,242 square foot parcel to be occupied by any of the following on the proposed 0.786-acre parcel: Freddy's Frozen Custard, Joe's Crab Shack, The 908, Bossa Nova, Urban Spoon, Tender Greens, Vino E Cucina, The Nest, Habit, Baja Fresh, Shake Shack, Einstein Bros. Bagels, Western Bagel, Sura Korean BBQ & Tofu House, Crazy Rock'n Sushi, Vino E Cucina, Steak n Shake, Rally's, Fat Burger, Five Guys, Sonic Drive-In, Firehouse Subs, Arby's, King Taco, or Panera Bread;
- (9) Conditional Use Permit (CUP 22-8) for an approximately 3,596 square foot drive-through Quick Quack Car Wash, on a proposed 58,430 square foot (1.34-acre) parcel;
- (10) Conditional Use Permit (CUP 22-9) for an approximately 950 square foot drive-through Dutch Bros Coffee Shop, on a proposed 29,584 square foot (0.7-acre) parcel;
- (11) the certification of an "EIR (as hereafter defined) with respect to the Project and the making of certain associated findings; and
- (12) a Development Agreement under the Development Agreement Act.

These twelve (12) above-referenced items shall be collectively referred to as the "Project Approvals".

E. The City Council has specifically considered the advantages and impacts of this Project upon the welfare of the City and believes that the Project will benefit the City.

F. This Agreement eliminates uncertainty in planning and provides for the orderly development of the Property in a manner consistent with the City's Zoning Regulations (as hereafter defined), the Applicable Rules (as hereafter defined) and the General Plan (as hereafter defined).

G. To provide such certainty in planning and orderly development, the City desires, by this Agreement, to provide Developer with assurance that Developer can proceed with development of the Property with the uses, density and other land use characteristics specified in the Project Approvals.

H. To provide the City with assurances that the corresponding benefits associated with the a higher intensity of uses in this "Anchor Location" will be realized (1) at an exceptional level of quality and with the anticipated synergies to the area anticipated by the Project approved under the Covina Village Specific Plan (and related approvals), and (2) the projected future economic benefits to the City from, among other matters, generally applicable tax revenues and Public Benefit Contribution (as defined below) will be realized, the Developer is committing to proceed with the development of the Property pursuant to the terms of this Agreement and as set forth in the Project Approvals.

Developer desires to provide the City with assurances that it will (as further provided below) timely construct, equip and staff that portion of the Project located on the Property and open the same to the public, in the allocated densities of uses provided under the full build-out of that portion of the Project located on the Property as contemplated by the Covina Village Covina Village Specific Plan and at the initial level of quality generally described in the Covina Village Specific Plan and Project Approvals as further supplemented by the Minimum Development Standard (as hereafter defined) and other provisions in this Agreement. The foregoing includes, without limitation the completion and opening of the two drive-through restaurants without material reduction in size and in accordance with the design standards set forth in the Covina Village Covina Village Specific Plan, and having a quality of interior design, materials and finishes consistent with the high design standards of other restaurant locations occupied by any of the following, a Freddy's Frozen Custard, Joe's Crab Shack, The 908, Bossa Nova, Urban Spoon, Tender Greens, Vino E Cucina, The Nest, Habit, Baja Fresh, Shake Shack, Einstein Bros. Bagels, Western Bagel, Sura Korean BBQ & Tofu House, Crazy Rock'n Sushi, Vino E Cucina, Steak n Shake, Rally's, Fat Burger, Five Guys, Sonic Drive-In, Firehouse Subs, Arby's, King Taco, or Panera Bread, as more fully described herein in connection with the definition of the Minimum Development Standard below.

I. Neither Developer nor City would enter into this Agreement, or agree to provide the public benefits and improvements described herein, without the agreement that the Property can and will be developed, during the Term (as hereafter defined) of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals.

J. The City has determined that, as a result of the development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public, including but not limited to (i) redevelopment of an anchor location in the City; and (ii) increased City revenues from the payment of sales taxes, and other economic benefits from the Project.

K. On \_\_\_\_\_, 202\_\_, pursuant to the requirements of the Development Agreement Act, the City Council of the City of Covina (the “City Council”) conducted a hearing on Developer’s application for this Agreement.

L. The City Council has found and determined that this Agreement is consistent with the City’s General Plan (as amended) and all other plans, policies, rules and regulations applicable to the Project.

M. By Resolution No. 23-\_\_\_\_\_ adopted by the City Council on \_\_\_\_\_, 202\_\_, the City Council reviewed and certified, after making appropriate findings, the EIR (as hereafter defined) that contemplates this Agreement.

N. On \_\_\_\_\_, 202\_\_, the City Council adopted Ordinance No. \_\_\_\_\_ approving this Agreement, and such ordinance became effective on December \_\_\_\_\_.

### **AGREEMENT**

NOW THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided herein, or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) “All or any portion of the Property” means the entire Property or any portion of the entire Property, including, without limitation, a subdivided parcel which is a portion thereof, any co-tenancy interest in all or any portion thereof and any condominium or air-space parcel from all or any portion of the Property.

(b) “Applicable Rules” means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City’s Zoning Regulations and building regulations, adopted as of the Effective Date. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

(c) “Building Permit” means a permit issued by the City pursuant to Title 14 of the Covina Municipal Code to authorize construction of a building or other structure. “Building Permit” shall not include a demolition permit, but shall include a foundation permit.

(d) “Business Day” means any day other than a Saturday, Sunday or State of California or Federal holiday on which banks in the City are customarily closed.

(e) “CEQA” means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*), as it now exists or may hereafter be amended.

(f) “Conditions of Approval” shall mean the conditions of approval imposed by the City upon the Project Approvals.

(g) “Commencement of Construction” shall mean the date of issuance of Building Permits for foundations for Phases 1 and 2 (as defined below) of the Property.

(h) “Developer Fees” shall mean those fees established, adopted, or imposed by the City pursuant to Section 66000-66008, of the Government Code of the State of California or the California Subdivision Map Act to offset the impact of development on the City’s capital facilities. Such fees may include impact fees, linkage fees, exactions, assessments, fair share charges, or other similar impact fees imposed by the City on or in connection with new development. Developer Fees do not mean or include Processing Fees.

(i) “Development Agreement” or “Agreement” means this Agreement.

(j) “Development Agreement Act” means Article 2.5 of Chapter 4 of Division I of Title 7 (Sections 65864 through 65869.5) of the California Government Code (as the same may be amended and/or re-codified from time to time).

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

(l) “Effective Date” shall mean the date this fully executed Agreement shall mean the date Ordinance No. \_\_\_\_\_, the ordinance adopting this Development Agreement takes effect following its adoption by the City Council. Said date shall be inserted herein by the City Clerk: \_\_\_\_\_, 2024.

(m) “EIR” shall mean the final Environmental Impact Report (SCH No. 2020110223) that addresses the Project and was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA.

(n) “Force Majeure” means shall mean and include:

(i) Any delay(s) caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party and the lack of such Party’s fault) that may prevent the Party from fulfilling the obligations for which it seeks excuse including without limitation all of the following events to the extent that they may prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of God; riots; strikes; global pandemic; damage to work in progress by reason of fire, floods, earthquake or other casualties; war;

or acts of terrorism; enactment of conflicting state or federal laws or regulations which may interfere with the performance of the subject obligation.

(ii) Force Majeure shall not include any delay attributable to economic hardships or conditions or financial wherewithal or to Developer's obligations under Sections 6(a) through 6(c) of this Agreement.

(iii) If the impacts of two or more of such events shall occur during the same time period, no more than one day of delay shall be attributed to any day which is impacted by two or more such events.

(iv) If a Party believes that an event has occurred which would constitute a Force Majeure event as to an obligation or time period, the affected Party shall be required to give prompt written notice to the other Party of the commencement of the event and its anticipated impact, but in no event later than thirty (30) days after the occurrence of same and the affected Party will use commercially reasonable efforts to minimize the impact of the event and the duration of any associated delay in performance. If Developer fails to provide timely notice as required above, Developer shall not have the right to assert Force Majeure as to the occurrence for which it has failed to provide timely notice as required above. If the City disagrees with any asserted Force Majeure in a notice from the Developer, it shall give written objection to the Developer's notice within thirty (30) days of the City's receipt of the same. If the City fails to timely provide such written objection, the City shall not have the right to later assert that the event did not occur, but the City's failure to object to Developer's assertion that the event occurred shall not limit the City's right to dispute the duration of the impact of that event.

(o) "General Plan" means the General Plan of the City, as it exists as of the Effective Date.

(p) "Minimum Development Standard" means with respect to the initial construction, opening and operations of the two restaurant uses on the Property contemplated by the Project Approvals, conformity with the design standards set forth in the Covina Village Specific Plan, and such quality of interior and exterior design, materials and finishes consistent with standards of commercial buildings occupied by any of the following, a Freddy's Frozen Custard, Joe's Crab Shack, The 908, Bossa Nova, Urban Spoon, Tender Greens, Vino E Cucina, The Nest, Habit, Baja Fresh, Shake Shack, Einstein Bros. Bagels, Western Bagel, Sura Korean BBQ & Tofu House, Crazy Rock'n Sushi, Vino E Cucina, Steak n Shake, Rally's, Fat Burger, Five Guys, Sonic Drive-In, Firehouse Subs, Arby's, King Taco, or Panera Bread.

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

(r) “Mortgage” means any mortgage, deed of trust, encumbrance, sale leaseback or other security interest encumbering all or any portion of the Property, whether now or hereafter existing, given by Developer for the purpose of securing funds to be used for financing or refinancing the Property or any portion thereof, financing or refinancing the construction of improvements thereon and/or any other expenditures reasonably necessary and appropriate to develop the Project.

(s) “Mortgagee” means the holder of the beneficial interest under any Mortgage.

(t) “Covina Village Specific Plan” shall be defined as set forth in Recital B.

(u) “Owner” shall be defined as the Developer as of the Effective Date, and following any Transfer, the beneficial and legal owner(s) of the Property, collectively, from time to time.

(v) “Processing Fees” means all processing fees and charges required by the City that are applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, Building Permit applications, Building Permits, demolition permits, foundation permits, grading permits, hauling permits, encroachment permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Fees. In addition, any and all fees payable under the current Applicable Rules shall be deemed to be included within the term “Processing Fees” and not to be included within the term “Developer Fees,” whether the same are payable upon issuance of a Building Permit, upon connection of a utility or upon issuance of a Certificate of Occupancy or other Ministerial Approval.

(w) “Project” means the development as described in the final EIR (as hereinafter defined), as modified by the Project Approvals.

(x) “Project Approvals” shall be defined as set forth in Recital D and shall include any Subsequent Project Approvals (as hereafter defined).

(y) “Property” means the real property described in Exhibit A attached hereto.

(z) “Public Benefit Contribution” means the payment from the Developer to the City pursuant to Section 10(d) of this Agreement, which payment may be used by the City for various public projects and programs.

(aa) “Reserved Powers” means the power and authority of the City to enact regulations and/or take Discretionary Action if the same is expressly found by the City to be necessary to protect residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health or safety or if the same is required to comply with California or federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement). Reserved Powers also include the power and authority of the City to enact regulations, including without limitation, regulations of retail uses and parking, provided that such regulations do not impact the permitted density, height, or square footage of the Project permitted by the Covina Village Specific Plan.

(bb) “Subsequent Land Use Regulations” means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general plan or Covina Village Specific Plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

(cc) “Subsequent Project Approvals” shall mean further Discretionary Actions or Discretionary Approvals, Building Permit, Ministerial Permits and Ministerial Approvals required to carry out the Project as approved on \_\_\_\_\_, 202\_\_, including, without limitation, any tentative subdivision map. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval subject to this Agreement.

(dd) “Transfer” means any transaction that directly or indirectly conveys all or any portion of the Property, and which conveyance would be subject to, and not exempt from, documentary transfer tax pursuant to California Revenue and Taxation Code Sections 11911 through 11933, including Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60), as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or any portion of the Property is transferred but the seller retains the title as security for the payment of the price shall be deemed a Transfer.

(ee) “Zoning Regulations” shall mean the official zoning regulations of the City adopted as of the Effective Date of this Agreement.

## 2. Recitals of Premises, Purpose and Intent.

(a) State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”



Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

(b) Development of the Property. The Developer intends to develop the Property as described in the Project Approvals and the final Building Permit plans submitted to the City, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals, the Applicable Rules and this Agreement, including the Conditions of Approval.

3. Property Subject to Agreement. This Agreement shall apply only to the Property.

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development shall be in accordance with the Project Approvals as the same may lawfully be amended from time to time, other than by initiative, and this Agreement.

5. Term of Agreement. The term of this Agreement shall be five (5) years commencing on the Effective Date.

6. Construction Pursuant to Project Approvals; Construction Phases; Opening; Design.

(a) Covenant to Construct, Open and Initially Operate to Minimum Development Standard. Subject to Developer's extension rights by compliance with Section 6(d) below, Developer shall cause the restaurants to be located on Pad 2 and Pad 3, as identified in the Covina Village Specific Plan to be (1) constructed, equipped and furnished; and (2) to be opened for business to the public with all inventories and employees reasonably required for the opening and on-going operation of each element of the Project to be located on the Property, including without limitation the two restaurant uses and facilities ancillary thereto for a continuous period of not less than one hundred and eighty (180) days within two (2) years after the Effective Date of this Agreement. The foregoing (i) construction, equipment, furnishing and initial operation for such period of one hundred and eighty (180) days shall be substantially in accordance with the Covina Village Covina Village Specific Plan and (ii) such initial operation shall be in accordance with the Minimum Development Standard.

(b) Construction Phases; Commencement of Construction of Improvements. Construction on the Property shall occur in three phases in the following order: (1) Phase 1 shall consist of the construction of an approximately 950 square foot Dutch Bros Coffee drive-through restaurant on the proposed 0.679 acre parcel (identified as "Pad 2" in the Covina Village Covina Village Specific Plan); (2) Phase 2 shall consist of the construction of an approximately 3,500 square foot drive-through restaurant to be occupied by only a Freddy's Frozen Custard, Joe's Crab Shack, The 908, Bossa Nova, Urban Spoon, Tender Greens, VINO E CUCINA, The Nest, Habit, Baja Fresh, Shake Shack, Einstein Bros. Bagels, Western Bagel, Sura Korean BBQ & Tofu House, Crazy Rock'n Sushi, VINO E CUCINA, Steak n Shake, Rally's, Fat Burger, Five Guys, Sonic Drive-In, Firehouse Subs, Arby's, King Taco,

or Panera Bread on the proposed 0.786 acre parcel (identified as “Pad 3” in the Covina Village Covina Village Specific Plan); and (3) Phase 3 shall consist of the construction of an approximately 58,430 square foot drive-through car wash on the proposed 1.341 acre site (identified as “Pad 1” in the Covina Village Covina Village Specific Plan). Subject to Developer’s extension rights by compliance with Section 6(d) below, Developer shall cause the Commencement of Construction of the Phase 1 and Phase 2 to occur no later than twelve (12) months from the Effective Date (“Commencement Deadline”). In no event shall building permits be issued for Phase 3 of the Property before vertical construction (framing) of Phase 1 and Phase 2 have commenced.

(c) Completion of Construction of Improvements. Developer shall complete Phase 1 and Phase 2 of the Property (as evidenced by a Certificate of Occupancy for Phase 1 and Phase 2 of that portion of the Project located on the Property) and open the two drive-through restaurants for business to the public, as provided in Section 6(a) above, no later than two (2) years from the Effective Date (“Completion Deadline”). Building Permits for Phase 3 shall not be issued until vertical construction (framing) of Phase 1 and Phase 2 has commenced.

(d) Permitted Extensions of Commencement and Completion Deadlines. During the Term of this Agreement Developer may, at its sole election, extend the Commencement Deadline and/or the Completion Deadline, for sixty (60) day periods, provided that any such extension by Developer shall be effective only upon the payment to the City of Fifty Thousand Dollars (\$50,000.00) for each 60 day extension period; provided, however, that the maximum aggregate period for any extensions under this Section 6(d) shall not exceed a period of one (1) year. An extension of the Commencement or the Completion Deadline by Developer shall be effective only upon written notice by Developer provided to the City at least ten (10) days before the expiration of the Commencement or the Completion Deadline (as applicable, and including any previous extension) and a concurrent payment to the City of Fifty Thousand Dollars (\$50,000.00) for each 60 day extension period. An extension of the Commencement Deadline shall likewise constitute the same extension of the Completion Deadline for the single \$50,000 Commencement Deadline extension payment.

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications.

(a) Covina Village Specific Plan Uses. The City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the minimum and maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes, if any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended from time to time other than by initiative. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals, as they may be lawfully amended from time to time other than by initiative.

(b) Anchor Use Contemplation; Minimum Development Standard. The intent and purposes of the approval of the higher densities permitted by the Covina Village Covina Village Specific Plan include the anchor role of the Project in the City. Accordingly, at any and all times after the 180-day period referred to in Section 6(a) that the portion of the Property is operated to include

restaurants, the Owner shall cause the two restaurant portions of the Property to be operated in accordance with the Minimum Development Standard.

8. Developer's Rights and Obligations; Relationship to Certain Other Agreements and Entitlements.

(a) Vested Rights. Subject to Section 9 below, Developer shall have and is hereby vested with the rights, during the Term of this Agreement, to develop the Property in accordance with this Agreement, the Covina Village Covina Village Specific Plan and related Project Approvals, as they may be lawfully amended by Developer from time to time, other than by initiative, all of which are hereby incorporated in this Agreement by reference.

(b) Effect of Failure to Perform. Nothing contained in this Section 8 shall limit the terms of Section 10(g) above or of Section 12 of this Agreement.

9. Changes in Applicable Rules.

(a) Non-Application of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees and taxes), including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Property or construction of all or any part of the Project located on the Property), and any changes in Developer Fees (which expression "changes in Developer Fees" includes under this Agreement new or additional Development Fees), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Property shall not be applied to that portion of the Project located on the Property during the term of this Agreement unless such changes represent an exercise of the City's Reserved Powers. Notwithstanding the foregoing, if within three (3) years after the Effective Date, the Developer has not caused the Commencement of Construction to occur, the Property shall be subject to all changes in Developer Fees adopted by the City between the Effective Date and the occurrence of the Commencement of Construction of the portion of the Project on the Property.

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, fire, mechanical, plumbing, electrical regulations and similar regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

(c) Changes Mandated by Federal or California Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date shall apply to the Project, if such changes or additions are specifically mandated to be applied to developments such as the Project, irrespective of vested rights, by applicable California or federal laws or regulations, provided however that if the City or Developer believes that such a change or addition

exists, that Party shall provide the other Party hereto with a copy of such California or federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. The City's determination as to the applicability of the change or addition to California or federal laws to the Project shall be final and conclusive; provided, however, that nothing in this Agreement shall deprive Developer of the rights possessed by any other property owner, absent vested rights, to judicially challenge the applicability of the change, the addition to California or federal laws to the Project, or the appropriateness of the application to the Project of the change or addition.

(d) Changes in Processing Fees and Taxes Under Applicable Rules. The Project shall be subject to any increase in taxes and Processing Fees imposed by the City; provided that such a change is applied on a Citywide basis.

10. Developer's Obligations.

(a) Conditions of Approval. Developer shall comply with the Conditions of Approval as they apply to the Property.

(b) Reimbursement of Approval Costs. No later than forty-five (45) days after the later of: (i) the date all parties have executed this Agreement (the "Execution Date"), or (ii) the date the City delivers to Developer an invoice of costs subject to reimbursement pursuant to this Section, Developer shall reimburse the City for all of its costs, to the extent that the Developer has not already advanced the same, to process the Project Approvals that apply to the Property and this Agreement, including, without limitation, legal, economic consulting and environmental processing costs related to the Project Approvals and this Agreement.

(c) Processing Fees and Taxes. Developer agrees to pay all taxes and Processing Fees, including City plan check fees, building inspection fees, and permit fees at the rate and amount in effect at the time the Processing Fee or tax is required to be paid.

(d) Public Benefit Contribution. Developer shall pay to the City a Public Benefit Contribution of Six Hundred Thousand Dollars (\$600,000) on or before May 1, 2024; provided that if Developer does not do so, the liquidated damages provisions of clause (g) below shall apply. Concurrently with its execution and delivery of this Agreement, Developer shall deliver to the City a fully executed originals of (a) the promissory note in the form attached hereto as Exhibit B ("Note") and (b) the deed of trust in the form attached hereto as Exhibit C, which must be duly acknowledged by a notary public ("Trust Deed"). The Note shall evidence, and the Trust Deed shall secure, the Developer's obligation to pay the \$800,000 of liquidated damages payable under clause (g) below. The Trust Deed shall be recorded against the Property by a title company acceptable to City which shall issue to the City, at Developer's cost, an ALTA Lenders Policy of Title Insurance with coverage in the amount of \$800,000 insuring the City that the Trust Deed is a first lien on the Property and that all property taxes and assessments are paid current. Developer shall pay the cost of recording the Trust Deed. If Developer pays the Public Benefit Contribution by May 1, 2024, or satisfies its obligations under such that liquidated damages could no longer be payable under Section 10(g) below, then the City shall promptly, upon request by the Developer, execute, acknowledge and deliver to the Developer a full reconveyance of the Trust Deed to be recorded releasing the Trust Deed from the Property ("Reconveyance"). The City shall executed reasonable recordable nondisturbance agreements in favor of tenants under leases permitted by this Agreement, such that such tenants' leases

will not be extinguished upon any foreclosure of the Trust Deed. For avoidance of doubt, if Developer pays the Public Benefit Contribution by May 1, 2024, the Note shall terminate and be returned to Developer, the Trust Deed shall be reconveyed and the provisions of Section 10(g) below shall terminate and be of no further force or effect.

(e) Potential Refund of Public Benefit Contribution. Upon Developer's written request, the City shall refund the Public Benefit Contribution (to the extent previously paid) or if not previously paid, deliver the Reconveyance to the Developer only if the following have occurred: (i) the entry of a final judgment or issuance of a final order or discharge of a writ, after all appeals have been exhausted, directed to the City as a result of any lawsuit filed against City to set aside, withdraw or abrogate the approval of the City Council of this Agreement, the Covina Village Covina Village Specific Plan or any other Project Approvals; or (ii) Developer satisfies its obligations under Sections 6(a) through 6(c) of this Agreement. If the Developer requests the refund of the Public Benefit Contribution under this Section 10(e)(i): (1) the City shall have the right to terminate this Agreement and to revoke any Project Approvals or Building Permits for the Property which remain in effect and (2) Developer shall be deemed to have waived and relinquished any vested rights to develop the Property it may hold or may acquire under any Project Approvals, Building Permits or this Agreement with respect to all or any portion of the Property.

(f) Construction, Opening and Initial Operation. These obligations are described in Section 6 above.

(g) Liquidated Damages.

IF DEVELOPER DOES NOT PAY THE \$600,000 PUBLIC BENEFIT CONTRIBUTION/FEE BY MAY 1, 2024, **AND THEN,** SUBJECT TO DEVELOPER'S EXTENSION RIGHTS BY COMPLIANCE WITH SECTION 6(d) ABOVE DEVELOPER DEFAULTS UNDER ANY OF ITS OBLIGATIONS SET FORTH IN SECTION 6(a) THROUGH SECTION 6(c) OF THIS AGREEMENT, THEN DEVELOPER SHALL PAY TO CITY, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, THE SUM OF EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) WHICH OBLIGATION SHALL BE ADDITIONALLY EVIDENCED BY THE PROMISSORY NOTE AND SECURED BY THE TRUST DEED. THE LIQUIDATED DAMAGES SET FORTH IN THIS SECTION AND RIGHT TO FORECLOSE THE DEED OF TRUST IF NOT PAID, SHALL BE THE CITY'S SOLE AND EXCLUSIVE DAMAGES REMEDY FOR SUCH DEFAULT BY DEVELOPER UNDER SECTIONS 6(a) THROUGH 6(c) OF THIS AGREEMENT.

THE PARTIES HERETO ACKNOWLEDGE THAT SUCH LIQUIDATED DAMAGES ARE FAIR AND REASONABLE IN LIGHT OF ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE PARTIES' ESTIMATION OF THE POSSIBLE RANGE OF DAMAGE TO THE CITY IN THE EVENT OF SUCH DEFAULT OR BREACH BY DEVELOPER UNDER SECTIONS 6(a) THROUGH 6(c) OF THIS AGREEMENT, IT BEING AGREED THAT THE DAMAGES TO THE CITY IN SUCH EVENT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE (IF NOT IMPOSSIBLE) TO DETERMINE WITH ACCURACY AND THAT PROOF AND DETERMINATION OF THE AMOUNT OF DAMAGES WOULD BE COSTLY AND INCONVENIENT.

EXCEPT FOR THE CITY'S RIGHT TO TERMINATE THIS AGREEMENT, THE CITY'S RIGHT TO REVOKE THE PROJECT APPROVALS ONLY AS TO THE PHASE (PHASE 1 OR 2) TO WHICH THE DEVELOPER DEFAULT APPLIES, THE CITY'S RIGHT TO INDEMNITY AND DEFENSE AND DEPOSITS UNDER SECTION 17 BELOW, AND THE CITY'S RIGHT TO REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS UNDER SECTION 25 BELOW, THE CITY AGREES TO LOOK SOLELY TO SUCH LIQUIDATED DAMAGES (AND IF NOT PAID, THEN TRUST DEED FORECLOSURE) AS COMPLETE SATISFACTION OF ANY DAMAGES CLAIM WHICH THE CITY MIGHT OTHERWISE HAVE AGAINST DEVELOPER ARISING OUT OF OR DUE TO DEVELOPER'S FAILURE TO PAY SUCH LIQUIDATED DAMAGES, AND THE CITY IRREVOCABLY WAIVES ANY OTHER DAMAGES REMEDY FOR ANY OF SUCH FAILURES OR DELAYS. BY SIGNING THIS SECTION WHERE INDICATED BELOW, THE PARTIES EXPRESSLY AFFIRM THEIR AGREEMENT TO THE PROVISIONS OF THIS SECTION.

FOR THE AVOIDANCE OF DOUBT, IT IS ACKNOWLEDGED, THAT THE LIQUIDATED DAMAGES UNDER THIS SECTION ARE NOT APPLICABLE TO, AND DO NOT LIMIT THE RIGHTS AND REMEDIES OF THE PARTIES FOR, THE BREACH OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT OTHER THAN THE OBLIGATIONS DESCRIBED IN THIS SECTION.

\_\_\_\_\_  
"City" (Initials)

\_\_\_\_\_  
"Developer" (Initials)

11. Lot Line Adjustment Approval and Recordation; Issuance of Building Permit; Expedited Permit Processing.

(a) Lot Line Adjustment Approval and Recordation. The Lot Line Adjustment shall not be approved and recorded until: (1) Developer has delivered to the City fully executed originals of the Note and the Trust Deed, in accordance with Section 10(d); and (2) this Development Agreement and the Trust Deed have been recorded in accordance with Section 10(d).

(b) Building Permit Issuance. The City shall be under no obligation to issue any Building Permit for the Property until: (i) all the fees and other obligations set forth in Section 6 and Section 10 which are due before issuance of such Building Permit have been fully paid or otherwise fulfilled; and (ii) any lender whose lien is prior and superior to any conveyance or covenant required by this Agreement shall have agreed to subordinate its lien to the conveyances and covenants created and required by this Agreement by a recorded subordination agreement acceptable to the City Manager, in his or her sole and absolute discretion.

(c) Expedited Processing. The City shall accept the Property Building Permit applications for expedited processing, including but not limited to expedited plan check review, provided that Developer pays the applicable Processing Fee and the actual costs to the City, plus fifteen percent (15%) of the cost of any internal or external expeditor directly employed or engaged by the City.

12. Default.

(a) Notice and Cure.

(i) With the exception of a Developer default under Sections 6(a) through (d) or Section 10(g), which shall cause the Developer's obligations under the Promissory Note to come due (and if not paid, result in foreclosure of the Trust Deed), and as to which no cure period shall be applicable prior to City's exercise of its rights and remedies, failure by the City or Developer to perform any other term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other shall constitute a default under this Agreement. Each notice under this Section 12(a)(i) shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) Termination. With the exception of a Developer default under Sections 6(a) through (c) above or Section 10(g) which default shall cause the Developer's obligations under the Promissory Note to come due (and if not paid, result in foreclosure of the Trust Deed), after notice and expiration of the 30-day cure period under Section 12(a) above, should the defaulting party fail to timely cure any default, the notifying party, at its option, shall have all rights and remedies provided by law, subject to any applicable express provisions of this Agreement, and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the City Council and a determination that a default exists, the Party alleging the default by the other Party may give written notice of termination of this Agreement to the other Party. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination except as to duties and obligations that arose prior to the date of such termination and except that if the two drive-through restaurants have been constructed pursuant to the Covina Village Specific Plan, then the obligations provided or referenced in Section 13 shall survive such termination.

(c) Monetary Damages Limitation. In no event: (i) shall monetary damages be available against the City for any alleged default or breach by the City, and (ii) shall consequential damages (other than the liquidated damages under Section 10(g) which is a negotiated alternative thereto) be available against Developer or Owner, except in the event that the remedy of specific performance is found by a court of competent jurisdiction to be unavailable to the City for a violation of the covenants with respect to the Minimum Development Standard provided in Section 7(b).

(d) Specific Performance as to Minimum Development Standard. The parties acknowledge and agree that irreparable damage to the City would occur in the event that the provisions of this Agreement the failure of the two drive-through restaurants to meet the Minimum Development Standard as provided in Section 7(b) (if open) were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the City shall be entitled to an injunction or injunctions to prevent breaches of this Agreement as to such matters and to enforce specifically such terms and provisions hereof. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, may be inadequate compensation for any loss and

that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by the Parties to this Agreement.

13. Certain Perpetual Provisions Extending Beyond the Term.

(a) Compliance with Minimum Development Standard. The obligations with respect to the Minimum Development Standard provided in Section 7(b) shall run with the land and be of perpetual duration, and the remedies for a violation of the same shall include specific performance under Section 12(d).

14. Transfers of Interests in Property or Agreement.

(a) Except as provided below, prior to completion of construction of the that portion of the Project to be constructed on the Property and expiration of the 180-day period referenced in Section 6(a), Developer shall have no right to Transfer any interest in the Property or in this Agreement, without the written consent of the City, which may be given or withheld in its sole, absolute and unrestricted discretion; however, notwithstanding the foregoing, without City approval the Developer shall be entitled to transfer the Property to a limited liability company which Allan Lui and members of his family are the sole interest holders (“Lui LLC”) provided that at least 30 calendar days prior to such conveyance the City is provided with an executed copy of the operating agreement for the Lui LLC which evidences the foregoing ownership by the Lui family and includes provisions making the LLC a ”single purpose entity” to make it a bankruptcy remote entity.

(b) After the completion of construction of the portion of the Project to be constructed on the Property and expiration of the 180-day period referenced in Section 6(a), Developer may freely Transfer any or all of its interest in the Property and this Agreement, without requirement that the City consent, provided that the transferee assumes all obligations of Developer arising or accruing on and after the transfer date under this Agreement, pursuant to an assignment and assumption agreement reasonably acceptable to the City Attorney.

(c) Upon any Transfer under Section 14(b), Developer shall remain liable for all obligations under this Agreement arising or accruing before the date of Transfer, but shall be discharged from any liability and responsibility for obligations arising or accruing on and after the date of Transfer; however, no obligation under the Promissory Note shall be deemed to have been altered, and the Promissory Note and Trust Deed shall remain in full force and effect.



15. Mortgagee Protection.

(a) In General. The provisions of this Agreement shall not prevent or limit Developer's right to encumber 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 such portion. The City acknowledges that Mortgagees and other financiers may require certain interpretations or modifications of this Agreement and agrees upon request, from time to time, to meet with Developer and representatives of such Mortgagees or other financiers to negotiate in good faith any such request for interpretation. The City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement and does not, in the City's sole determination, diminish the City's benefits from this Agreement or increase the risk that the City will fail to receive the same. Any Mortgagee shall be entitled to the rights and privileges set forth in this Section.

(b) Notice of Default to Mortgagee. If a Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, the City shall use its best efforts to provide to such Mortgagee written notification from the City of any failure or default by Developer in the performance of Developer's obligations under this Agreement, which notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

(c) Right of Mortgagee to Cure. With respect to any default under the Promissory Note or Trust Deed, any Mortgagee shall rely on its cure rights or right to payoff the Promissory Note under applicable law relating to the foreclosure of the Trust Deed, and shall have no other notice or cure rights. Any Mortgagee have the right, but not the obligation, to cure any other failure or default by Developer during the cure period allowed Developer under this Agreement (provided, such lender shall receive a day by day extension to such cure period for each day a notice of default is not delivered to Mortgagee in accordance with Section 15(b)), plus an additional one hundred twenty (120) days in order to cure such failure or default, if it is reasonably necessary for the Mortgagee to obtain possession of the property to cure, such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to the City that it is undertaking efforts of such a nature; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

(d) Liability for Past Defaults or Obligations. Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Property or any portion thereof pursuant to foreclosure, deed-in-lieu of foreclosure, shall take such property subject to the terms of this Agreement and in no event shall any such property be released from any obligations associated with its use and development under the provisions of this Agreement, including, without limitation, the payment of any sums due before or after any such actions. Nothing in this Section shall prevent the City from exercising any remedy it may have for a default under this Agreement, provided, however, that in no event shall such Mortgagee or purchaser at a foreclosure sale be personally liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee, but any such defaulted obligations shall continue to run with the land.

16. Binding Effect. Subject to Section 5 and Section 12(a) hereof, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be (a) binding upon the Parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns and (b) constitute covenants running with the land.

17. Indemnification.

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

i. In the future there may be challenges to the legality, validity and adequacy of the Project Approvals, the EIR, and/or this Agreement as they apply to the Property; and

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

iii. In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 17, neither party shall have liability under this Agreement for any failure of either party to perform its respective obligations under this Agreement under this Agreement as the direct result of a judicial determination resulting from any claim or litigation that on the Effective Date, or at any time thereafter, the Land Use Regulations, the Project Approvals, the EIR or any related CEQA determination for the Project ("CEQA Determination"), this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

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

(c) Participation in Litigation: Indemnity. To the full extent permitted by law, Developer agrees to and shall fully indemnify, hold harmless, and defend, City and its respective elected and appointed officials, officers, members, agents, employees, and representatives (each an "Agent" and collectively "Agents") from any and all claims, suits, causes of action, fines, penalties, proceedings, damages, injuries or losses of any name, kind or description, specifically including

attorneys' fees (collectively, "Claim(s)"), arising in any way out of or challenging the validity of this Agreement, any of the other Project Approvals, the EIR or the CEQA Determination. Developer's indemnification obligation shall include, but not be limited to, actions to attack, set aside, void, or annul any approval, should it occur, related to this Agreement, any of the other Project Approvals, the EIR or the CEQA Determination, including actions invoking Planning and Zoning Law or CEQA. Developer shall reimburse City for any court costs and attorneys' fees that City may be required by a court to pay as a result of such Claim(s). City may, at its sole and absolute discretion, participate in the defense of any such Claim(s) undertaken by Developer, or (b) retain separate counsel whose attorneys' fees and costs shall be paid by Developer. Such participation in the defense of such Claim(s) or the retention of separate counsel by City shall not relieve Developer of its obligations under this Agreement.

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

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

(f) In the event Developer fails or refuses to reimburse City for its cost to defend any Claim(s), City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12(a) above, and revoke any Project Approvals or Building Permits which remain in effect. Additionally, in the event of any such Claim(s), the Term of this Agreement shall be tolled for the period during which such Claim(s) are proceeding until fully and finally resolved.

(g) In order to ensure compliance with this Section 17, within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, Developer shall deposit with the City cash in the amount of One Hundred Thousand Dollars (\$100,000), guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this Section. If the City is required to draw on that cash to indemnify or reimburse itself for such costs, Developer shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Manager determines that an

additional deposit or additional security up to an additional One Hundred Thousand Dollars (\$100,000) is necessary to secure the obligations of this Section, Developer shall provide such additional security within fifteen (15) days of notice from the City Manager. The City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

(h) **Hold Harmless: Developer's Construction and Other Activities.** Developer shall indemnify, defend, save and hold City and its Agents, as defined in this Section 17 above, and shall hold and save them and each of them harmless from any and all claims, damages of any kind and litigation which may arise from Developer's or Developer's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by Developer or by any of Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's agents, contractors or subcontractors. Notwithstanding anything to the contrary in this Section 17, nothing herein shall make Developer liable for the negligence or willful misconduct of City's Agent(s).

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

18. **Relationship of the Parties; Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the development of the Property 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 and the owner of such property.

19. **Recordation.** The City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles no later than ten (10) days after the later to occur of the effective date of the ordinance approving this Agreement. Developer shall reimburse the City for all costs of such recording, if any.

20. **No Third-Party Beneficiaries.** The only signatories to this Agreement are the City and Developer. There are no third-party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever other than the successors in interest of the signatories.

21. **Advice; Neutral Interpretation.** Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsman, but in accordance with its fair meaning.

22. Certificate of Compliance. At any time during the term of this Agreement, any Party or Mortgagee may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) Business Days of receipt of the written request therefor.

23. Consideration. The City and Developer acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to Developer pursuant to this Agreement as more particularly set forth in the Recitals and Section 2 of this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

24. Periodic Reviews.

(a) Annual Reviews. During the Term of this Agreement, the City may conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement and Government Code Section 65865.1. The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to the City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

(b) Special Reviews. In addition, during the Term of this Agreement, the City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time. The cost of such special reviews shall be borne by the City, unless such a special review demonstrates that Developer is not acting in good faith compliance with the provisions of this Agreement. In such cases, Developer shall reimburse the City for all costs, direct and indirect, incurred in conjunction with such a special review.

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 24 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Community Development Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as requested by the Community Development Director.

(d) Result of Review. If following such a review, the Community Development Director finds good faith compliance by Developer with the terms and conditions of this Agreement, the Community Development Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith

compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Los Angeles.

If, following such a review, the Community Development Director finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance as provided in Section 12 and the City may follow the default procedures as set forth in Section 12.

(e) Effect on Default. Nothing in this Section 24 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time, including any time other than during a periodic review under this Section 24, or from terminating this Agreement pursuant to the provisions of Section 12 following any event of default by Developer.

25. Future Litigation Expenses.

(a) Payment of Prevailing Party. If the City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of default, breach, tortious act, or act or omission, arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

26. Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words "include," "including" or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

27. Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(i) City and Developer, by mutual agreement, may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Development Agreement amendments.

(ii) Except as may be otherwise agreed to by the Parties, no amendment of this Agreement shall be required in connection with any Subsequent Project Approval except a Subsequent Project Approval proposed by initiative. Any Subsequent Project Approval issued after

the Effective Date of this Agreement other than by initiative automatically shall be incorporated into this Agreement and vested hereby.

28. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act.

29. Waiver. The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

30. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 6 or Section 10 is held invalid or unenforceable before a Certificate of Occupancy is issued for the Property, then this entire Agreement shall be void and unenforceable and of no further force and effect except that the liquidated damages under Section 6 shall survive, except to the extent that such provisions have been found to be invalid or unenforceable.

31. Extensions of Time; Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused or extended, as the case may be, during any period of Force Majeure as defined in Section 1 above, except as otherwise expressly provided in this Agreement; however, no Force Majeure or other extension shall apply to the obligations of Developer to satisfy its obligations under Sections 6(a) through 6(c) of this Agreement.

32. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered to Developer (notices to City may not be hand delivered) or sent by overnight courier service; (ii) upon receipt if delivered by UPS, Federal Express or other overnight courier service or (iii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To PKL: PKL  
C/O Mega 5 Partners  
2863 Maricopa Street  
Torrance, CA 90503  
Attn: Allan Lui

With Copy to: Dzida, Carey & Steinman  
3 Park Plaza, Suite 750  
Irvine, CA 92614  
Attn: Greg Weiler and Jay R. Steinman, Esq.

To the City: City Manager  
City of Covina  
125 E. College Street  
Covina, CA 91723

With Copy to: City Attorney  
Richards Watson Gershon  
c/o Candice K. Lee, City Attorney, City of Covina  
350 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 32 change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

33. Applicable Law. This Agreement shall be governed and construed in all respects by the laws of the State of California with the venue of the Los Angeles County Superior Court.

34. Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

35. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the within subject matter and contains the entire understanding between the Parties with respect thereto.

36. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

37. Compliance With Law. Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, state and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.



38. Authorization. Each person executing this Agreement represents and warrants that he or she is authorized and has the legal capacity to execute and deliver this Agreement on behalf of the Party for which execution has been made.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the \_\_\_ day of \_\_\_\_\_, 2023

CITY OF COVINA,  
a California municipal corporation

\_\_\_\_\_  
Walter Allen III  
Mayor

ATTEST:

\_\_\_\_\_(SEAL)  
Fabian Velez  
Chief City Clerk

PKL INVESTMENTS, LLC, A CALIFORNIA  
LIMITED LIABILITY COMPANY

By: \_\_\_\_\_  
Name:  
Its:

APPROVED AS TO FORM:

\_\_\_\_\_  
Candice K. Lee  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Christopher Marcarello  
City Manager

**ACKNOWLEDGMENT**

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**ACKNOWLEDGMENT**

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**Exhibit "A"**  
**Legal Description of Property**

PARCEL 2

THOSE PORTIONS OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 10 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF WEST COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 21, 1877, DESCRIBED AS FOLLOWS:

THE SOUTH 500 FEET OF SAID PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTHERLY 306.90 FEET OF SAID LAND;

EXCEPTING THEREFROM THAT PORTION LYING EAST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF AZUSA AVENUE, 50.00 FOOT HALF WIDTH, AS SHOWN THE MAP OF TRACT NO. 34224, FILED IN BOOK 895, PAGES 56 THROUGH 58 OF MAPS, RECORDS OF SAID COUNTY, WITH THE NORTH LINE OF THE SOUTHERLY 306.90 FEET OF SAID PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11; THENCE ALONG SAID NORTH LINE, NORTH 89°57'39" EAST 244.51 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID NORTH LINE, PARALLEL WITH SAID EAST LINE OF AZUSA AVENUE, NORTH 00°27'53" EAST 500.02 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHERLY 806.90 FEET OF SAID PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF LOT 3 OF TRACT NO. 23421, AS SHOWN ON A MAP FILED IN BOOK 780, PAGE 18 OF MAPS, RECORDS OF SAID COUNTY, SAID POINT BEING THE TERMINUS POINT OF THIS DESCRIPTION.

**Exhibit "B"**  
**Promissory Note**

**SECURED PROMISSORY NOTE**

\$600,000

\_\_\_\_\_, 20\_\_ (“*Effective Date*”)

***THIS NOTE CONTAINS PROVISIONS FOR A BALLOON PAYMENT.***

For value received, PKL INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (“*Maker*”), promises to pay to the CITY OF COVINA a California municipal corporation (“*Holder*”) (Holder and Maker are collectively referred to as the “*Parties*” and individually as a “*Party*”), at, \_\_\_\_\_, California \_\_\_\_\_, EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) (“*Note Amount*”), which is the liquidated damages obligation under Section 10(g) of the Development Agreement between the City and Maker dated \_\_\_\_\_, 2024 (“*Development Agreement*”) together with interest on the unpaid balance from the date it is due, at the applicable rate specified below, in accordance with the following provisions:

1. **Interest.** Except as provided in Section 5.4 below, no interest shall accrue under this Note..
2. **Purpose of Note** The Note Amount is the liquidated damages that Maker owes the City if Developer does not comply with the obligations under or described in Section 10(g) of the Development Agreement after failing to pay the Public Benefit Contribution by May 1, 2024 under the Development Agreement.
3. **Maturity.** The Note Amount is due as the liquidated damages under Section 10(g) of the Development Agreement, and is payable when such liquidated damages become payable. All payments made under this Note shall be by Federal wire transfer or certified or cashiers.
4. **Security.** As security for payment of this Note, Maker has, concurrently herewith, delivered for the benefit of Holder a deed of trust (“*Trust Deed*”) encumbering real property in Los Angeles County, California (“*Property*”) which is not junior or subordinate to any other deeds of trust or liens (except the liens for property taxes and assessments not yet payable).
5. **Events of Default.** The items listed in Sections 5.1 and 5.2 shall be an “*Event of Default*” under this Note:
  - 5.1. **Note Payments.** Maker’s failure to make a payment of principal and/or interest on the date due under this Note; or
  - 5.2. **Other Defaults.** Any other default or breach of any obligation of Maker under this Note and/or the Trust Deed where such default is not cured within five (5) days following receipt by Maker of written notice of default from Holder..
  - 5.4. **Default Interest Rate.** From and after the maturity of this Note interest on the Note Amount shall be computed at the maximum rate allowed by law (“*Default Interest Rate*”). The imposition of the Default Interest Rate shall not limit any of Holder’s other rights and remedies under this Note or the Trust Deed, including, but not limited to, foreclosure, and the right to compel prompt performance under this Note. If interest is not paid when due, it shall thereafter bear like interest as the principal. Notwithstanding the

foregoing or any other provision of this Note, in no event shall the rate of interest under this Note exceed the maximum rate permitted by law; and if such rate of interest, computed in the amount provided for in this Note, should exceed said maximum legal rate, then the rate of interest shall be automatically reduced to such maximum legal rate. The remedies of Holder as provided herein and in the Trust Deed shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor may arise under the terms of such documents.

6. **Waivers.**

6.1. **By Maker.** Presentment, demand, protest, and all notice of every kind (including notices of protest, dishonor and nonpayment of this Note) are hereby waived by Maker. To the extent permitted by applicable law, the defense of any statute of limitations is hereby waived by Maker.

6.2. **By Holder.** Nothing contained herein shall prevent Holder from waiving, in writing, in any certain instance or on any particular occasion, any right or remedy hereunder (including, but not limited to, the operation of the acceleration clauses above). Consent to one (1) such transaction shall not be deemed to be a consent or waiver to any future transaction. No such waiver shall constitute a further or continuing waiver of such right or remedy as to any preceding or succeeding breach hereunder. No single or partial exercise of any right hereunder or under any instrument securing or guaranteeing this Note shall preclude any other or further exercise thereof or the exercise of any other right. Holder shall at all times have the right to proceed against any security for this note in such order and in such manner as Holder may deem fit, without waiving any rights with respect to any other security. No delay or omission on the part of Holder in exercising any right hereunder or under any other instrument shall operate as a waiver of such right or of any other right under this Note. No acceptance by Holder of any payment due hereunder which is less than the full amount then due and owing shall operate as a waiver of the same or any other right or option, except as and to the extent provided by law. The release of any party liable on this note shall not operate to release any other party liable hereon. All rights and remedies of Holder hereunder and under any documents guaranteeing or securing this Note are cumulative.

7. **Collection Costs.** Maker hereby agrees to pay all costs and expenses including, without limitation, reasonable attorneys' fees, incurred by Holder and arising out of or related to the collection of any amounts due hereunder or the enforcement of any rights provided for herein or in the Trust Deed. In any action or proceeding brought to enforce any right or obligation under this Note and/or the Trust Deed, the prevailing party therein shall be entitled to recover from the other party the costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding.

8. **Notices.** All notices, consents, waivers, demands, requests or other instruments or communications provided for under this Note or by law to be served on or to be given to either Maker or Holder shall be in writing, signed by the party giving the same to the addresses set forth below and personally delivered to Maker (personal delivery may not be used for notices to Holder) or sent by certified mail, return receipt requested and prepaid, or sent by reputable overnight courier (such as Federal Express, UPS or DHL), or by e-mail to Developer (email may not be used for delivery of notices to Holder). A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. prevailing local time, otherwise on the day following personal delivery, or on the date of receipt, if transmitted by e-mail prior to 5:00 p.m. prevailing local time or otherwise on the next business day, or two (2) business days following the date the notice is postmarked, if mailed, or on the day following delivery to the applicable overnight courier, if sent by overnight courier. Either Party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice:



HOLDER:

MAKER:

9. **Performance of Acts on Business Days.** All references in this Note to “days” shall mean consecutive calendar days. If the date for payment of any amount hereunto falls on a Saturday, Sunday or state or federal holiday, such payment may be made on the next succeeding business day.

10. **Payment Allocation.** Payments received by Holder shall be applied first to any delinquent charges assessed hereunder and to costs incurred by Holder in the enforcement of this Note or in the preservation of the collateral under the Trust Deed, second to accrued interest hereunder, and finally, to principal.

11. **Applicable Law/Terms.** This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12. **Construction of Agreement.** The agreements contained herein shall not be construed in favor of or against either Party, but shall be construed as if both Parties prepared this Note.

13. **Time of the Essence.** Time is of the essence of each and every provision of this Note.

14. **Severability.** If any portion of this Note is illegal, null, void or against public policy, for any reason, or is held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Note shall not be affected thereby and shall remain in force and effect to the full extent permissible by law, but only to the extent that performance of such remaining provisions would not be inconsistent with the intent and purposes of this Note.

15. **Entire Agreement.** This Note and the Development Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

16. **Joint and Several.** If more than one person signs this Note, each such person shall be deemed an obligor and the obligation of all such obligors shall be joint and several. When the context and construction so requires, all words used in the singular shall be deemed to have been used in the plural. The word “person” as used in this Note shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

17. **Transfer of Property.** Upon transfer of the Property to a limited liability company in which Allan Lui and members of his family are the sole owners (“*Lui Entity*”) and which otherwise complies with the provisions of Section 14(a) of the Development Agreement, and if a written assignment and assumption agreement executed by Maker and such Lui Entity is delivered to Holder with respect to this Note, then the obligations under this Note shall be deemed assigned to and accepted by the Lui Entity and thereafter such Lui

Entity shall be deemed the Maker under this Note and the original Maker shall be released from its obligations under this Note (but the Trust Deed shall continue to secure this Note).

***THIS NOTE CONTAINS PROVISIONS WHICH WILL REQUIRE A BALLOON PAYMENT AT MATURITY.***

PKL INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

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

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

Its: \_\_\_\_\_

***Maker***

**Exhibit "C"**  
**Trust Deed**

Order No.  
Escrow No.  
Loan No.

**WHEN RECORDED, MAIL TO:**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
(SHORT FORM)

**This DEED OF TRUST**, made this \_\_\_\_\_, 20\_\_\_\_, between PKL INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, called **TRUSTOR**, whose address is \_\_\_\_\_ and \_\_\_\_\_ Title Company called **TRUSTEE**, and CITY OF COVINA, a California municipal corporation, herein called **BENEFICIARY**. Trustor grants to Trustee in trust, with power of sale, that property in the County of Los Angeles, State of California ("**Property**"), described on Exhibit A attached hereto, together with the rents, issues and profits thereof (collectively the "**Property**"), subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$800,000 with interest thereon according to the terms of a Secured Promissory Note dated substantially concurrently herewith made by Trustor, payable to order of Beneficiary ("**Note**"), and any express written extensions thereof approved and executed by Beneficiary.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

(CONTINUED ON NEXT PAGE)

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

**PKL INVESTMENTS, LLC, A CALIFORNIA  
LIMITED LIABILITY COMPANY,**

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

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

Its: \_\_\_\_\_

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

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF                                    )

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

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

WITNESS my hand and official seal.

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

(SEAL)

## DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste therefor; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary; provided that fire insurance required by any senior lender shall be deemed satisfactory to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay; at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may; make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(CONTINUED ON NEXT PAGE)

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD**

**REQUEST FOR FULL RECONVEYANCE**

TO \_\_\_\_\_, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated \_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to \_\_\_\_\_

**Do Not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.**

<b>DEED OF TRUST</b> WITH POWER OF SALE	_____ <b>TRUSTEE</b>
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**EXHIBIT "A" TO DEED OF TRUST**  
**DESCRIPTION OF PROPERTY**

