



UPLAND CITY COUNCIL

AGENDA

**February 25, 2019
City Council Chamber**

**DEBBIE STONE, MAYOR
JANICE ELLIOTT, MAYOR PRO TEM
RICKY FELIX, COUNCILMEMBER
RUDY ZUNIGA, COUNCILMEMBER
BILL VELTO, COUNCILMEMBER**

**JEANNETTE VAGNOZZI, CITY MANAGER
JAMES L. MARKMAN, CITY ATTORNEY**

DISRUPTION OF MEETINGS

Individuals who demonstrate disruptive conduct during City Council meetings that prevent the City Council from conducting its meeting in an orderly manner are guilty of a misdemeanor as stated in PC403, disrupting a public meeting, and are subject to removal from the chamber or arrest.

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6:00 PM - Closed Session

- 1. CALL TO ORDER AND ROLL CALL**
- 2. ADDITIONS-DELETIONS TO AGENDA**
- 3. ORAL COMMUNICATIONS**

This is a time for any citizen to comment on item listed on the closed session agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit.

- 4. CLOSED SESSION**

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of California Government Code Section 54956.9)

Case Name: San Antonio Heights Association v. County of San Bernardino
Local Agency Formation Commission et. al.
San Bernardino Superior Court Case No. CIVDS 1715504

- B. GOVERNMENT CODE SECTION 54956.9 (d) (1) EXISTING LITIGATION
(WORKER'S COMP CLAIM)

Claimant: Judy Jauregui
Agency: City of Upland

- C. GOVERNMENT CODE SECTION 54956.9 (d) (1) EXISTING LITIGATION
(WORKER'S COMP CLAIM)

Claimant: Phillip Watkins
Agency: City of Upland

- D. GOVERNMENT CODE SECTION 54956.9 (d) (1) EXISTING LITIGATION
(WORKER'S COMP CLAIM)

Claimant: Anthony Yoakum
Agency: City of Upland

- E. GOVERNMENT CODE SECTION 54957 - PUBLIC EMPLOYEE
PERFORMANCE EVALUATION

Title: City Attorney

7:00 PM

5. INVOCATION

Zayneb Shakely, City of Knowledge School

6. PLEDGE OF ALLEGIANCE

7. PRESENTATIONS

Certificate Recognizing the 90th Anniversary of the Placement of the Madonna of the Trail Statue, accepted by Kathy Holloway

8. CITY ATTORNEY

9. ORAL COMMUNICATIONS

This is a time for any citizen to comment on any item listed on the agenda only. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. Speakers will be given five (5) minutes during public hearings. The use of visual aids will be included in the time limit.

10. COUNCIL COMMUNICATIONS

11. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine and will be enacted by one roll call vote. There will be no separate discussion of

these items unless members of the legislative body request specific items be removed from the Consent Calendar for separate action.

- A. APPROVAL OF WARRANT AND PAYROLL REGISTERS JANUARY 2019
Approve the January Warrant Registers and Direct Disbursements (check numbers 23634-24031) totaling \$7,870,525.23 and Payroll Registers totaling \$1,768,651.89 (check Numbers 160471-160510 and EFTs 12557-13296). (Staff Person: Londa Bock-Helms)
- B. APPROVAL OF MINUTES
Approve the Regular Meeting Minutes of February 11, 2019. (Staff Person: Jeannette Vagnozzi)
- C. DESIGNATION OF A DELEGATE TO THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS GENERAL ASSEMBLY MEETING
Appoint Councilmember Janice Elliott as the delegate to represent the City of Upland at the Southern California Association of Governments General Assembly Meeting on May 2, 2019. (Staff Person: Jeannette Vagnozzi)
- D. APPROVAL OF PARCEL MAP 19856 FOR THE COLONIES PARTNERS, L.P.
Conditionally approve Parcel Map 19856 subject to the recordation of the Ingress/Egress Easement Agreement referenced on the map on the same date as the final map recordation. (Staff Person: Rosemary Hoerning)
- E. EMERGENCY PURCHASE AND INSTALLATION OF EQUIPMENT AND PROFESSIONAL SERVICES FOR WATER SYSTEM IMPROVEMENTS
Receive and file the status update. (Staff Person: Rosemary Hoerning)
- F. APPOINTMENT OF TRAFFIC SAFETY ADVISORY COMMITTEE MEMBERS
Ratify the following appointments to the Traffic Safety Advisory Committee: Eddie Limbaga, term to expire in December 2020, and Lisa Nassar, term to expire in December 2022. (Staff Person: Keri Johnson)
- G. APPOINTMENT TO THE BUILDING BOARD OF APPEALS
Ratify the appointment of Jason Gaudy to the Building Board of Appeals, term to expire in December 2022. (Staff Person: Jeannette Vagnozzi)
- H. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR BENEFIT BROKER SERVICES
Approve a Professional Services Agreement for benefit broker services with Keenan and Associates; and authorize the City Manager to execute the agreement. (Staff Person: Jeannette Vagnozzi)

12. PUBLIC HEARINGS

- A. CONTINUED PUBLIC HEARING: ALLEY VACATION AT 1148 SAN BERNARDINO ROAD AND ORDER TO VACATE
City Council will consider an order to vacate approximately 813 linear feet of 20-foot wide alley located at 1148 San Bernardino Road, further described as south and east of Assessor's Parcel No. 1046-191-06. (Staff Person: Rosemary Hoerning)
Recommendation: 1) Staff Presentation
2) Hold Public Hearing
3) Close Public Hearing
4) Adopt a Resolution declaring the order to vacate 20-foot wide alley located at 1147 San Bernardino Road, approximately 813 linear feet.

13. COUNCIL COMMITTEE REPORTS

14. BUSINESS ITEMS

A. CONSIDER RENEWAL OF LIBRARY AGREEMENT

Direct staff to negotiate and prepare a draft Agreement for renewal of the existing Agreement with Library Systems and Services, LLC (LS&S) for continued operation of the Upland Public Library, for a period of five (5) years. (Staff Person: Jeannette Vagnozzi)

B. APPOINTMENT TO PERSONNEL BOARD OF REVIEW

Select an appointment from the employee associations' nominees, Gifty Beets and Steve Bierbaum; and ratify the appointment to the Personnel Board of Review, term to expire June, 2019. (Staff Person: Keri Johnson)

C. MID-YEAR BUDGET FY 2018-19 REVIEW

Receive and file the Mid-Year Budget Report for Fiscal Year 2018/19 (Attachment 1); approve the Proposed Mid-Year Adjustments detailed on Attachment 2; and provide staff with direction regarding committing unreserved/undesignated fund balance. (Staff Person: Londa Bock-Helms)

D. CONSIDERATION OF A SECOND AMENDMENT TO THE RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT BY AND BETWEEN THE CITY OF UPLAND AND FORD OF UPLAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (FORMALLY NAMED PARK PLACE, LLC)

Approve the Second Amendment to the Restated and Amended Owner Participation Agreement between the City of Upland and Ford of Upland, LLC, a California limited liability company. (Staff Person: Robert Dalquest)

E. PROXY FOR SAN ANTONIO WATER COMPANY

Appoint Tom Thomas as proxy to vote all shares at the annual stockholder's meeting of the San Antonio Water Company for the slate of directors; and to include the appointment of John Navarro and Councilmember Rudy Zuniga to the proposed Board slate. (Staff Person: Rosemary Hoerning)

F. CREATE TWO AD HOC COMMITTEES

It is recommended that the City Council take the following actions:

1. Create an ad hoc committee to discuss concerns related to Historic Downtown Upland and consider an application process for future appointments to the committee.
2. Create an ad hoc committee to discuss facility use with Upland Unified School District and appoint members to the committee.

(Staff Person: Jeannette Vagnozzi)

15. ORAL COMMUNICATIONS

This is a time for any citizen to comment on any item not listed on the agenda. Anyone wishing to address the legislative body is requested to submit a speaker card to the City Clerk at or prior to speaking. The speakers are requested to keep their comments to no more than three (3) minutes. The use of visual aids will be included in the time limit. Public comments and questions for the purpose of hearing current matters of concern in our community and to provide citizens a method for the public to hear those concerns in an open venue is encouraged. However, under the provisions of the Brown Act, the City Council is prohibited from discussion of items not listed on the agenda, and therefore, the City Council, City Manager, or City Attorney will take communications under advisement for consideration and appropriate response or discussion at a later time.

16. CITY MANAGER

17. ADJOURNMENT

The next regularly scheduled City Council meeting is Monday, March 11, 2019.

NOTE: If you challenge the public hearing(s) or the related environmental determinations in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Upland, at, or prior to, the public hearing.

All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at www.ci.upland.ca.us, subject to staff's ability to post the documents before the meeting.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office, 931-4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

POSTING STATEMENT: On February 21, 2019 a true and correct copy of this agenda was posted on the bulletin boards at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall).

**MINUTES OF THE REGULAR MEETING OF THE
UPLAND CITY COUNCIL
FEBRUARY 11, 2019**

OPENING

The regular meeting of the Upland City Council was called to order by Mayor Debbie Stone at 7:00 p.m. in the Council Chamber of the Upland City Hall.

1. ROLL CALL

Present: Mayor Debbie Stone, Council Members Janice Elliott, Ricky Felix, Bill Velto, and Rudy Zuniga

Staff: City Manager Jeannette Vagnozzi, City Attorney James L. Markman, and City Clerk Keri Johnson

2. ADDITIONS/DELETIONS TO AGENDA None

3. ORAL COMMUNICATIONS None

4. CLOSED SESSION None

5. INVOCATION Reverend Jan Chase, Unity Church of Pomona

6. PLEDGE OF ALLEGIANCE Councilmember Velto

7. PRESENTATIONS

Police Chief Goodman presented Officer Nelson with his badge.

8. CITY ATTORNEY None

9. ORAL COMMUNICATIONS

Kati Parker, elected official for the Inland Empire Utilities Agency, spoke in support of the appointment of Sid Robinson and Linden Brouse to the San Antonio Water Company Board.

Martha Goss, Upland, provided information on her background and qualifications to serve on the San Antonio Water Company Board and requested the Council consider her for the appointment.

John Goss, Upland, stated the the San Antonio Water Company Board should have representation by San Antonio Heights residents and requested the Council consider Martha Goss for the appointment.

Barbara Papa, Upland, had questions regarding the role of water board members, and the background and qualifications of the individuals being appointed to the San Antonio Water Company Board and West End Consolidated Water Company Board.

Bob Cable, Upland, stated that the San Antonio Company Water Board should have more representation by San Antonio Heights residents and requested that the Council postpone the decision regarding appointments.

Steve Bierbaum, Upland, had questions regarding the emergency water repairs and the appointment of the proxy for the water boards. He requested the Council consider appointing Martha Goss to the San Antonio Company Water Board.

Glenn Bozar, Upland, stated the the San Antonio Water Company Board should have representation by San Antonio Heights residents and requested the Council consider Martha Goss for the appointment. He also commented on the complexity and volume of information included in the Comprehensive Annual Financial Report.

10. COUNCIL COMMUNICATIONS

Councilmembers announced various activities throughout the community, including providing an update on the League of California Cities Conference they attended.

11. CONSENT CALENDAR

Councilmember Elliott removed Consent Calendar Items 11G and 11H for separate action. Motion by Councilmember Felix to approve the remainder of the Consent Calendar, seconded by Councilmember Elliott, and carried unanimously.

A. APPROVAL OF WARRANTS AND PAYROLL REGISTERS DECEMBER 2018

Approved the December Warrant Registers and Direct Disbursements (check numbers 23278-23633) totaling \$5,521,896.07 and Payroll Registers totaling \$1,352,139.42 (check Numbers 160325-160470 and EFTs 12067-12556).

B. APPROVAL OF MINUTES

Approved the Regular Meeting Minutes of January 28, 2019.

C. TREASURER'S REPORT NOVEMBER 2018 AND DECEMBER 2018

Received and filed the November 2018 and December 2018 Treasurer's Reports.

D. SAN ANTONIO WATER COMPANY STOCK ACQUISITION

Authorized the City Manager to acquire 1/4 share of San Antonio Water Stock from the James M. Casey, Trustee of the Serra Group Trust in the amount of \$13,500.

E. EMERGENCY PURCHASE AND INSTALLATION OF EQUIPMENT AND PROFESSIONAL SERVICES FOR WATER SYSTEM IMPROVEMENTS

Received and filed the status update.

F. SEWER SERVICE AGREEMENT FOR 125 E 24TH STREET (SSA-2018-29-11)

Authorized the City Manager to execute the Sewer Service Agreement.

ITEMS REMOVED FOR SEPARATE ACTION

G. PROXY FOR SAN ANTONIO WATER COMPANY

Public Works Director Hoerning presented the staff report which is on file in the City Clerk's office.

There was discussion on the application process for board openings, the purpose of appointing a proxy, and the potential conflicts of interest if a Councilmember is appointed to the board.

Motion by Councilmember Elliott to continue the appointments to the February 25, 2019 City Council meeting.

Public Works Director Hoerning responded to Council's questions regarding the date of the San Antonio Water Company annual meeting and the deadline for the proposed slate of directors to be submitted to them.

Councilmember Elliott amended the motion to include approving the reappointment of Will Elliott to the slate of directors; and to continue the appointment of the proxy and remaining appointments to the slate of directors to the next City Council meeting, seconded by Councilmember Felix, and carried unanimously.

H. BOARD OF DIRECTORS FOR WEST END CONSOLIDATED WATER COMPANY

Council questioned the appointment process for the board of directors.

Motion by Councilmember Elliott to appoint Tom Thomas as proxy to vote all shares at the annual stockholder's meeting of the West End Consolidated Water Company for the slate of directors, to include the reappointment of Tom Thomas and Ken Willis, seconded by Councilmember Felix, and carried unanimously.

12. PUBLIC HEARINGS

A. 20-FOOT WIDE ALLEY VACATION AT 1148 SAN BERNARDINO ROAD

Public Works Director Hoerning presented the staff report which is on file in the City Clerk's office.

Bob Cable, Upland, stated concern that this project differed from the process used for another project in the City and questioned if the City was receiving any financial compensation.

Public Works Director Hoerning provided additional information regarding the alley vacation process.

Motion by Councilmember Elliott to declare its intention to vacate approximately 813 linear feet of 20-foot wide alley located at 1148 San Bernardino Road, further described as south and east of Assessor's Parcel No. 1046-191-06 and continue the public hearing concerning the vacation to

February 25, 2019 at 7 p.m. in the Council Chamber, seconded by Councilmember Felix, and carried with Councilmember Zuniga opposed.

13. COUNCIL COMMITTEE REPORTS None

14. BUSINESS ITEMS

A. COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) AND RELATED REPORTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018

Finance Officer Bock-Helms presented the staff report, which is on file in the City Clerk's Office. Finance Officer Bock-Helms then introduced Greg Fankhanel, of the auditing firm Van Lant and Fankhanel, who provided an overview of the audit process and findings.

There was discussion on the self-insurance fund, housing fund, fraud detection measures, audit standards, and the audit findings.

Motion by Councilmember Elliott to receive and file the CAFR, the Statement on Auditing Standards 114 and 115 letters and the Independent Accountants' Report of Agreed-Upon Procedures Applied to Appropriation Limit Worksheets for the Fiscal Year Ended June 30, 2018. It is also recommended that City Council retroactively approve the transfer of cash from the General Fund to the Self-Insurance Fund in the amount of \$3,213,000 in order to eliminate a long term negative cash balance which couldn't be reported as such in the June 30, 2018 Comprehensive Annual Financial Report, seconded by Councilmember Velto, and carried unanimously.

15. ORAL COMMUNICATION (items not on the agenda)

James Breitling, Upland, made suggestions for improving the City's website to make information more accessible.

Bob Cable, Upland, stated that he felt he was lied to by the City.

Shannan Maust, Upland, suggested the Council have the City Council Advisory Committee review the Homeless Coordinator program and suggested the request for proposal be extended if they receive less than two applications during the process.

Elinor Barnes, Upland, stated concerns regarding the potential health hazards of 5G.

Carlos Garcia, Upland, spoke about leadership and reasons for the change of leadership in the City.

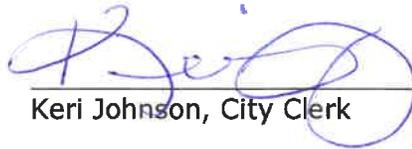
16. CITY MANAGER

City Manager Vagnozzi announced the dates of upcoming public education workshops and introduced the new Development Services Director, Bob Dalquest.

17. ADJOURNMENT

At 9:33 p.m. Mayor Stone adjourned adjourned in memory of Bill Alexander, former Mayor and City Councilmember for the City of Rancho Cucamonga. The next regularly scheduled City Council meeting is Monday, February 25, 2019.

SUBMITTED BY



Keri Johnson, City Clerk

APPROVED

February 25, 2019



STAFF REPORT

ITEM NO. 11.C.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
KERI JOHNSON, CITY CLERK
SUBJECT: DESIGNATION OF A DELEGATE TO THE SOUTHERN CALIFORNIA
ASSOCIATION OF GOVERNMENTS GENERAL ASSEMBLY MEETING

RECOMMENDED ACTION

It is recommended that the City Council appoint Councilmember Janice Elliott as the delegate to represent the City of Upland at the Southern California Association of Governments (SCAG) General Assembly Meeting on May 2, 2019.

GOAL STATEMENT

The proposed action supports the City's goal to participate in activities in developing policies for California cities.

BACKGROUND

The City of Upland is a member of SCAG, a planning organization representing six counties, 191 cities and more than 19 million residents in an area covering over 38,000 square miles. SCAG is involved in coordinating a number of planning and policy initiatives related to Southern California transportation and land-use planning.

ISSUES/ANALYSIS

The SCAG General Assembly Regional Conference will take place May 1-3, 2019, in Palm Desert, CA. The conference will feature presentations and panel discussions on new opportunities and innovations that will help meet the challenges the region faces in the coming years. In order to vote in the SCAG General Assembly meeting, the City Council must designate a representative.

FISCAL IMPACTS

There is no fiscal impact associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

No Attachments Available



STAFF REPORT

ITEM NO. 11.D.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
PONCE YAMBOT, PRINCIPAL ENGINEER
SUBJECT: APPROVAL OF PARCEL MAP 19856 FOR THE COLONIES PARTNERS, L.P.

RECOMMENDED ACTION

It is recommended the City Council conditionally approve Parcel Map 19856 subject to the recordation of the Ingress/Egress Easement Agreement referenced on the map on the same date as the final map recordation.

GOAL STATEMENT

The proposed action supports the City's goal to adhere for processing of development proposals in an efficient professional and courteous manner.

BACKGROUND

The project site is within the Colonies at San Antonio Specific Plan (Planning Area 4, PA4). The property is located east of Campus Avenue on the south side of 19th Street. Planning Area 4 has a Mixed-Use land designation. The size of the parcel is 5.78 acres and is proposed to be subdivided into two smaller parcels. Parcel 1 will be 1.282 acres and Parcel 2 will be 4.502 acres. The plan for the property is to build 203 unit apartments on Parcel 2 and a 60-unit condominium on Parcel 1, which is allowed under the Specific Plan.

The Planning Commission has made determinations to support approval of Tentative Parcel Map 19856 per Resolution 4881 dated May 30, 2018.

ISSUES/ANALYSIS

In accordance with the State's Subdivision Map Act and the Upland Municipal Code, the City has examined the final map as to sufficiency and correctness of information, and consequently endorsed its approval. In addition, The Colonies Partners, L.P., (the developer) has entered

into an agreement with the neighboring property owner to provide ingress and egress to the proposed land division that will be recorded on the same date as this map. Utility easements, both public and private, are likewise shown and dedicated on the map.

No improvement is necessary on this two-lot land division and therefore no subdivision agreement or bonds are required.

FISCAL IMPACTS

There is no fiscal impact associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Final Map

Location Map

Access Easement

2 NUMBERED LOT
5.784 ACRES GROSS
5.784 ACRES NET

PARCEL MAP NO. 19856

IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

BEING A SUBDIVISION OF LOT 1 OF TRACT NO. 16198-2, AS PER PLAT RECORDED IN BOOK 324, PAGES 77 THROUGH 79, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, STATE OF CALIFORNIA, AND AS AMENDED BY CERTIFICATE OF CORRECTION RECORDED APRIL 24, 2007 AS INSTRUMENT NO. 2007-0249341, OF OFFICIAL RECORDS.

MADOLE AND ASSOCIATES, INC.
ANTHONY HARO, PLS 7635 DATE OF SURVEY: JULY, 2017

OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE ALL AND THE ONLY PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND SUBDIVIDED AS SHOWN ON THIS MAP AND WE CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP.

WE HEREBY DEDICATE TO THE CITY OF UPLAND AN EASEMENT FOR PUBLIC UTILITY PURPOSES AS SHOWN HEREON.

WE HEREBY RESERVE A VARIABLE WIDTH EASEMENT FOR RECIPROCAL VEHICULAR AND EMERGENCY INGRESS/EGRESS ACCESS, AS SHOWN HEREON, FOR PRIVATE USE AND THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNS AND LOT OWNERS WITHIN THIS ANNEXED MAP.

WE HEREBY RESERVE A 20' WIDE PRIVATE EASEMENT FOR SEWER PURPOSES, AS SHOWN HEREON, FOR PRIVATE USE AND THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNS AND LOT OWNERS WITHIN THIS ANNEXED MAP.

WE HEREBY RESERVE A 15' WIDE PRIVATE EASEMENT FOR DRAINAGE PURPOSES, AS SHOWN HEREON, FOR PRIVATE USE AND THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNS AND LOT OWNERS WITHIN THIS ANNEXED MAP.

WE HEREBY RESERVE AN EASEMENT FOR ON-SITE SHARED VEHICULAR INGRESS/EGRESS ACCESS BETWEEN PARCELS 1 AND 2, AS SHOWN HEREON, FOR PRIVATE USE AND THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNS AND LOT OWNERS WITHIN THIS ANNEXED MAP.

WE HEREBY DEDICATE TO THE CITY OF UPLAND A 26' WIDE PUBLIC EASEMENT FOR WATER PURPOSES AS SHOWN HEREON.

BY: THE COLONIES PARTNERS, L.P., A CALIFORNIA LIMITED PARTNERSHIP
BY ITS GENERAL PARTNER

BY: _____
CO-MANAGING MEMBER

BY: _____
CO-MANAGING MEMBER

NOTARY 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 _____
COUNTY OF _____

ON _____ (DATE) BEFORE ME, _____ (NAME AND TITLE OF THE OFFICER)

PERSONALLY APPEARED _____ (NAME OF PERSON SIGNING)

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 OF OFFICER

MY PRINCIPAL PLACE OF BUSINESS IS IN _____ COUNTY.

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: / /

CITY ENGINEER'S STATEMENT:

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ANNEXED MAP AND THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY OF UPLAND MUNICIPAL CODE HAVE BEEN COMPLIED WITH.

DATED: _____ BY: _____
ROSEMARY HOERNING
PUBLIC WORKS DIRECTOR/CITY ENGINEER
CITY OF UPLAND, CALIFORNIA
R.C.E. 44766 EXP. 3/31/2020

I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATED: 2/15/19 BY: _____
MICHAEL P. THORNTON, L.S. 6867
LICENSE EXPIRES 9/30/2020



BOARD OF SUPERVISOR'S CERTIFICATE:

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS, COLLECTED AS TAXES, WHICH AT THE TIME OF FILING OF THE ANNEXED MAP WITH THE COUNTY RECORDER, ARE A LIEN AGAINST SAID PROPERTY, BUT NOT YET PAYABLE, AND THAT THE SUBDIVIDER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER, GIVING HIS ESTIMATE OF THE AMOUNT OF SAID TAXES AND SPECIAL ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

DATED: _____ BY: _____
LAURA H. WELCH, CLERK OF THE
BOARD OF SUPERVISORS OF THE
COUNTY OF SAN BERNARDINO
BY: _____, DEPUTY

AUDITOR'S CERTIFICATE:

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE REAL PROPERTY SHOWN UPON THE ANNEXED MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS, NOT YET PAYABLE, ESTIMATED TO BE \$ _____

DATED: _____ BY: _____
OSCAR VALDEZ, AUDITOR-CONTROLLER/
TREASURER / TAX COLLECTOR
COUNTY OF SAN BERNARDINO, CALIFORNIA
BY: _____, DEPUTY

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE COLONIES PARTNERS, L.P., A CALIFORNIA LIMITED PARTNERSHIP, IN JULY, 2017. I HEREBY STATE THAT ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN SUCH POSITIONS WITHIN ONE YEAR OF RECORDATION, IN COMPLIANCE WITH SECTIONS 66485 AND 66486 OF THE SUBDIVISION MAP ACT; AND THAT SAID MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATED: 2/13/19 BY: _____
ANTHONY HARO P.L.S. 7635
REGISTRATION EXPIRES 12/31/2020.



CITY CLERK'S CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF UPLAND BY A MOTION DULY SECONDED AND PASSED, APPROVED THE ATTACHED MAP ON THE _____ DAY OF _____, 201____, AND ACCEPTED FOR PUBLIC USE THE DEDICATIONS THEREIN OFFERED, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, AND FOUND THIS MAP TO BE CONSISTENT WITH APPLICABLE GENERAL OR SPECIFIC PLANS OF THE CITY OF UPLAND.

DATED: _____ BY: _____
KERI JOHNSON
CITY CLERK, CITY OF UPLAND, CALIFORNIA

CITY PLANNING COMMISSION CERTIFICATE:

I HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THE ANNEXED MAP IS IN ACCORDANCE WITH THE TENTATIVE MAP APPROVED AT A MEETING OF THE PLANNING COMMISSION OF THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, HELD ON THE _____ DAY OF _____, 201____, AND A MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF _____, 201____.

DATED: _____ BY: _____
ROBERT DALQUEST
SECRETARY OF PLANNING COMMISSION
CITY OF UPLAND, CALIFORNIA

SAN BERNARDINO COUNTY RECORDER'S CERTIFICATE :

THIS MAP HAS BEEN FILED UNDER DOCUMENT NUMBER _____
THIS _____ DAY OF _____, 20____, AT _____ M.
IN BOOK _____ OF _____, AT PAGE(S) _____
AT THE REQUEST OF _____
IN THE AMOUNT OF \$ _____

BOB DUTTON
ASSESSOR-RECORDER-CLERK
COUNTY OF SAN BERNARDINO

BY: _____
DEPUTY RECORDER

2 NUMBERED LOT
5.784 ACRES GROSS
5.784 ACRES NET

SHEET 2 OF 2 SHEETS

PARCEL MAP NO. 19856

IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

BEING A SUBDIVISION OF LOT 1 OF TRACT NO. 16198-2, AS PER PLAT RECORDED IN BOOK 324, PAGES 77 THROUGH 79, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, STATE OF CALIFORNIA, AND AS AMENDED BY CERTIFICATE OF CORRECTION RECORDED APRIL 24, 2007 AS INSTRUMENT NO. 2007-0249341, OF OFFICIAL RECORDS.

MADOLE AND ASSOCIATES, INC.
ANTHONY HARO, PLS 7635 DATE OF SURVEY: JULY, 2017

BASIS OF BEARINGS

THE BEARING OF N62°24'56"E ALONG THE CENTERLINE OF CAMPUS AVENUE, AS SHOWN ON TRACT MAP No. 16198-2 M.B. 324/77-79, WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP

SURVEYOR'S NOTES

HORIZONTAL DISTANCES SHOWN ON THIS MAP ARE GRID. TO OBTAIN GROUND LEVEL DISTANCES, DIVIDE THE GRID DISTANCE SHOWN BY 0.99990826 (COMBINATION FACTOR).

() INDICATES MEASURED AND RECORD 1" IRON PIPE TAGGED L.S. 4430 PER TR. NO. 16198-1, M.B. 324/77-79.

○ INTERIOR LOT CORNERS AND LOT LINE E.C.'S AND B.C.'S TO BE MONUMENTED AS FOLLOWS:

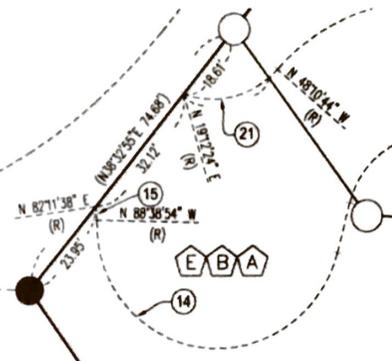
LEAD AND TACK WITH TAG STAMPED "P.L.S. 7635" TO BE SET AT ALL LOCATIONS WHERE POINT FALLS IN CONCRETE; 1" IRON PIPE WITH TAG STAMPED "P.L.S. 7635" TO BE SET WHERE POINT FALLS IN ASPHALT OR IN LANDSCAPED AREA.

● INDICATES FOUND 1" IRON PIPE L.S. 4430, PER TR. NO. 16198-1, M.B. 296/43-55 AND TR. NO. 16207, M.B. 304/58-61.

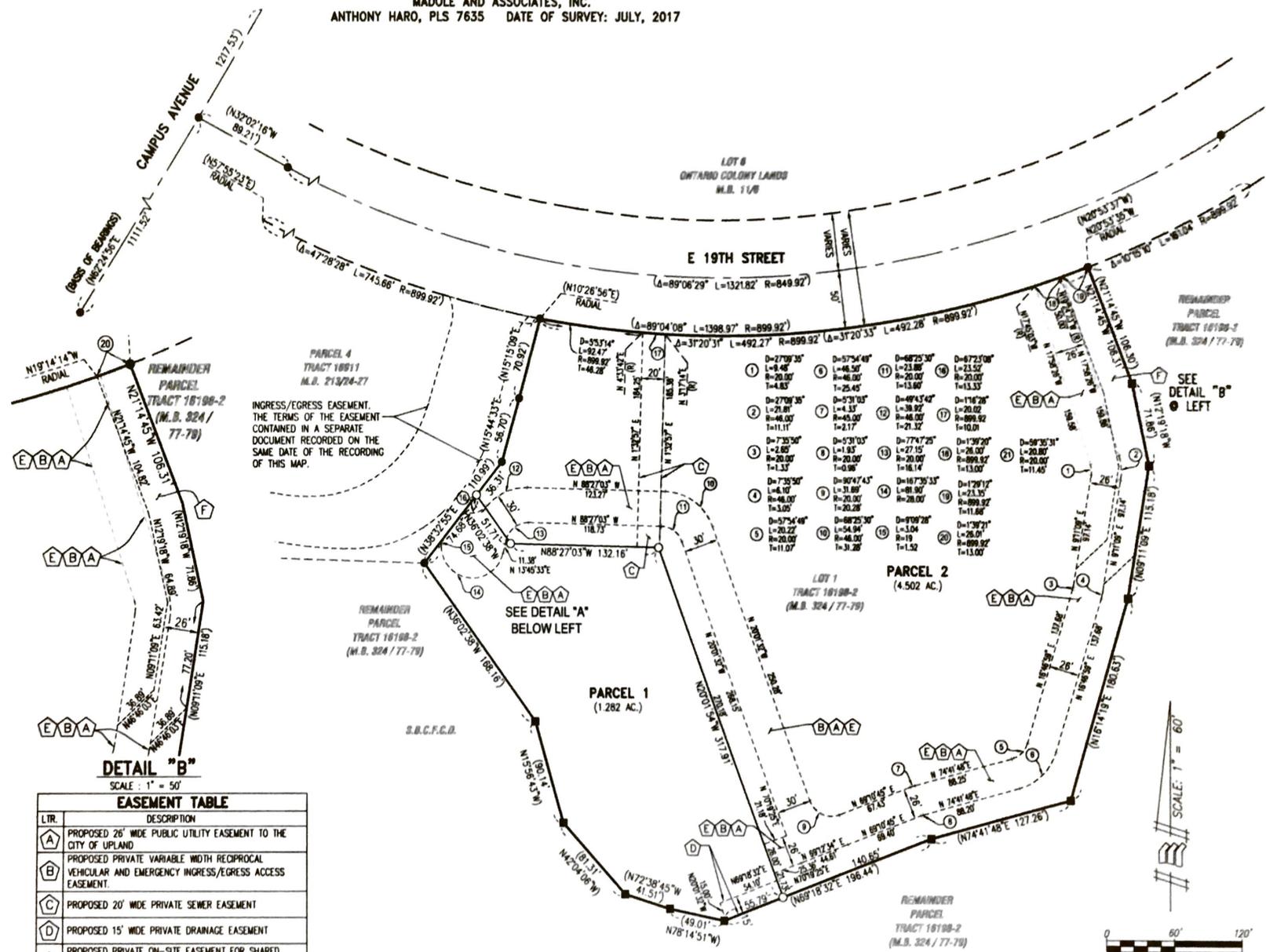
■ INDICATES FOUND 1" IRON PIPE L.S. 4430, FLUSH, PER TR. NO. 16198-2, M.B. 324/77-79.

LEGEND

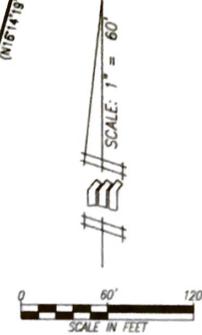
- INDICATES EASEMENT AS NOTED
- INDICATES CENTERLINE
- INDICATES EXISTING PROPERTY LINE
- INDICATES EXISTING RIGHT OF WAY
- 1 INDICATES PARCEL NUMBER
- LOT 1 INDICATES EXISTING LOT NUMBER AND RECORD MAP INFORMATION



DETAIL "A"
SCALE: 1" = 20'



LTR	DESCRIPTION
A	PROPOSED 26' WIDE PUBLIC UTILITY EASEMENT TO THE CITY OF UPLAND
B	PROPOSED PRIVATE VARIABLE WIDTH RECIPROCAL VEHICULAR AND EMERGENCY INGRESS/EGRESS ACCESS EASEMENT.
C	PROPOSED 20' WIDE PRIVATE SEWER EASEMENT
D	PROPOSED 15' WIDE PRIVATE DRAINAGE EASEMENT
E	PROPOSED PRIVATE ON-SITE EASEMENT FOR SHARED VEHICULAR INGRESS/EGRESS ACCESS BETWEEN PARCEL 1 AND PARCEL 2
F	PROPOSED 26' WIDE PUBLIC WATER EASEMENT TO THE CITY OF UPLAND



PARCEL MAP 19856



LOCATION MAP



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Recording Requested by
-- and --
When Recorded, Return to:
The Colonies Partners
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: Jeff Burum/Phil Burum

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT

THIS EASEMENT (referred to herein for convenience as the "**Easement Instrument**") is dated for identification purposes as of _____, 201__ and is premised on the following:

RECITALS

A. The Colonies-Pacific 17, LLC, a California limited liability company ("**Company**") is the owner of that certain commercial shopping center property located generally at the southeasterly corner of 19th Street and Campus Avenue in the City of Upland. The property is commonly known as 1890, 1900, 1902, 1910 and 1916 Campus Avenue and 1118 and 1126 East 19th Street, Upland and is more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Shopping Center**").

B. The Shopping Center is comprised of seven separate parcels of improved real property which resulted from recordation of Parcel Map No. 16911, as shown on map on file in Book 213, pages 24-27, inclusive, of Maps, in the Office of the County Recorder of San Bernardino County ("**Parcel Map No. 16911**", and each parcel therein a "**Parcel**" and collectively, the "**Parcels**"; separate Parcels in Parcel Map No. 16911 are identified herein as "**Parcel __**" by the parcel number given to such parcel in Parcel Map No. 16911) and includes and is subject to certain perpetual, non-exclusive easements.

C. Parcel 4 of the Shopping Center, commonly known as 1910 North Campus Avenue, Upland, is subject to a long-term lease between Company and Albertson's, LLC, a Delaware limited liability company (as successor-in-interest to Albertson's Inc., a Delaware

corporation) (“**Albertson’s**”) and is improved by a building and other ancillary improvements operated by Albertson’s as a supermarket. Parcel 4 also includes parking lots, parking lot drive aisles and main drive aisles providing ingress and egress to all parcels making up the Shopping Center including Parcel 4. The Company and Albertson’s are sometimes referred to herein collectively as the “**Consenting Owners.**”

D. The Shopping Center is subject to that certain Declaration of Easements, Restrictions and Common Area Maintenance Agreement recorded on March 9, 2006 as Document No. 2006-0162787, Official Records of San Bernardino County, California (the “**REA**”). Among other things, the REA provides for common operation, maintenance, and repair of the Shopping Center; the REA also includes specific provisions regarding the common area thereof (“**Common Area**”). The Common Area of the Shopping Center, defined therein as all of those areas on each constituent Parcel outside of defined Building Limit Lines (as defined therein), is subject to certain reciprocal easements granted and/or reserved in favor of all owners, tenants and occupants thereof and their employees, service persons, licensees, invitees, customers, contractors and agents, as provided more specifically in the REA. Capitalized terms used herein from the REA shall have the meanings ascribed thereto in the REA.

E. Common Area of the Shopping Center includes certain primary drive aisles for ingress to and egress from the Shopping Center which are illustrated in Exhibit A-1 of the REA as Main Drive Aisles (“**Main Drive Aisles**”).

F. The Colonies Partners, L.P., a California limited partnership (“**Colonies Partners**”) is the owner of that certain parcel of real property immediately adjacent to and east of the Shopping Center, south of 19th Street, containing approximately 5.79 acres, more or less (which real property is referred to herein as “**Planning Area 4**”), which real property is described more specifically on Exhibit B attached hereto and incorporated herein by reference. Planning Area 4 is located within The Colonies at San Antonio Specific Plan, as amended (as amended, the “**Specific Plan**”), adopted by the City of Upland. The Specific Plan permits a density of residential development on Planning Area 4 of no more than 263 dwelling units. Colonies Partners, for itself and its successors and assigns as the owner of all or any portion of Planning Area 4 agrees that without the prior written consent of the Consenting Owners (in their sole discretion) and the holder of any deed of trust security interest then encumbering the Shopping Center (each such holder, a “**Mortgagee**”) it will not seek to amend that portion of the Specific Plan relating to Planning Area 4 to increase the permitted density within Planning Area 4 above 263 units in such a way that the vehicular and pedestrian traffic from Planning Area 4 would increase use of the “**Access Driveway**” located within the “**Easement**” (as such terms are defined hereinbelow) (such prohibition against any such amendment is referred to herein as the “**Density Restriction**”). Notwithstanding the generality of the foregoing, however, the provisions hereof shall not be applicable to requested changes in the Specific Plan relating to aspects of Planning Area 4 other than the increase in residential density or in a change in the proposed use of Planning Area 4.

G. Colonies Partners is in the process of subdividing, or has as of the date of recordation hereof subdivided, Planning Area 4 into a parcel containing approximately 4.50 acres

and a parcel containing approximately 1.28 acres. Concurrently with or immediately following recordation hereof, Colonies Partners will sell and transfer title of the larger parcel of 4.50 acres (sometimes referred to herein as the “**Wood Parcel**”; and described more specifically on Exhibit C hereto) to CRP/WP Alta Upland Owner, L.L.C., a Delaware limited liability company (referred to for convenience herein as “**Wood Partners**”).

H. Wood Partners intends to construct on the Wood Parcel an apartment or common interest community containing approximately 203 residential apartment and/or condominium dwelling units (the “**Wood Project**”).

I. As of the date of recordation hereof, Colonies Partners will retain title to the smaller parcel; Colonies Partners intends to seek entitlements for the smaller parcel (sometimes referred to herein as the “**Luxury Condominium Parcel**”; and described more specifically on Exhibit D hereto) enabling construction of a common interest project thereon consisting of luxury condominiums and ancillary improvements for single family residential use (the “**Condominium Project**”). If the density of residential use in such Condominium Project would cause the density for Planning Area 4 to exceed the Density Restriction, then the provisions of Recital F requiring consent of the Consenting Owners and each Mortgagee shall apply.

J. Ingress and egress to and from the Shopping Center to and from 19th Street is provided by a Main Drive Aisle located within the Shopping Center along the easterly and southeasterly portion of Parcel 4 (the location of such Main Drive Aisle is identified and illustrated more specifically in Exhibit A-1 of the REA). Colonies Partners and Wood Partners desire to also share the use of a certain designated portion of this Main Drive Aisle as well as of certain areas within Parcel 4 lying southeasterly of the Main Drive Aisle between the Main Drive Aisle and the easterly boundary of Parcel 4 for joint ingress, egress and access to and from 19th Street for the residents of the Wood Project and the Condominium Project as well as their guests, invitees, and the employees, service persons, contractors, vendors, agents and their representatives employed in the operation of both such communities (referred to herein collectively, respectively, as the “**Wood Parcel Residents**” and the “**Luxury Condominium Residents**”) into the joint/common entrance to both the Wood Parcel and the Luxury Condominium Parcel which is to be located primarily on the Luxury Condominium Parcel.

K. In order to (i) grant an easement to permit the above described designated portions of such Main Drive Aisle and Common Area of the Shopping Center to be used for such ingress and egress by the Wood Parcel Residents and the Luxury Condominium Residents, (ii) permit a portion of the Shopping Center property east of the current easterly curb line of such Main Drive Aisle to be used for an entry driveway into the joint/common traffic circle entrance to both the Wood Parcel and the Luxury Condominium Parcel and for sidewalks to be constructed from both the Wood Parcel and the Luxury Condominium Parcel to the sidewalk located on the Shopping Center property contiguous to the eastern curb line of that portion of the Main Drive Aisle, (iii) alter a Main Drive Aisle, as well as (iv) enlarge permitted use of a Main Drive Aisle for property or premises other than the Shopping Center, all of the Owners and Consenting Owners (as defined in the REA) of the Shopping Center must give their written consent. The Company is the sole Owner of all of the Parcels constituting the Shopping Center and the Company and

Albertson's together are the only Consenting Owners under the REA. As a consequence thereof, the Company and Albertson's are the only entities whose consent to this easement and other rights granted herein is required.

L. Entry from 19th Street into both the Wood Parcel and the Luxury Condominium Parcel is necessary to facilitate development of the Wood Parcel and the Luxury Condominium Parcel. Consequently, Colonies Partners and Wood Partners desire to obtain non-exclusive, permanent easement rights described herein for the benefit of both the Wood Parcel and the Luxury Condominium Parcel, as follows:

(i) for vehicular and pedestrian ingress, egress and access on, over and across a certain designated portion of the Main Drive Aisle located between Parcel 7 of the Shopping Center and Planning Area 4,

(ii) as well as vehicular and pedestrian ingress, egress and access from the designated portion of the Main Drive Aisle into the joint/common traffic circle entrance which provides access to and is located largely upon the Wood Parcel and the Luxury Condominium Parcel, as is illustrated in Exhibits F-1 and F-2 attached hereto and incorporated herein by reference (the easement rights referred to in this subparagraph (ii) and in subparagraph (i) above are sometimes referred to herein for convenience as the "Easement"),

(iii) as well as construction, maintenance and use of certain improvements to facilitate both of the foregoing,

for and to be used by the Wood Parcel Residents and the Luxury Condominium Residents. The area of the Shopping Center and the Main Drive Aisle which is subject to this Easement (which area is sometimes referred to herein for convenience as the "Access Driveway") extends approximately one hundred seventy-five (175) feet, more or less, in a northerly and southerly direction measured from the southerly line of the right-of-way of 19th Street down the centerline of the Access Driveway, and covers an area approximately fifty-nine (59) feet wide from east to west at its widest point measured from the westerly curb-line of the Access Driveway to the easterly curb-line thereof, includes the entry drive to the traffic circle to be constructed in Planning Area 4, and certain pedestrian sidewalks. The area covered by the Easement is specifically described herein on Exhibit E and illustrated on Exhibit F-1.

M. Colonies Partners and Wood Partners desire to create a joint entry into the Wood Parcel and the Luxury Condominium Parcel to be used by the Wood Parcel Residents and the Luxury Condominium Residents for access into and egress from the Wood Project and the Condominium Project from 19th Street, which requires use of the Access Driveway. As illustrated on Exhibit F-2, the Access Driveway will contain two lanes south of 19th Street in the Main Drive Aisle for non-exclusive access for southbound traffic from 19th Street to be used to enter the Wood Parcel and the Luxury Condominium Parcel, two lanes to carry northbound traffic from the Wood Parcel and the Luxury Condominium Parcel for non-exclusive access to 19th Street, as well as the median separating southbound and northbound traffic. The parties intend that this Easement shall include both (i) the right to pass over the indicated areas of the

Main Drive Aisle and (ii) also the right to construct and use on the Shopping Center property east of and leading from the easterly curb line of the Main Drive Aisle a drive approach into a jointly used traffic circle for the Wood Parcel and the Luxury Condominium Parcel (a small portion of which will lie within the Shopping Center property east of the Main Drive Aisle) as well as to construct and use sidewalks permitting pedestrian ingress and egress from and to the Wood Parcel and the Luxury Condominium Parcel from the sidewalk adjacent to and easterly of the Main Drive Aisle and then for pedestrian access across the sidewalks adjacent to the Main Drive Aisle to 19th Street, all as illustrated conceptually on Exhibit F-2. The parties further agree and acknowledge that the Access Driveway shall provide the sole means of vehicular ingress and egress from the Luxury Condominium Parcel to and from 19th Street, and shall also provide one of two access points to enter and exit the Wood Parcel to and from 19th Street, with the second main access point for the Wood Parcel to enter and exit 19th Street to be located near the northeast corner of the Wood Parcel.

N. To facilitate use of a portion of the Main Drive Aisle and of the Shopping Center in the configuration described in Recitals L and M above, the current configuration of the Main Drive Aisle will need to be modified following recordation hereof to, among other things, (i) demolish a portion of the landscaped median currently located within the Access Driveway portion of the Main Drive Aisle, (ii) demolish a portion of existing curb along the eastern edge of the Access Driveway to create a joint access drive approach/aisle from the Access Driveway into a traffic circle to be located primarily on the Luxury Condominium Parcel, which will then provide joint access to the improvements on both the Luxury Condominium Parcel and the Wood Parcel, conceptually all as illustrated more specifically on Exhibit F-2, (iii) create a left-hand turn lane and traffic-stacking pocket in the median in the Access Driveway for vehicular traffic coming south off of 19th Street to enter the Wood Parcel and the Luxury Condominium Parcel, and (iv) create a left-hand (only) turn lane in the Access Driveway for vehicular traffic coming from the Main Drive Aisle and turning left onto 19th Street. The parties hereto intend that placement of such improvements within the Access Driveway will permit shared, commonly used access into the Shopping Center as well as the Wood Parcel and the Luxury Condominium Parcel through and across the Access Driveway.

O. Following execution of this Easement Instrument by all parties hereto and subject to the terms hereof, the parties will reasonably cooperate to develop demolition and construction plans in accordance with applicable provisions of this Easement Instrument, which plans shall reflect improvements within the affected portion of the Main Drive Aisle area in substantial accord with the conceptual layout illustrated on Exhibit F-2 hereto.

P. Subject to the terms of this Easement Instrument, the Consenting Owners are willing to grant the Easement and the easement rights described herein and by their execution hereof, Company and Albertson's evidence their consent to the creation of and grant of the Easement and the easement rights contained herein.

Q. For clarity and to confirm the Easement rights contained herein, the existence of which Easement rights are essential to both Colonies Partners and Wood Partners to obtain approval from the City of Upland to subdivide Planning Area 4 and to continue with the planning

for both the Wood Project and the Condominium Project, by their execution hereof all parties acknowledge that this Easement Instrument is being executed at a time that its recordation is conditional; recordation of the executed and acknowledged final version of this Easement Instrument will only occur concurrently with recordation of a parcel map subdividing Planning Area 4 into the Wood Parcel and the Luxury Condominium Parcel and close of the sale transaction between Colonies Partners and Wood Partners. The legal descriptions of the Wood Parcel and the Luxury Condominium Parcel which are necessary to complete Exhibits C and D hereto cannot be finalized until the parcel map is recorded. As a consequence of the foregoing, all parties hereto acknowledge and agree that this Easement Instrument will be fully executed and acknowledged, but will be held by Colonies Partners in trust and not recorded immediately. This Easement Instrument will be recorded concurrently with recordation of the parcel map subdividing Planning Area 4 and prior to transfer of title of the Wood Parcel to the Wood Partners; all parties authorize Colonies Partners to complete and attach hereto when available the legal descriptions which comprise Exhibit C and Exhibit D hereto, and to then release the fully executed original of this Easement Instrument for recordation at such time. Colonies Partners shall cause recordation hereof in compliance with the provisions of this Easement Instrument. During the period prior to recordation or termination hereof, no party may revoke, cancel or terminate its execution of this Easement Instrument; by signing, all parties authorize recordation hereof at the time required to comply with the foregoing provisions of this Easement Instrument. In the event that Colonies Partners and Wood Partners determine, in their sole discretion, that they will terminate the transaction by which Colonies Partners would sell the Wood Parcel to the Wood Partners and/or terminate the subdivision of Planning Area 4, or if recordation of the parcel map to subdivide Planning Area 4 and the close of the sale of the Wood Parcel by Colonies Partners does not occur by June 30, 2019, then, in such event, upon written notice as required by the provisions hereof this Easement Instrument shall have no further legal force or effect, the provisions hereof will be deemed automatically terminated and void, and this Easement Instrument shall not be recorded.

R. Colonies Partners by its execution hereof for Planning Area 4 and particularly for the Luxury Condominium Parcel, and Wood Partners, upon its receipt of title to the Wood Parcel, for the Wood Parcel, each agree for themselves and all of their successors and assignees to be bound by the provisions hereof affecting such real properties, including, without limitation, the Density Restriction.

S. These Recitals are deemed incorporated into the following Operative Provisions.

OPERATIVE PROVISIONS

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements contained herein, all of the parties executing this instrument agree as follows:

1. Creation of Easement. Company and Albertson's hereby grant to and in favor of all of Planning Area 4, including the Wood Parcel, the Luxury Condominium Parcel, Wood Partners and Colonies Partners, as the owners of such Parcels, respectively, and to their

respective successors and assigns, for the use and benefit of each of the Wood Parcel and the Luxury Condominium Parcel, as well as for the use and benefit of the Wood Parcel Residents and the Luxury Condominium Residents, the Easement, which shall be both non-exclusive and irrevocable, over, across and through the area described in Exhibit E to use the Access Driveway for ingress, egress and access of motor vehicles, pedestrian and vehicular traffic to and from the Wood Parcel and the Luxury Condominium Parcel to 19th Street. Such Easement shall: (a) be perpetual and survive either the termination of or breach of this Easement Instrument, (b) burden title to the Shopping Center and each of the Parcels therein and the interests of each Owner thereof, Occupant thereof or Permittee thereof (all as such terms are defined more specifically in the REA), including, but not limited to Company, as the record owner of fee simple title to the Parcels, and to Albertson's, and their respective successors and assigns (all of which are collectively referred to herein as the "Burdened Parcel"), (c) benefit both the Wood Parcel and the Luxury Condominium Parcel to which such rights are appurtenant (collectively referred to herein as the "Benefitted Parcels"), and (d) be non-exclusive. No parking easement or parking rights within the Access Driveway are granted herein; parking shall not be permitted within the Access Driveway, which is to be used only for vehicular and pedestrian ingress, egress, access and circulation. The parties hereto also confirm that this Easement Instrument does not confer any rights or easement not expressly granted herein (by way of example only and not by way of limitation, this Easement Instrument does not permit the Wood Parcel Residents and/or the Luxury Condominium Residents to park vehicle(s) in other areas within the Shopping Center, other than as members of the general public are able to temporarily park within the Shopping Center when they are engaged in business at the Shopping Center in connection with their shopping, dining and/or other retail activities). Any provision contained in the REA regarding the scope or extension of that portion of the Main Drive Aisle which is subject to the Easement granted herein which is in conflict with the description of the Access Driveway and rights therein described in this Easement Instrument is deemed modified by and superseded by the description of, and the provisions herein regarding, the Easement and the Access Driveway and such contrary REA provisions will be hereafter superseded and, to the extent superseded, shall thereafter be null, void and unenforceable. While the parties acknowledge and agree that the utilization of the Main Drive Aisle and Access Driveway contemplated herein is subject to the REA, as inconsistent provisions of the same are superseded hereby in certain respects, in no event will any other terms, conditions, covenants or restrictions of the REA (including, without limitation, any architectural controls or restrictions) be deemed binding on either the Wood Parcel or Luxury Condominium Parcel by virtue of this Easement Instrument.

2. Priority of Easement. The parties acknowledge and agree that the rights created by and conferred under this Easement Instrument are to be senior to the rights of Mortgagees holding deed of trust security interests in the Shopping Center and of monetary lien holders holding deed of trust security interests in Planning Area 4. Company shall exercise its commercially reasonable efforts to cause any Mortgagee holding a deed of trust security interest encumbering the Shopping Center to subordinate its security interest to this Easement Instrument, provided that in no event shall any such subordination be deemed to constitute a waiver of any approval or consent rights of any such Mortgagee set forth herein; such agreement to subordinate shall be attached to this Easement Instrument. Colonies Partners and Wood Partners will cause this Easement Instrument to be recorded as a lien upon the Wood Parcel and

the Luxury Condominium Parcel prior to and senior to the liens of any financial encumbrances thereon. For the purposes hereof, Colonies Partners represents to the other parties hereto that Planning Area 4 is currently free and clear of the lien of deeds of trust and shall remain so until this Easement Instrument has been recorded.

3. Access Driveway Design and Construction. No later than five (5) calendar months following the date that the last of the parties hereto has executed this Easement Instrument, the parties shall reasonably cooperate to develop plans to implement the provisions of this Easement Instrument, as follows:

a) Colonies Partners shall be responsible, at its sole cost (and without reimbursement from any of the other parties hereto), to engage an architect and/or civil engineer for the purposes of preparing plans, and cause such plans to be prepared, (i) for demolition of the existing improvements within the area described in Recital L to the extent demolition is required in order to construct improvements for the purpose described herein to reconfigure that portion of the Main Drive Aisle located within the Access Driveway in the configuration shown for the same conceptually in Exhibit F-2, and (ii) for construction of new improvements within the area covered by the Access Driveway. The parties confirm their agreement that such plans shall be substantially consistent with the conceptual layout illustrated in Exhibit F-2 hereto. The parties executing this Easement Instrument agree that the civil engineering firm of Madole & Associates, Inc. of Rancho Cucamonga, California (the “Civil Engineer”) shall be acceptable for all purposes for civil engineering work required to implement executory provisions of this Easement Instrument. Colonies Partners agrees that it will cause the Civil Engineer and, as necessary, architects and other consultants, to finalize the demolition and construction plans for the Access Driveway and all ancillary improvements within the Shopping Center property (collectively, the “Access Driveway Plans” and, sometimes, the “Plans”). Colonies Partners shall cause such Plans to comply with Applicable Laws (as defined in Section 4(c) hereinbelow) at its sole cost and expense (and without reimbursement from any of the other parties hereto). Once approved by the parties hereto as provided hereinbelow, the Access Driveway Plans shall be submitted by the Civil Engineer to and for approval by the City of Upland (the “City”). Colonies Partners shall use commercially reasonable efforts to obtain prompt City approval of the Access Driveway Plans.

b) Prior to submission of such Plans to the City, the Plans shall be submitted to and shall be subject to the prior reasonable review and approval of Company, Albertson’s, Wood Partners and any Mortgagee then holding a deed of trust security interest encumbering the Shopping Center. An address for such notice for the current Mortgagee is attached hereto as a part of the Consent and Subordination to Easement attached to this Easement Instrument. Each of said entities agrees to review any such Plans which are delivered to such party within ten (10) business days of receipt thereof and to provide comments, if any, and deliver same in accordance with the notice provision hereof by the end of such ten (10) business day review period. If a party fails to submit comments within said ten (10) business day period, Colonies Partners shall send a written request to such party which includes the following language in all caps: **“THIS IS OUR SECOND SUBMISSION OF THE ENCLOSED ACCESS DRIVEWAY PLANS FOR YOUR REVIEW AND COMMENT. IF YOU FAIL TO RESPOND WITHIN FIVE (5)**

BUSINESS DAYS FOLLOWING YOUR RECEIPT OF THIS NOTICE, YOU SHALL BE DEEMED TO HAVE APPROVED THE ENCLOSED ACCESS DRIVEWAY PLANS.”

Such failure to respond within said five (5) business day period shall be deemed to be such party's acceptance of the provisions and content of such Access Driveway Plans. In no event, however, shall the foregoing "deemed acceptance" provision apply to or be binding upon any Mortgagee holding a deed of trust security interest encumbering the Shopping Center with respect to its consent and approval rights set forth herein. In the event that any such Mortgagee has not made any response whatsoever after the second submission of the Access Driveway Plans described above, then a representative of any of the other Parties hereto may contact such Mortgagee to arrange for a telephone conference with a representative(s) of the Mortgagee concerning such Plans. Such Mortgagee shall use good faith commercial efforts to make a representative of such Mortgagee available to participate in a "meet and confer" telephone call with representatives of any of the parties hereto concerning such Access Driveway Plans. In such call the representative of the Mortgagee shall be prepared to indicate any questions or concerns of the Mortgagee to the proposed Access Driveway Plans in order to facilitate any revisions thereto acceptable to the parties hereto. If the Plans are revised as a result of such contact with the Mortgagee, such revised Access Driveway Plans shall be circulated as provided herein to all of the parties, including the Mortgagee, for such review and acceptance as is described hereinabove. The approval of any Plans by the parties hereto shall not impose any liability or responsibility whatsoever upon any such party with respect to the compliance or non-compliance of any such Plans or any improvements constructed in accordance therewith with Applicable Laws. Further, each of said parties agree to use good faith efforts to make representatives available to meet and confer as necessary to discuss and resolve any comments or objections made by a party to or concerning the Access Driveway Plans, as well as to discuss and resolve necessary or desired changes or modifications made by the City in connection with such Access Driveway Plans following review and comment on the same by the staff of the City.

c) In carrying out its responsibilities hereunder, the relationship of Colonies Partners to all of the other parties hereto is that of an independent contractor. No relationship of employer and employee, principal and agent, partnership or joint venture is created by the provisions hereof or by the satisfaction by Colonies Partners of its obligation to prepare the Access Driveway Plans and circulate the same for review and approval. Except as may be otherwise expressly set forth in this Easement Instrument, Colonies Partners is not authorized to enter into any contract, agreement, easement or other instrument in the name of any of the other parties, or as to which any of the other parties or their property would be legally bound.

d) Once the Plans have received necessary approval from the parties and the City, the Plans shall not be modified thereafter without the prior written approval of all parties to this Easement Instrument. Wood Partners, at its cost (and without reimbursement from any of the other parties hereto), shall be responsible to pay the fees imposed by the City for and to obtain any required demolition, grading and/or construction permits required to reconstruct that portion of the Main Driveway Aisle within the Access Driveway to the configuration consistent with such approved and final Plans. As may be reasonably necessary and at no additional out-of-pocket expense, the Company and/or Albertson's shall execute any instruments reasonably necessary and/or required by the City to evidence their approval of such construction.

4. Construction of and Use of Shared Driveway.

a) Wood Partners shall be responsible at its sole cost (and without reimbursement from any of the other parties hereto) to engage the services of a duly-licensed general contractor for the purposes of constructing the improvements constituting the Access Driveway. The parties executing this Easement Instrument agree that either Wood Partners or WP West Builders, LLC, a Delaware limited liability company which is an affiliate of Wood Partners, shall be acceptable for all purposes as the general contractor identified in the previous sentence. Should Wood Partners wish to engage a different general contractor for such purpose, the identity of such general contractor shall be subject to the approval by Company and Albertson's, whose approval shall not be unreasonably withheld or delayed. In such event, Wood Partners shall give written notice in accordance with the notice provision hereof to Company, Albertson's and Colonies Partners of its designation of such general contractor, which notice shall also provide either a link to an electronic statement of the qualifications and background of such general contractor or such data in hard copy. If a party fails to give written notice disapproving of such general contractor within ten (10) business days, Wood Partners shall send a second written notice to such party which includes the following language in all caps: **"THIS IS YOUR SECOND NOTICE. IF YOU FAIL TO RESPOND WITHIN FIVE (5) BUSINESS DAYS FOLLOWING YOUR RECEIPT OF THIS NOTICE, YOU SHALL BE DEEMED TO HAVE APPROVED THE BELOW DESCRIBED GENERAL CONTRACTOR."** A party's failure to respond within said five (5) business day period shall be deemed to be such party's acceptance of such designated general contractor. The general contractor engaged by Wood Partners pursuant to the provisions hereof shall be referred to as the "General Contractor".

b) In order to minimize the impact of demolition and construction of the Access Driveway on the Shopping Center, prior to the commencement of construction, representatives of Company, Albertson's, Colonies Partners, Wood Partners and the General Contractor shall meet and confer to develop a scheduling plan for such demolition and construction which permits construction but reasonably preserves continuing use of a portion of the Main Drive Aisle defined as the Access Driveway herein for continuing vehicular traffic including, as necessary, vendor and delivery vehicle traffic, into and from the Shopping Center. In order to implement the same, the parties agree that demolition and construction activities shall leave a northbound and a southbound lane of the Main Drive Aisle open at all reasonable times and to give such reasonable cooperation to any further actions which might reasonably be required to coordinate traffic flows over such area. To ensure the safe passage of vehicles (including, without limitation, Albertson's delivery trucks) over such open lanes, conditions such as deep holes, large rocks, brush or similar hazards shall be immediately corrected, and such open lanes shall be compacted to maintain a packed surface with dust reduced to a minimum. Subject to the approval by Company and Albertson's, whose approval shall not be unreasonably withheld or delayed, the parties shall also agree on the scheduling of the construction work to avoid major holidays (including, without limitation, Fourth of July, Thanksgiving, Christmas and New Year's) or events scheduled at the Shopping Center.

c) No construction described in this Easement Agreement shall occur until this Easement Instrument has been recorded. Wood Partners shall use commercially reasonable efforts to cause its General Contractor to expedite and coordinate reasonably prompt completion of construction of the Access Driveway improvements within a period of not more than six (6) months from the date of commencement of such work, subject only to delays on account of an event of force majeure outside the reasonable control of Wood Partners and/or its General Contractor. Wood Partners shall cause (or cause its General Contractor to perform) all work done under the provisions of this Easement Instrument to be in compliance with all applicable federal (including, but not limited to, the Americans With Disabilities Act), state and local statutes, laws, codes, ordinances, rules and regulations, and all applicable orders and decrees of any government or quasi-government entity having jurisdiction over the project (collectively, “Applicable Laws”), and in compliance with all industry standards, materials and workmanship, to be free from faulty materials or workmanship, and to be consistent with the approved Access Driveway Plans in all material respects and with the conditions, if any, imposed on any permit relating thereto issued by the City. Wood Partners shall cause all construction work done on the Shopping Center property to be completed free of mechanic’s and materialman’s liens and shall cause its General Contractor to provide to any of the parties hereto, upon request, copies of necessary releases and lien waivers evidencing the same. Wood Partners shall give written notice to Company and to Albertson’s when the construction of the Access Driveway has been substantially completed. Wood Partners shall defend (or cause its General Contractor to defend) the Shopping Center property, the Company, Albertson’s, Colonies Partners and the principals, partners, and representatives of each, free and harmless from and against any and all liability for injury or death of any person and/or for loss or damage to property (including, without limitation, the Albertson’s monument sign which is located at the southeast corner of the intersection of the Access Driveway and 19th Street) and also against mechanic’s and/or materialmen’s liens, in each case to the extent arising out of or resulting from construction of or Repairs (defined below) to the Access Driveway, except to the extent caused by the gross negligence or willful misconduct of Colonies Partners, Company, Albertson’s, or their respective agents, employees, contractors, tenants, successors or assigns. This obligation of Wood Partners shall survive completion of construction of the Access Driveway.

d) Prior to entry upon the Shopping Center property in connection with its construction activities, Wood Partners shall at its cost procure and maintain, or cause its General Contractor to procure and maintain, a general liability insurance policy written on an “occurrence” basis (covering both bodily injury and property damage) in an amount of at least \$2,000,000 combined single limit. This insurance shall (i) be with an insurance company with an A.M. Best Rating of A-, FSC IX, which is admitted to issue insurance in California, (ii) name Company, Albertson’s and Colonies Partners as additional insureds, and (iii) be issued on an “occurrence basis” with the primary coverage for Wood Partners. Any construction-related activities (including, without limitation, site inspection prior to commencement of construction, or work within the Temporary Construction Easement area (as defined in Section 6 below)) shall be conditioned upon delivery to Company and Albertson’s of certificates of insurance evidencing compliance with the preceding sentence.

e) Materials, tools, construction vehicles, equipment, materials removed during demolition and materials to be used for re-construction shall not be stored or stockpiled within the Shopping Center property without the prior written consent of Company and Albertson's. Wood Partners shall cause its General Contractor to maintain the Shopping Center property in a reasonably clean and orderly condition, free of debris and to continuously clean the job site and grounds around the job site (both during and at the end of each day) and keep the same in a safe, orderly and neat condition and, at the completion of such construction, to leave the Access Driveway in a broom-clean condition.

f) If any other portion of the Access Driveway, Shopping Center property or any improvements thereon (including without limitation asphalt, utilities, striping, lighting, signage, and landscaping) shall be disturbed, damaged or destroyed by contractors, subcontractors or material suppliers of either Wood Partners or Colonies Partners, such disturbance, damage or destruction shall be repaired and/or restored at the expense of the party whose contractor, subcontractor or material supplier caused such damage, with such repair and/or restoration subject to the reasonable satisfaction of Company and Albertson's. This obligation of Wood Partners and of Colonies Partners shall survive completion of construction of the Access Driveway.

g) When the work within the Access Driveway has been completed substantially in accordance with the Access Driveway Plans, Wood Partners or the General Contractor shall provide written notice to the parties to this Easement Instrument and to any Mortgagee then holding a deed of trust security interest encumbering the Shopping Center that such work is ready for final inspection by the parties. The parties shall thereafter have ten (10) business days to review the condition of construction and provide any objections to the same. Within such ten (10) business day period, the parties shall use commercially reasonable efforts to inspect the work and, if appropriate, develop a written punch list of repairs and work to be completed; for such purpose and at all times during such work, all parties shall have access to the area in question subject only to applicable safety protocols in effect. Parties may agree that the work is substantially complete subject to completion of the items listed on the punch list. If any party gives written notice of an objection to any item in the construction, representatives of the parties and the General Contractor shall meet and confer to resolve any question or dispute. If no party hereto circulates written objections to such final completion within such ten (10) business day period, Wood Partners or the General Contractor, as applicable, shall send a second written notice to such party which includes the following language in all caps: **"THIS IS YOUR SECOND NOTICE. IF YOU FAIL TO RESPOND WITHIN FIVE (5) BUSINESS DAYS FOLLOWING YOUR RECEIPT OF THIS NOTICE, YOU SHALL BE DEEMED TO HAVE ACCEPTED THE COMPLETION OF THE ACCESS DRIVEWAY."** Such failure to respond within said five (5) business day period shall be deemed to be such party's acceptance that the work of constructing the Access Driveway is final, complete and accepted by the parties hereto. In no event, however, shall the foregoing "deemed acceptance" provisions apply to or be binding upon any Mortgagee then holding a deed of trust security interest encumbering the Shopping Center with respect to its rights set forth herein. In the event of a failure by the Mortgagee to respond following the second notice given as set forth above, then the parties shall follow the same process as set forth in Section 3(b) above to meet and confer telephonically

concerning the Mortgagee's acceptance or objection to such final completion. Notwithstanding the foregoing, the acceptance (or deemed acceptance) of the completed Access Driveway by the parties hereto shall not impose any liability or responsibility whatsoever upon any such party with respect to the compliance or non-compliance of the Access Driveway with the Applicable Laws, all of which Wood Partners and/or its General Contractor shall comply with at its/their sole cost and expense.

5. Non-Exclusive Easement. All parties hereto acknowledge and agree that the Easement and easement rights granted hereunder are non-exclusive. As a consequence, that portion of the Main Driveway Aisle reconfigured as the Access Driveway shall continue to be used for all purposes and by all persons and entities whose use is authorized under the REA and who use the same consistent with the provisions of the REA as modified herein, as well as the Benefitted Parcels and the Wood Parcel Residents and the Luxury Condominium Residents. For avoidance of doubt, once the work within the Access Driveway has been completed in accordance with the Access Driveway Plans and accepted pursuant to the provisions hereof, the Access Driveway, as improved, will continue to be deemed a part of the "Common Area" under the REA but payment by the owners of the Wood Parcel and the Luxury Condominium Parcel toward the cost of ongoing maintenance, repair and replacement of the Access Driveway, including, without limitation, the cost to maintain, repair and replace striping, landscaping, irrigation, lighting and utility systems therein (cumulatively, "**Ongoing Access Driveway Repair**") resulting from the additional use of the Access Driveway shall be governed by the applicable provisions of Section 9 of this Easement Instrument. Except as otherwise described in Section 9 of this Easement Instrument, no Common Area Expenses under the REA will be chargeable to either the Wood Parcel or the Luxury Condominium Parcel.

6. Temporary Easement for Construction. To implement the executory provisions hereof concerning demolition and construction of the Access Driveway, Company and Albertson's confirm their grant of a non-exclusive temporary easement and right-of-way (the "**Temporary Construction Easement**") to Wood Partners, the General Contractor, its contractors and subcontractors and their employees on, over and across those portions of the Main Drive Aisle and the Shopping Center property located immediately adjacent to and within 20 feet of the Access Driveway, as may be reasonably necessary and required to permit demolition of existing improvements as provided in the Access Driveway Plans and construction of the Access Driveway and improvements ancillary thereto shown therein in conformity with the Access Driveway Plans and in accordance with the applicable terms and provisions set forth in this Easement Instrument. Such Temporary Construction Easement shall also permit Wood Partners, the General Contractor and its contractors, subcontractors and representatives thereof to thereafter perform necessary repair and reconstruction work with respect to the Access Driveway (collectively, "**Repairs**") to the extent that the same may be required by the City or by a party hereto to complete the Access Driveway in accordance with the Access Driveway Plans, to the extent the performance of such Repairs reasonably requires the use of the Temporary Construction Easement, with such Repairs also to be performed in accordance with the applicable terms and conditions of this Easement Instrument. The initial term of the Temporary Construction Easement shall expire automatically without further action of the parties hereto upon completion of the Access Driveway improvements and may be revived as reasonably

necessary for Repairs until accepted by the parties pursuant to the terms hereof, at which time future repairs will become the responsibility of the Maintenance Director as provided in Section 9 below.

7. Insurance.

(a) Following substantial completion of construction of the Access Driveway, and at all times thereafter, Colonies Partners and Wood Partners on the one hand and the Maintenance Director under the REA on the other hand, shall cause its real property or the improvements with the Common Area, as applicable, whether benefitted or burdened by the Easement and easement rights described herein, to be covered by a policy of commercial general liability insurance from an insurance company admitted to do business in California with an A.M. Best rating of not less than A- VIII with the limits of such policy or policies to be not less than One Million Dollars (\$1,000,000) per occurrence and a general aggregate limit of not less than Two Million Dollars (\$2,000,000). Such insurance shall include contractual liability coverage, and, (i) for Wood Partners and Colonies Partners, shall name the Company, Albertson's and the Maintenance Director all as additional insureds, and (ii) for the Maintenance Director, shall name the Company, Albertson's, Wood Partners and Colonies Partners as additional insureds. Commencing on the fifth (5th) anniversary of the date of recordation hereof and not more than once every five (5) years thereafter, the limits of such liability insurance required to be provided by the terms hereof shall be increased to commercially reasonable levels as the parties may reasonably determine are then customary. Each owner required to provide such insurance coverage shall provide evidence of the same to the other parties named as additional insureds thereunder within ten (10) business days after written request for the same. Such coverage as required herein may be provided by one or more blanket or umbrella policies; provided that any blanket insurance policy shall be endorsed to apply to the relevant property and to name the relevant parties as additional insureds, and the general aggregate limit under any such blanket policy shall apply separately to the relevant parcel.

(b) If any party required to provide insurance hereunder fails or refuses to secure and maintain such required liability insurance complying herewith, or to provide copies of policies or certificates or copies of renewal policies or certificates within the time provided herein, and such failure continues for more than ten (10) business days after notice thereof, any other party may secure the appropriate insurance on behalf of such party and the defaulting party shall pay, upon ten (10) business days following written demand, the cost thereof to the party who secured such policy.

8. Indemnity. Colonies Partners and Wood Partners for itself and for real property or interests therein which it owns, shall indemnify, defend and hold harmless the Company and Albertson's, and each of their respective partners, directors, shareholders, members, officers, employees, subsidiaries, affiliated companies, representatives, consultants, and agents, along with each of their respective tenants, occupants and customers of all other Parcels within the Shopping Center, from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal or in connection with any collection proceeding), judgments, proceedings and causes of action of any

kind whatsoever, for injury to or death of any person or damage to any property resulting or arising out of (i) the performance of or in connection with the construction and/or Repair activities that are the subject of this Easement Instrument, or (ii) any future use of the Access Driveway by Colonies Partners or Wood Partners and its or their respective employees, agents, or contractors in connection with the construction activities and development of the Wood Parcel and Luxury Condominium Parcel, as applicable. This obligation of Colonies Partners and Wood Partners shall survive completion of construction of the Access Driveway.

9. Ongoing Maintenance.

a) Following completion of construction thereof, all of the Access Driveway improvements, including but not limited to, paving, striping, median landscaping, landscaping on the east side of the Access Driveway to the eastern property line of Parcel 4, the Albertson's monument sign located at the southeast corner of the intersection of the Access Driveway and 19th Street and all utilities supplied for landscaping or lighting of the same, all constituting collectively the Ongoing Access Driveway Repair, shall be maintained by Company, by the "Maintenance Director" (as defined in the REA) or by any third party responsible for maintenance of the Common Area of the Shopping Center pursuant to applicable provisions of the REA. For the purposes hereof, "maintenance" of the Access Driveway shall include such sweeping, repair, resealing, resurfacing and, if applicable, restriping of the Access Driveway as may be customary and reasonably appropriate depending on the construction materials used therefore. Company and/or Albertson's and/or the Maintenance Director, whichever party is responsible for Common Area maintenance under the provisions of the REA, shall maintain the Access Driveway, the driving surfaces thereof and the landscaping in and adjacent thereto in substantially the same condition as the Common Area of the Shopping Center is maintained. In all events, the driving surface of the Access Driveway shall be maintained in a well-kept, visually appealing fashion reasonably similar to the surface thereof when initially constructed, reasonable wear and tear accepted. Landscape material and irrigation systems within or adjacent to the Access Driveway shall be maintained in like condition, trimmed and weed-free. Plant material which may have died shall be replaced with like-kind plant material to achieve the overall affect that the Access Driveway shall remain an attractive streetscape as originally constructed serving the purposes of a Main Drive Aisle for the Shopping Center and also providing egress from and access for the residents of the communities constructed on both the Wood Parcel and the Luxury Condominium Parcel.

b) Reimbursement of the costs incurred for the Ongoing Access Driveway Repair shall be paid by the parties hereto or their successors in interest in accordance with the provisions hereof. The Wood Parcel and the Luxury Condominium Parcel shall pay to the Maintenance Director amounts, referred to herein collectively as the "PA-4 Traffic Usage Fee", as their contributive share of the cost of the Ongoing Access Driveway Repair, equal to a total of the following: (i) two percent (2%) of the amount collected by the Maintenance Director pursuant to Sections 6 and 7 of the REA for payment of Common Area Expenses which is collected by the Maintenance Director for each Maintenance Budget Year (the "2% Share"), as well as (ii) thirty-two percent (32%) of Ongoing Access Driveway Repair expenses specific to the Access Driveway that can be or are billed specifically as a direct expense associated with the

Access Driveway (collectively, the “**Specific Expenses**”), such as for example, parking lot work for the Access Driveway, slurry sealing and restriping of the Access Driveway, and repairs to asphalt, concrete, utility systems or landscaping within the Access Driveway. By way of illustration, parking lot sweeping and pressure washing for the Shopping Center which cannot be segregated easily as a direct expense associated with the Access Driveway shall be deemed to be a part of the 2% Share of the PA-4 Traffic Usage Fee; but a large expense that can be broken out by the Maintenance Director such as parking lot work for the Access Driveway or specific repairs thereto, shall be deemed to be part of the Specific Expenses component of the PA-4 Traffic Usage Fee. A total of the 2% Share and the Specific Expenses shall make up the annual PA-4 Traffic Usage Fee to be paid by the Wood Parcel and the Luxury Condominium Parcel in accordance with the applicable provisions of this Easement Instrument.

c) Payment of the PA-4 Traffic Usage Fee shall commence upon the completion of construction of the Access Driveway as provided in Section 4 of this Easement Instrument (the “**Payment Commencement Date**”). If the Payment Commencement Date does not fall on the first day of a calendar month, for ease of calculation the first PA-4 Traffic Usage Fee payable to the Maintenance Director shall be deemed to be due on the first day of the first full calendar month following the Payment Commencement Date. The 2% Share of the PA-4 Traffic Usage Fee shall be paid by the Wood Parcel and the Luxury Condominium Parcel in accordance with Section 9(d) below monthly to the Maintenance Director in the same way as amounts paid toward Common Area Expenses under Section 7.1 of the REA are paid. Payment of the 2% Share shall also be subject to being reconciled and unpaid amounts paid, as and if applicable, pursuant to the provisions of Section 7.2 of the REA. At his or her discretion, the Maintenance Director may give written notice of the 2% Share of the PA-4 Traffic Usage Fee payable as of the Payment Commencement Date, and for each calendar year thereafter, to the respective owners of the Wood Parcel and the Luxury Condominium Parcel based upon the then total budgeted annual Common Area Expenses for the Maintenance Budget Year as set forth in the approved Budget therefore, all as are provided in Sections 6 and 7 of the REA. Further, the Maintenance Director may invoice the Wood Parcel and the Luxury Condominium Parcel monthly, quarterly or otherwise at the discretion of the Maintenance Director for any Specific Expenses component of the PA-4 Traffic Usage Fees which is to be borne by the Wood Parcel and the Luxury Condominium Parcel.

d) Following the Payment Commencement Date, the entire PA-4 Traffic Usage Fee including both the 2% Share and the Specific Expenses, if any, shall be paid when due entirely by the owner of the Wood Parcel. The owner of the Wood Parcel shall be obligated to pay the same until the earlier of the following events shall have occurred: (i) the date that the owner of the Luxury Condominium Parcel commences qualifying grading activities on the Luxury Condominium Parcel relating to the construction of improvements thereon, such as trenching for foundations (grading of the Luxury Condominium Parcel in conjunction with grading of the Wood Parcel in order to complete the grading of a “super pad” including all of Planning Area 4 shall not be deemed to be a qualifying grading activity triggering the obligation of the Luxury Condominium Parcel to commence payment of its allocable share of the PA-4 Traffic Usage Fee), or (ii) eighteen (18) months from the Payment Commencement Date. Once the first event identified in the preceding sentence has occurred, the owner of the Luxury

Condominium Parcel shall be obligated to commence payment of one-half of the PA-4 Traffic Usage Fee, and the owner of the Wood Parcel shall remain obligated to pay the other one-half of the PA-4 Traffic Usage Fee. With the limited exception of the terms of the preceding sentences of this Section 9(d), neither the owner of the Wood Parcel nor the owner of the Luxury Condominium Parcel shall be responsible to pay that portion of the PA-4 Traffic Usage Fee obligation which is payable by the owner of the other real property in Planning Area 4 pursuant to the provisions of this Easement Instrument (that is, such obligation shall not be a joint and several obligation of the respective owners of parcels within Planning Area 4). Promptly following recordation of this Easement Instrument, the name and communication information of the Maintenance Director shall be provided in writing to each of the owners of the Wood Parcel and the Luxury Condominium Parcel for the purposes of payment of the PA-4 Traffic Usage Fee to satisfy the provisions hereof, and the name and communication information of the designated representative(s) of the Wood Parcel and the Luxury Condominium Parcel shall be provided in writing to the Maintenance Director to ensure the timely delivery of payment invoices of the PA-4 Traffic Usage Fee to satisfy the provisions hereof. If either the Maintenance Director or the designated representative(s) of the Wood Parcel or the Luxury Condominium Parcel should change thereafter, communication information for each successor Maintenance Director or designated representative(s), as applicable, shall be promptly provided in writing to the then owner of the Wood Parcel and the Luxury Condominium Parcel or the Maintenance Director, as applicable. Failure to timely provide such information to the Maintenance Director shall not waive or excuse the payment obligations of each owner of the Wood Parcel and the Luxury Condominium Parcel as set forth herein. By recordation hereof, each owner of the Wood Parcel and the Luxury Condominium Parcel agrees for itself and its successors and assigns by its ownership or acceptance of conveyance of title or any other interest therein or any portion thereof that each such owner will be responsible for payment of its allocable share of the PA-4 Traffic Usage Fee as described herein.

e) Provided, however, that notwithstanding the foregoing, any damage caused to the Access Driveway (i) by the residents of the communities constructed on the Wood Parcel or the Luxury Condominium Parcel or the agents, employees, contractors or subcontractors of either or of Colonies Partners or Wood Partners or their successors and assigns, or (ii) by the tenants, vendors or customers of any business operating within the Shopping Center or the agents, employees or contractors of any thereof, shall be repaired and restored at the expense of the party which caused, or whose residents, tenants, vendors, customers, or agents or subcontractors caused, such damage. It is anticipated that the Access Driveway will be used by Colonies Partners' and/or Wood Partners' respective contractors in connection with the initial development and related construction activities on the Wood Parcel and Luxury Condominium Parcel, as applicable. Consequently, Colonies Partners and Wood Partners, as applicable, shall be responsible at their sole cost and expense (and without any reimbursement from any of the other parties hereto) for promptly removing any construction debris and dirt from the Access Driveway and repairing and restoring any damage which is caused to the Access Driveway by their respective contractors, subcontractors and material suppliers, with such repairs and restoration subject to the reasonable satisfaction of the parties to this Easement Instrument.

f) If either the Wood Parcel or the Luxury Condominium Parcel is further subdivided into a common interest subdivision, then the billing and payment responsibility for that portion of the PA-4 Traffic Usage Fee allocable to either such parcel, as applicable, shall be borne by the homeowner's association established for each such community (but in such event such expense shall be deemed for all purposes to be a common area expense of the common interest subdivision located on either or both of the Wood Parcel and the Luxury Condominium Parcel). In such event, the name and communication information of the homeowner's association established for each such community shall be provided in writing to the Maintenance Director to ensure the timely delivery of payment invoices of the PA-4 Traffic Usage Fee to satisfy the provisions hereof. If the name and communication information of the homeowner's association established for each such community should change thereafter, the name and communication information for each successor homeowner's association shall be promptly provided in writing to the Maintenance Director. Failure to timely provide such information to the Maintenance Director shall not waive or excuse the payment obligations of each owner of the Wood Parcel and the Luxury Condominium Parcel as set forth herein. Payment by each of Colonies Partners or Wood Partners or their respective successors and assigns of each respective share of the PA-4 Traffic Usage Fee shall be made no later than thirty (30) days after receipt of an invoice therefor from the Maintenance Director. Payment not made within said thirty (30) days shall be subject to the payment of interest by the party who has not paid the same at the rate of eight percent (8%) per annum from date due until date paid.

g) In the event that either Colonies Partners or Wood Partners or their successors and assigns either: (i) fails to pay any amount due hereunder which failure continues for a period of ten (10) days after receipt of written notice from the Maintenance Director, Company or Albertson's, or (ii) fails to perform any non-monetary obligation imposed upon such party by any provision of this Easement Instrument, which continues for a period of thirty (30) days (or a reasonable lesser period if such failure to perform poses a reasonable threat of injury to person or property) after receipt of written notice from the Maintenance Director, Company or Albertson's specifying the particulars of such failure, such failure shall constitute a default. Except in the case of an emergency situation which poses a reasonable threat of injury to person or property, the defaulting party shall not be deemed to be in default if failure to perform a non-monetary obligation cannot reasonably be rectified within such 30-day period but if such party commences to cure or remedy such default within such 30-day period and diligently proceeds with such performance following the end of the such 30-day period until cured (with such extended cure period not to exceed more than sixty (60) days after receipt of such written notice of default). In the case of a non-monetary default, the party giving notice (i.e., the Maintenance Director, Company or Albertson's) may thereafter, but shall not be obligated to, perform such non-monetary obligation on behalf of the party failing to do so and charge the costs thereof, with interest and late charges, if applicable, against such defaulting party or, at its election, may institute legal action against the defaulting party for specific performance, declaratory or injunctive relief or any other remedy provided by law. In the case of a monetary default, the Maintenance Director, Company or Albertson's (the "**Curing Party**") may institute legal action for reimbursement plus interest thereon at the rate of eight percent (8%) per annum and such party may further have a lien on the Wood Parcel and/or the Luxury Condominium Parcel, as applicable, for the amount of said expenses plus accrued interest as set forth above; provided,

however, if there is a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid in full, there shall be no right to place a lien on the Wood Parcel and/or the Luxury Condominium Parcel, as applicable, until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made. In the event that the Company, Albertson's or the Maintenance Director (whichever party shall be responsible for performance of non-monetary obligations under this Easement Instrument) fails to perform any of the non-monetary obligations hereunder imposed on such party by the provisions of this Easement Instrument, which failure continues for a period of thirty (30) days after receipt of written notice from Colonies Partners, Wood Partners or their successors and assigns specifying the particulars of such failure, such failure shall constitute a default and the party giving notice may thereafter, but shall not be obligated to, take such actions to satisfy such non-monetary obligations as are in default and charge the costs thereof, with interest thereon at the rate of eight percent (8%) per annum from date incurred until date paid, and late charges, if applicable, against such defaulting party or, at its election, may institute legal action against the defaulting party for specific performance, declaratory or injunctive relief or any other remedy provided by law. Provided, however, that the Company, Albertson's or the Maintenance Director (whichever party shall be responsible for performance of non-monetary obligations under this Easement Instrument) not be deemed to be in default of such failure to perform cannot be reasonably rectified within such 30-day period but the party seeking to cure the default commences to do so within such 30-day period and diligently pursues the cure thereafter to completion.

h) Whichever of Company, Albertson's or the Maintenance Director is responsible for the payment under the REA of Common Area Expenses incurred to maintain the Common Area, including the Access Driveway, shall pay the Ongoing Access Driveway Repair expenses and shall hold both the Wood Parcel and the Luxury Condominium Parcel free and clear from any mechanic's or materialman's liens arising therefrom.

10. Covenants Running With the Land. The parties hereto intend that every person who now or in the future owns or acquires any right, title, estate or interest in or to any real property or interest therein which is described in this Easement Instrument shall be deemed conclusively to have agreed that each term, covenant, condition and agreement contained in this Easement Instrument shall be (a) a burden on each parcel of real property described herein and shall be appurtenant to and for the benefit of all such parcels of real property, (b) covenants permitted to run with the land under Title 3 of Part 1 of Division 3 of the California Civil Code (§1457 et seq.) or incidental to such covenants and, as such, also permitted to run with title to the land under such Title, and (c) inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns and all those (including mortgagees) holding under any of them.

11. Successors and Assigns. This Easement Instrument shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, assigns and personal representatives and upon any person acquiring a parcel of real property subject to, burdened by or benefitted by this Easement Instrument or any portion thereof or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any of the parties executing this

Easement Instrument sells or transfers all of its interest in the real property which it owns subject to and/or benefitted by this Easement Instrument, such owner shall, upon the completion of such sale and conveyance, be released and discharged from all of its obligations hereunder in connection with the property sold by it after the sale and conveyance of title but shall remain liable for all obligations arising hereunder prior to the sale and conveyance of title. Each new owner of any such parcel of real property or any portion thereof (including, without limitation, any owner or lienholder who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising hereunder with respect to the parcel of real property, or a portion thereof, which it owns or in which it has an interest, arising from and after the date of transfer of title.

12. Breach Shall Not Permit Termination. A breach hereof shall not entitle any other party hereto to terminate this Easement Instrument, but such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any breach of a provision of this Easement Instrument. Any breach of any provision hereof shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Easement Instrument and any liens arising hereunder shall be binding upon and effective against any owner whose title or interest is acquired by foreclosure, trustee's sale or otherwise.

13. No Dedication. Nothing contained herein shall be deemed a gift or dedication of any portion of any real property subject to or benefitted by this Easement Instrument to any governmental authority or to the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto that this Easement Instrument shall be limited to and for the purposes herein expressed. No easements except for such easement rights specifically set forth in this Easement Instrument shall be implied by this Easement Instrument.

14. Benefit; Binding Effect. The Easement and easement rights granted herein are intended to benefit the respective grantee's parcel, the grantee or grantees named herein, and their respective heirs, successors, assigns, tenants, subtenants, licensees and invitees. No easement rights conferred or reserved hereunder shall be transferred, assigned or encumbered except as appurtenant to the real property benefitted or burdened hereby.

15. Notice. All notices given pursuant to provisions of this Easement Instrument shall be in writing and shall be delivered (i) by personal service, or (ii) by facsimile or electronic transmission, if subsequently followed by mailing the same day such notice regular first-class mail, postage prepaid, or (iii) by commercial overnight package delivery service, or (iv) by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses provided in this Section. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service if served personally or by facsimile or electronic transmission conforming to the requirements hereof. "Electronic transmission" shall mean delivery of a notice or other communication in a Word format, Excel format, a portable document format (PDF) or similar electronic mailing systems, by electronic mail; provided, that if the sender receives notice that the electronic mail was undeliverable, notice must be sent as otherwise required by the provisions hereof. At the written request of any party hereto, any other party shall provide communication information to enable electronic

transmission of a notice or other communication for that party. Rejection or the refusal to accept or the inability to deliver because of changed address of which no notice was given as provided herein shall be deemed to be receipt of the notice, demand or request sent. Notices to the parties hereto shall be addressed as follows:

Company: The Colonies-Pacific 17, LLC
 c/o Pacific Development Group II
 1 Corporate Plaza, 2nd Floor
 Newport Beach, California 92660
 Attn: Arn K. Youngman
 Facsimile: (949) 760-8584
 Email: ayoungman@pdgcenters.com

Albertson's: Albertsons Companies
 11555 Dublin Canyon Road
 Pleasanton, California 94588
 Attn: Real Estate Law (ABS Store #599; Upland, CA)

With a copy to: Albertsons Companies
 250 Park Center Blvd.
 Boise, Idaho 83706
 Attn: Legal Department (ABS Store #599; Upland, CA)

And a copy to: Vons/Albertsons LLC
 20427 N 27th Avenue
 Phoenix, Arizona 85027-3241
 Attn: Property Manager (Southern California Division)
 Re: ABS Store #599; Upland, CA

Colonies Partners: The Colonies Partners, L.P.
 10621 Civic Center Drive
 Rancho Cucamonga, California 91730
 Attn: Jeffrey S. Burum/Daniel W. Richards
 Facsimile: (909) 481-1154
 Email: jburum@diversifiedpacific.com
 drichards@kendrew.net

With a copy to (but such copy shall not constitute notice):

The Colonies Partners, L.P.
1220 East 19th Street
Upland, California 91786
Attn: Philip Burum
Facsimile: (909) 946-2623
Email: pburum@diversifiedpacific.com

Wood Partners: Wood Partners
250 East 1st Street, Suite 500
Los Angeles, California 90012
Attn: Joe Gambill
Telephone: (949) 333-9026
Email: joe.gambill@woodpartners.com

With a copy to (but such copy shall not constitute notice):

Alston & Bird, LLP
Attn: Andrew R. Allen
1201 West Peachtree Street
Atlanta, Georgia 30309
Facsimile: (404) 253-8422
Email: drew.allen@alston.com

By giving all other parties written notice thereof, any party hereto shall have the right from time to time or at any time to change its respective address for notice. The address for notice to the current Mortgagee is set forth in the Consent and Subordination to Easement. Legal counsel for a party hereto may give notice for such party with the same force and effect as if such party had given such notice.

16. Amendment. This Easement Instrument may be amended or modified only by a written instrument executed by all of the parties hereto or their successors-in-interest in ownership of the parcels of real property which are subject to and/or benefitted by this Easement Instrument; amendment shall not require joinder of any tenants, subtenants or other occupants unless or until the same are given rights of an owner under the REA or under any written instrument recorded on any of the parcels benefitted or burdened hereby of which notice is given to the other parties hereto. Any such modification shall be effective when filed for record in the Official Records of San Bernardino County, California.

17. Attorney's Fees. In the event of any action or proceeding by any party hereto or its successor or assign to enforce or defend rights or obligations under this Easement Instrument, the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties in such action or proceeding all reasonable attorneys' fees and expenses incurred in connection therewith.

18. Severability. If any provision of this Easement Instrument is held to be invalid, illegal or otherwise unenforceable for any reason, the remaining provisions of this Easement Instrument shall remain in full force and effect and shall not be affected thereby.

19. Governing Law; Venue. This Easement Instrument shall be construed and enforced in accordance with the laws of the State of California. Venue for any legal action arising out of this Easement Instrument or relating to any real property benefitted or burdened hereby shall be in San Bernardino County, California.

20. Construction and Interpretation.

(a) This Easement Instrument contains all of the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements concerning the subject matter hereof are superseded hereby. No party shall be deemed the scrivener hereof and, based on the foregoing, the provisions hereof shall be construed as a whole according to their common meaning and not strictly for or against any party.

(b) Whenever required by the context hereof, the singular shall include the plural and vis a versa and the masculine shall include the feminine and neuter genders and vis a versa.

(c) The captions preceding the text when used in this Easement Instrument are included only for convenience of reference. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this instrument.

(d) This Easement Instrument may be executed in counterparts, each of which shall be deemed an original. The signatures to this instrument may be placed and notarized on separate pages and, when attached hereto, shall constitute one complete document.

(e) Neither this Easement Instrument nor the acts of any of the parties hereto shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between or among any of the parties executing this instrument or any of the parcels of real property benefitted or burdened by the provisions hereof.

(f) No assignment of the Easement or easement rights may be made without being accompanied by a transfer of title to the real property to which such rights relate. Transfer of title to such real property shall be deemed transfer of the Easement and easement rights without further written confirmation of such assignment, although, at the sole election of any of the parties hereto, evidence of such sale/assignment of rights under this Easement Instrument may be recorded with the County Recorder of San Bernardino County.

(g) Signatures transmitted by facsimile or by electronic transmission means and copies of instruments executed and delivered by means of facsimile and/or electronic transmission with electronic signatures shall have the same force and effect as copies executed and delivered with original signatures, except for such documents or instruments which must be recorded. The parties may rely upon facsimile and/or electronic signatures as if such signatures were originals.

21. Further Execution of Documents. At no additional out-of-pocket cost to Albertson's, the parties hereto agree to execute and file and to join in the execution and filing of any and all agreements, consents or other documents or instruments, and also to take any further acts, which may be reasonably necessary to effect the consummation of the transaction contemplated hereby, as any party hereto may reasonably require.

22. General Provisions.

(a) No failure of any party to exercise any power given that party under this Easement Instrument or to insist on strict compliance by any other party to its obligations, and no custom or practice of the parties in variation with the terms of this Easement Instrument, will constitute a waiver of any party's right to demand exact compliance with any such term.

(b) Time is of the essence as to each and every obligation contained in this Easement Instrument.

(c) If any date indicated in this Easement Instrument falls on an official United States holiday, or a Saturday or Sunday, the date so indicated shall mean the next business day following such date.

(d) Force majeure or an "event of force majeure" as used in this Easement Instrument means an event beyond the reasonable control of a party which delays or prevents that party from complying with its obligations under this Easement Instrument including, but not limited to: acts of God, such as, but not limited to, fires, earthquakes and floods; war, invasion, riot, acts of foreign enemies or embargo; sabotage; a strike or strikes or other industrial action or blockade or embargo in each case affecting on a general basis the ability of a party to reasonably perform its obligations hereunder and which is not attributable to any unreasonable action or inaction on the part of that party or any of its contractors, subcontractors or suppliers, and the settlement of which is beyond the reasonable control of such party; inability (notwithstanding good faith and diligent efforts) to procure (or general shortage of) labor, equipment, facilities, materials or supplies in the open market; condemnation actions; litigation involving such party or

others relating to zoning, subdivision, or other governmental action or inaction pertaining to Planning Area 4 or any portion of it; inability (notwithstanding good faith and diligent efforts) to obtain, or unexpected delays in obtaining necessary permits or governmental approvals; specific incidents of exceptional adverse weather conditions which are materially worse than those typically encountered within that portion of San Bernardino County in which the Shopping Center is located; any other unforeseeable circumstance beyond the control of a party against which it would have been unreasonable for the affected party to have taken precautions and which the affected party cannot avoid even by using its best commercial efforts; strikes, lockouts, work stoppages, labor disputes when such action is directly related to performance by a party whose workers resort to such action. Notwithstanding anything to the contrary contained herein, in no event shall financial inability constitute an event of force majeure.

23. NOTICE OF TERMINATION. IF FOR ANY REASON COLONIES PARTNERS TERMINATES SUBDIVISION OF PLANNING AREA 4 OR THE SALE TRANSACTION WITH WOOD PARTNERS, OR IF RECORDATION OF THE PARCEL MAP AND CLOSE OF THE SALE OF THE WOOD PARCEL TO WOOD PARTNERS DOES NOT OCCUR BY JUNE 30, 2019, COLONIES PARTNERS SHALL PROMPTLY GIVE WRITTEN NOTICE THEREOF TO COMPANY AND ALBERTSON'S AND THIS EASEMENT INSTRUMENT SHALL AUTOMATICALLY BE NULL AND VOID. COLONIES PARTNERS SHALL DELIVER WITH SUCH WRITTEN NOTICE THE ORIGINAL OF THIS EASEMENT INSTRUMENT, MARKED "CANCELLED" ON THE FACE PAGE HEREOF, TO EITHER COMPANY OR ALBERTSON'S FOR THE PURPOSES OF DESTRUCTION THEREOF.

24. Exhibits. The following Exhibits are attached hereto and the provisions thereof are incorporated into this Easement Instrument as may be indicated herein:

- | | |
|--------------|--|
| Exhibit A: | Legal Description of Shopping Center |
| Exhibit B: | Legal Description of Planning Area 4 |
| Exhibit C: | Legal Description of Wood Parcel |
| Exhibit D: | Legal Description of Luxury Condominium Parcel |
| Exhibit E: | Legal description of Easement |
| Exhibit F-1: | Graphic of Metes and Bounds Legal Description of Easement |
| Exhibit F-2: | Graphic of Conceptual Access Driveway site plan providing joint access to both the Luxury Condominium Parcel and the Wood Parcel |

IN WITNESS WHEREOF, each of the undersigned has executed this instrument to be effective as of the date and year first above written.

[this space is left blank intentionally; the signatures of the parties are on the following pages]

**The Colonies-Pacific 17, L.L.C.,
a California limited liability company**

**By its Member
Pacific-Upland, LLC,
a California limited liability company**

**Pacific Development Group II,
a California general partnership, Member**

JK

By: _____

**Arn K. Youngman, Trustee of the Arn K.
Youngman Trust, Partner**

By: _____

**Dennis M. Berryman, Trustee of the
Berryman Family Trust, Partner**

**By its Member
The Colonies Partners, L.P.,
a California limited partnership**

**By its General Partner
BGRW Lakes, LLC, a California
limited liability company**

By: _____

Jeffrey S. Burum, Co-Managing Member

By: _____

Daniel W. Richards, Co-Managing Member

Attached to Easement

CALIFORNIA NOTARY ACKNOWLEDGEMENT

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

State of California }
County of Orange }

On MARCH 22, 2018 before me, Vicki Jane Lasky, Notary Public, personally appeared Arn K. Youngman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Vicki Jane Lasky
Signature



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

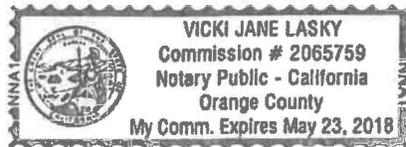
State of California }
County of Orange }

On MARCH 22, 2018 before me, Vicki Jane Lasky, Notary Public, personally appeared Dennis M. Berryman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Vicki Jane Lasky
Signature



The Colonies-Pacific 17, L.L.C.,
a California limited liability company

By its Member
Pacific-Upland, LLC,
a California limited liability company

Pacific Development Group II,
a California general partnership, Member

By: _____
Arn K. Youngman, Trustee of the Arn K.
Youngman Trust, Partner

By: _____
Dennis M. Berryman, Trustee of the
Berryman Family Trust, Partner

By its Member
The Colonies Partners, L.P.,
a California limited partnership

By its General Partner
BGRW Lakes, LLC, a California
limited liability company

By: _____
Jeffrey S. Burum, Co-Managing Member

By: _____
Daniel W. Richards, Co-Managing Member

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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)
) ss.
County of San Bernardino)

On Mar 12, 2018, before me, Lisa Schaffer, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

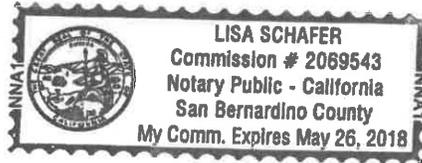
personally appeared Jeffrey S. Burum
Name(s) of Signer(s)

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/hers/their authorized capacity(ies), and that by his/hers/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.

Lisa Schaffer
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Easement
Document Dated _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____
Capacity(ies) Claimed by Signer
Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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State of California)
) ss.
County of San Bernardino)

On Mar 12, 2018, before me, Lisa Schafer, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

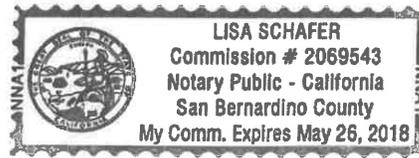
personally appeared Daniel W. Richards
Name(s) of Signer(s)

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.

Lisa Schafer
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

Albertson's LLC,
a Delaware limited liability company, as the
successor-in-interest to Albertson's Inc., a Delaware
corporation

By: 
Name: Marilyn K. Beardsley
Title: Authorized Signatory

Form Approved: 

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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State of California)
) ss.
County of Alameda)

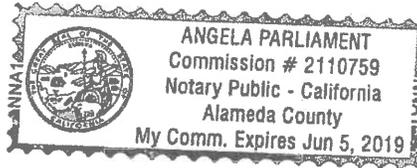
On 3/20/18, before me, Angela Parliament, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Marilyn K. Beardsley
Name(s) of Signer(s)

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]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

The Colonies Partners, L.P.,
a California limited partnership

By its General Partner
BGRW Lakes, LLC, a California
limited liability company

By: 
Jeffrey S. Burum, Co-Managing Member

By: 
Daniel W. Richards, Co-Managing Member

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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State of California)
) ss.
County of San Bernardino)

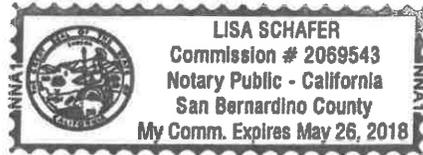
On Mar 12, 2018, before me, Lisa Schafer, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeffrey S. Burum
Name(s) of Signer(s)

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/hers/their authorized capacity(ies), and that by his/hers/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.



Place Notary Seal Above

Lisa Schafer
Signature of Notary Public

OPTIONAL

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Title or Type of Document: Easement

Document Dated _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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State of California)
County of San Bernardino) ss.

On Mar 12, 2018 before me, Lisa Schafer, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

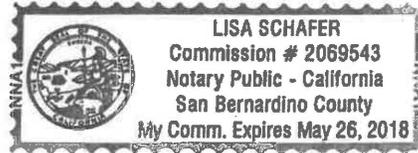
personally appeared Daniel W. Richards
Name(s) of Signer(s)

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.

Lisa Schafer
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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Capacity(ies) Claimed by Signer

Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

CRP/WP ALTA UPLAND OWNER, L.L.C.,
a Delaware limited liability company

By: CRP/WP Alta Upland Venture, L.L.C.,
a Delaware limited liability company,
its sole Member

By: WS Upland, LLC,
a Delaware limited liability company,
its Administrative Member

By: WP California, LLC,
a Delaware limited liability
company, its sole Member

By: 
Name: Brian Pfander
Title: Vice President

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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

State of California)
County of Los Angeles) ss.

On March 9, 2018, before me, G. Quesada, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

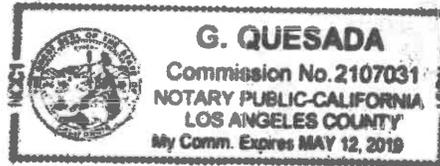
personally appeared Brian P. Hansen
Name(s) of Signer(s)

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]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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Description of Attached Document

Title or Type of Document: Easement

Document Dated _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

EXHIBIT A
[Legal Description of Shopping Center]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 1 THROUGH 7 INCLUSIVE OF PARCEL MAP NO. 16911, IN THE CITY OF UPLAND, AS SHOWN BY MAP ON FILE IN BOOK 213, PAGE(S) 24 THROUGH 27 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA.

PARCEL B:

A PERPETUAL NON-EXCLUSIVE EASEMENT FOR STORM DRAIN PIPELINES AND APPURTENANCES FACILITIES AS SET FORTH IN THAT CERTAIN "EASEMENT GRANT TO THE COLONIES-PACIFIC 17, LLC FOR EASEMENT FOR STORM DRAIN FACILITIES", RECORDED MARCH 9, 2006, AS INSTRUMENT NO. 2006-0162766, OF OFFICIAL RECORDS.

APN: 1044-641-50-0-000, 1044-641-51-0-000, 1044-641-52-0-000, 1044-641-53-0-00, 1044-641-54-0-000, 1044-641-55-0-000, and 1044-641-56-0-000

EXHIBIT B
[Legal Description of Planning Area 4]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 1 OF TRACT NO. 16198-2, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 324, PAGES 77 THROUGH 79, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA, AND AS AMENDED BY CERTIFICATE OF CORRECTION RECORDED APRIL 24, 2007 AS INSTRUMENT NO. 2007-0249341, OF OFFICIAL RECORDS.

APN: 1044-122-01-0-000

EXHIBIT C
[Legal Description of Wood Parcel]

[to be attached per Recital Q]

Exhibit D
[Legal Description of Luxury Condominium Parcel]

[to be attached per Recital Q]

Exhibit E
[Legal description of Easement]

EXHIBIT "E"
LEGAL DESCRIPTION
(VEHICULAR AND PEDESTRIAN ACCESS EASEMENTS)

PARCEL A

BEING A PORTION OF PARCEL 4 OF PARCEL MAP 16911, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP FILED IN BOOK 213, PAGES 24 THROUGH 27 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 4; SAID CORNER BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 19TH STREET, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 899.92 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 10°26'55" EAST;

THENCE NORTHWESTERLY, ALONG SAID RIGHT-OF-WAY LINE AND THROUGH A CENTRAL ANGLE OF 00°46'16", AN ARC LENGTH OF 12.11 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 33.21 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 38°53'39" WEST, SAID BEGINNING ALSO BEING THE POINT OF BEGINNING;

THENCE, LEAVING SAID RIGHT-OF-WAY LINE, SOUTHWESTERLY AND THROUGH A CENTRAL ANGLE OF 27°22'26", AN ARC LENGTH OF 15.87 FEET;

THENCE SOUTH 18°03'49" WEST 7.91 FEET;

THENCE SOUTH 15°14'57" WEST 71.47 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 211.58 FEET;

THENCE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 8°53'39", AN ARC LENGTH OF 32.84 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 149.21 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 65°52'01" WEST;

THENCE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 13°45'04", AN ARC LENGTH OF 35.81 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 10.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS SOUTH 57°50'37" EAST;

THENCE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 106°54'52", AN ARC LENGTH OF 18.66 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 4;

THENCE, ALONG SAID EAST LINE, SOUTH 38°32'55" WEST 40.09 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 31.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS SOUTH 89°45'40" EAST;

THENCE, LEAVING SAID EASTERLY LINE, NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 09°52'40", AN ARC LENGTH OF 5.34 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 10.00 FEET, RADIAL LINE TO SAID BEGINNING BEARS NORTH 79°53'00" WEST;

THENCE, NORTHWESTERLY, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 132°25'00", AN ARC LENGTH OF 23.11 FEET;

THENCE NORTH 33°05'10" WEST 60.13 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 116.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 39°14'20" WEST;

THENCE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 25°49'25", AN ARC LENGTH OF 52.28 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 169.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 66°44'09" WEST;

THENCE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 07°47'22", AN ARC LENGTH OF 22.98 FEET;

THENCE NORTH 16°32'32" EAST 86.77 FEET TO A POINT ON SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 899.92 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 15°19'04" EAST;

THENCE SOUTHEASTERLY, ALONG SAID RIGHT-OF-WAY LINE AND THROUGH A CENTRAL ANGLE OF 4°52'08", AN ARC LENGTH OF 64.36 FEET TO THE POINT OF BEGINNING;

PARCEL B

BEING A PORTION OF PARCEL 4 OF PARCEL MAP 16911, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP FILED IN BOOK 213, PAGES 24 THROUGH 27 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 4; SAID CORNER BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 19TH STREET, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 899.92 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 10°26'55" EAST;

THENCE NORTHWESTERLY, ALONG SAID RIGHT-OF-WAY LINE AND THROUGH A CENTRAL ANGLE OF 04°52'08", AN ARC LENGTH OF 76.47 FEET TO THE POINT OF BEGINNING;

THENCE, LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 16°32'32" WEST 86.76 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 169.00 FEET;

THENCE, SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 07°47'22", AN ARC LENGTH OF 22.98 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 116.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 65°03'45" WEST;

THENCE, SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 25°49'26", AN ARC LENGTH OF 52.28 FEET;

THENCE NORTH 39°14'20" WEST 6.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 110.00 FEET;

THENCE, NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 25°49'25", AN ARC LENGTH OF 49.58 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 163.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 66°47'51" WEST;

THENCE, NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 19°20'19", AN ARC LENGTH OF 21.99 FEET;

THENCE NORTH 16°32'32" EAST 86.66 FEET TO A POINT ON SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 899.92 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 15°41'59" EAST;

THENCE SOUTHEASTERLY, ALONG SAID RIGHT-OF-WAY LINE AND THROUGH A CENTRAL ANGLE OF 00°22'55", AN ARC LENGTH OF 6.00 FEET TO THE POINT OF BEGINNING;

PARCEL C

BEING A PORTION OF PARCEL 4 OF PARCEL MAP 16911, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP FILED IN BOOK 213, PAGES 24 THROUGH 27 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 4; SAID CORNER BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 19TH STREET;

THENCE, LEAVING SAID RIGHT-OF-WAY LINE AND ALONG THE EAST LINE OF SAID LOT 4, SOUTH 15°15'09" WEST 6.13 FEET;

THENCE, LEAVING SAID EAST LINE, SOUTH 56°59'35" WEST 20.04 FEET;

THENCE SOUTH 15°16'57" WEST 76.24 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 207.97 FEET;

THENCE, SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 9°28'03", AN ARC LENGTH OF 34.37 FEET;

THENCE SOUTH 88°26'05" EAST 16.46 FEET TO A POINT ON SAID EASTERLY LINE;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 38°32'55" WEST 6.26 FEET;

THENCE, LEAVING SAID EASTERLY LINE, NORTH 88°26'21" WEST 14.95 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 150.16 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 62°56'56" WEST;

THENCE, SOUTHWESTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF 13°41'34", AN ARC LENGTH OF 35.89 FEET TO A POINT OF CUSP, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 10.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 69°06'17" EAST;

THENCE, NORTHEASTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF 53°03'05", AN ARC LENGTH OF 9.26 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 149.21 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 52°27'04" WEST;

THENCE, NORTHEASTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF 13°45'44", AN ARC LENGTH OF 35.81 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 211.58 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 65°52'01" WEST;

THENCE, NORTHEASTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF 08°53'39", AN ARC LENGTH OF 32.84 FEET;

THENCE NORTH 15°14'57" WEST 71.47 FEET;

THENCE NORTH 18°03'49" EAST 7.91 FEET TO THE BEGIINING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 33.21 FEET;

THENCE, NORTHEASTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF 27°22'26", AN ARC LENGTH OF 15.87 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE;

THENCE SOUTHWESTERLY, ALONG SAID RIGHT-OF-WAY LINE AND THROUGH A CENTRAL ANGLE OF 00°46'16", AN ARC LENGTH OF 12.11 FEET TO THE POINT OF BEGINNING;

PARCEL D

BEING A PORTION OF PARCEL 4 OF PARCEL MAP 16911, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO MAP FILED IN BOOK 213, PAGES 24 THROUGH 27 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 4; SAID CORNER BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 19TH STREET;

THENCE, LEAVING SAID RIGHT-OF-WAY LINE AND ALONG THE EASTERLY LINE OF SAID PARCEL 4, THE FOLLOWING COURSES:

SOUTH 15°15'09" WEST 70.91 FEET;

SOUTH 15°44'33" WEST 56.70 FEET;

SOUTH 38°32'55" WEST 97.82 FEET TO THE POINT OF BEGINNING;

THENCE, CONTINUING ON SAID EASTERLY LINE, SOUTH 38°32'55" WEST 5.36 FEET;

THENCE, LEAVING SAID EASTERLY LINE, NORTH 30°13'03" WEST 20.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 145.18 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 29°13'51" WEST;

THENCE, SOUTHWESTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF 03°48'54", AN ARC LENGTH OF 9.67 FEET;

THENCE NORTH 25°24'58" WEST 5.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 114.77 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH 24°42'16" WEST;

THENCE, NORTHEASTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF $07^{\circ}34'11''$, AN ARC LENGTH OF 15.16 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 10.00 FEET, A RADIAL BEARING TO SAID BEGINNING BEARS NORTH $32^{\circ}16'27''$ WEST;

THENCE, EASTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF $58^{\circ}58'48''$, AN ARC LENGTH OF 10.29 FEET TO A POINT OF CUSP, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 145.18 FEET, A RADIAL BEARING TO SAID POINT BEARS SOUTH $35^{\circ}01'09''$ EAST;

THENCE, SOUTHWESTERLY, ALONG SAID CURVE AND THROUGH A CENTRAL ANGLE OF $03^{\circ}48'54''$, AN ARC LENGTH OF 9.67 FEET;

THENCE SOUTH $30^{\circ}13'03''$ EAST 18.05 FEET TO THE POINT OF BEGINNING.

EXHIBIT F-1
[Graphic of Metes and Bounds Legal Description of Easement]

EXHIBIT "F" - 1"
SHARED ACCESS EASEMENTS

OVERALL SITE MAP:
SEE SHEETS 2, 3, 4 AND 5
FOR EASEMENT DETAILS

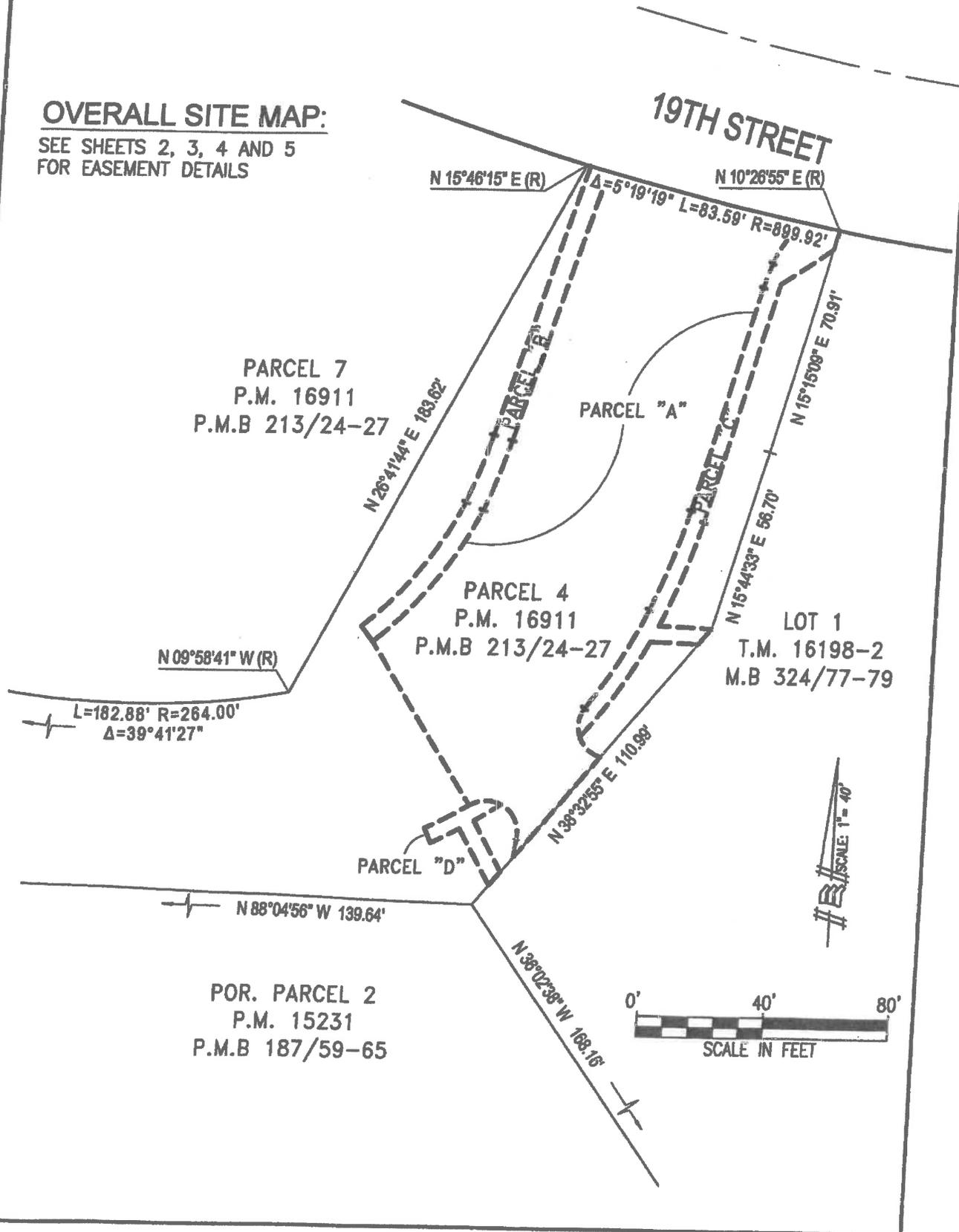
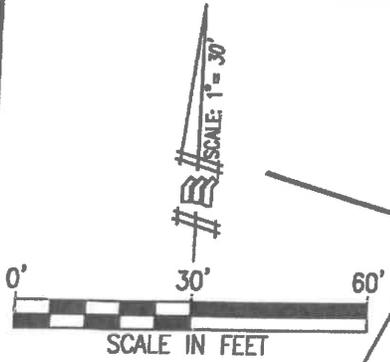


EXHIBIT "F"
 SHARED ACCESS EASEMENT
 (PARCEL "A")

19TH STREET



PARCEL 7
 P.M. 16911
 P.M.B 213/24-27

PARCEL 4
 P.M. 16911
 P.M.B 213/24-27

LOT 1
 T.M. 16198-2
 M.B 324/77-79

PARCEL "A"

LINE	BEARING	DISTANCE
1	N18°03'49"E	7.91'

CURVE	DELTA	RADIUS	LENGTH	TANGENT
1	00°46'16"	899.92'	12.11'	6.06'
2	27°22'26"	33.21'	15.87'	8.09'
3	08°53'39"	211.58'	32.84'	16.46'
4	13°45'04"	149.21'	35.81'	17.99'
5	106°54'52"	10.00'	18.66'	13.49'
6	09°52'40"	31.00'	5.34'	2.68'
7	132°25'00"	10.00'	23.11'	22.68'
8	25°49'25"	116.00'	52.28'	26.59'
9	07°47'22"	169.00'	22.98'	11.51'
10	04°05'52"	899.92'	64.36'	32.19'

LOT 1
 T.M. 16198-2
 M.B 324/77-79

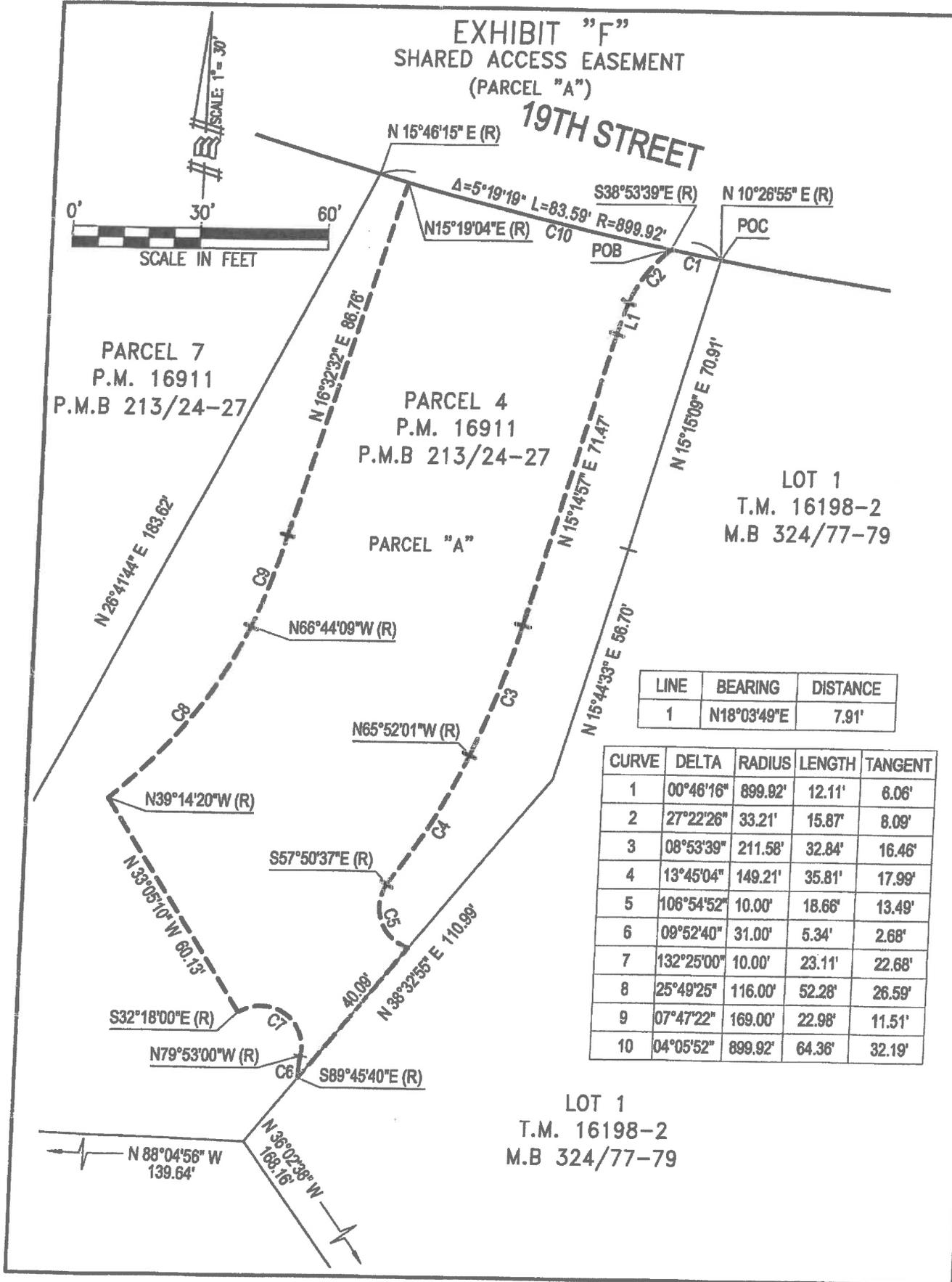
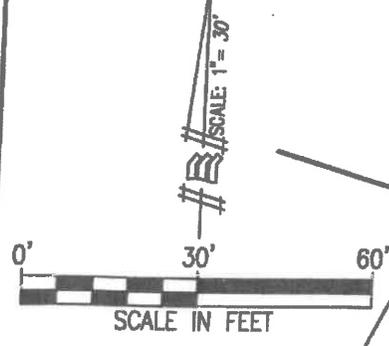


EXHIBIT "F"
 SHARED ACCESS EASEMENT
 (PARCEL "C")

19TH STREET



PARCEL 7
 P.M. 16911
 P.M.B 213/24-27

PARCEL 4
 P.M. 16911
 P.M.B 213/24-27

LOT 1
 T.M. 16198-2
 M.B 324/77-79

CURVE	DELTA	RADIUS	LENGTH	TANGENT
1	09°28'03"	207.97'	34.37'	17.22'
2	13°41'34"	150.16'	35.89'	18.03'
3	53°03'05"	10.00'	9.26'	4.99'
4	106°54'52"	10.00'	18.66'	13.49'
5	13°45'04"	149.21'	35.81'	17.99'
6	08°53'39"	211.58'	32.84'	16.46'
7	27°22'26"	33.21'	15.87'	8.09'
8	00°46'16"	899.92'	12.11'	6.06'

LINE	BEARING	DISTANCE
1	N15°15'09"E	6.13'
2	N56°59'35"E	20.04'
3	N88°26'05"W	16.46'
4	N38°32'55"E	6.26'
5	N88°26'21"W	14.95'
6	N18°03'49"E	7.91'

LOT 1
 T.M. 16198-2
 M.B 324/77-79

N 88°04'56" W
 139.64'

N 36°02'36" W
 168.76'

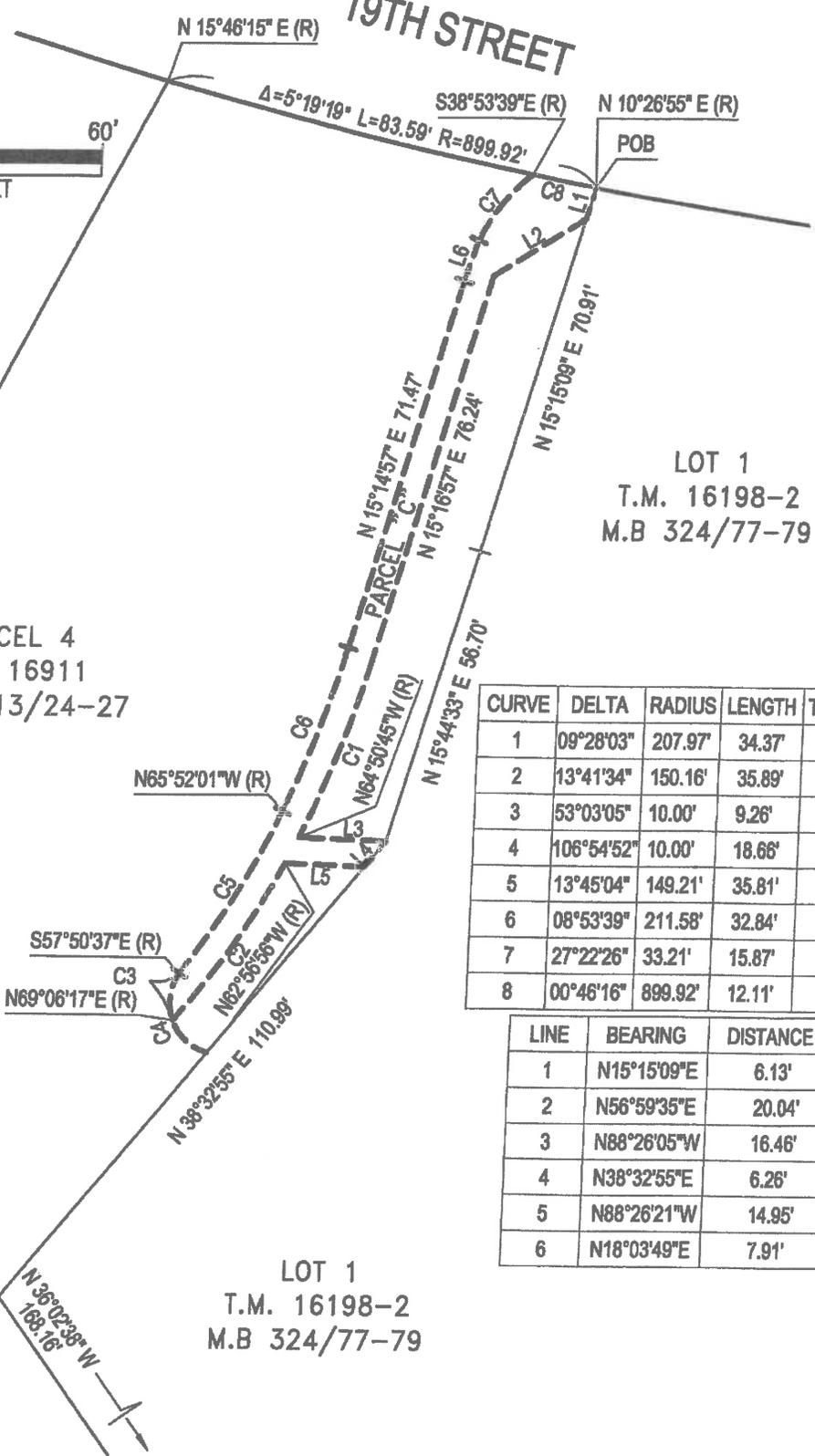
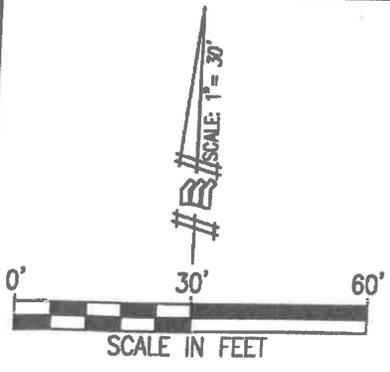


EXHIBIT "F"
 SHARED ACCESS EASEMENT
 (PARCEL "D")

19TH STREET



CURVE	DELTA	RADIUS	LENGTH	TANGENT
1	03°48'54"	145.18'	9.67'	4.84'
2	07°34'11"	114.77'	15.16'	7.59'
3	58°58'48"	10.00'	10.29'	5.66'
4	03°48'54"	145.18'	9.67'	4.84'

PARCEL 7
 P.M. 16911
 P.M.B 213/24-27

PARCEL 4
 P.M. 16911
 P.M.B 213/24-27

LOT 1
 T.M. 16198-2
 M.B 324/77-79

N 09°58'41" W (R)

N 26°41'44" E 183.62'

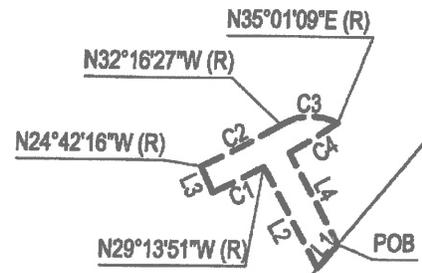
$\Delta=5^{\circ}19'19''$ L=83.59' R=899.92'
 N 15°46'15" E (R)

N 10°26'55" E (R)

N 15°15'09" E 70.91'

N 15°44'33" E 56.70'

97.82'
 N 38°32'55" E 110.96'



POB

N 88°04'56" W 139.64'

N 36°02'38" W 168.16'

LINE	BEARING	DISTANCE
1	N38°32'55"E	5.36'
2	N30°13'03"W	20.00'
3	N25°24'58"W	5.01'
4	N30°13'03"W	18.05'

EXHIBIT F-2
**[Graphic of Access Driveway site plan providing joint access to both the Luxury
Condominium Parcel and the Wood Parcel]**

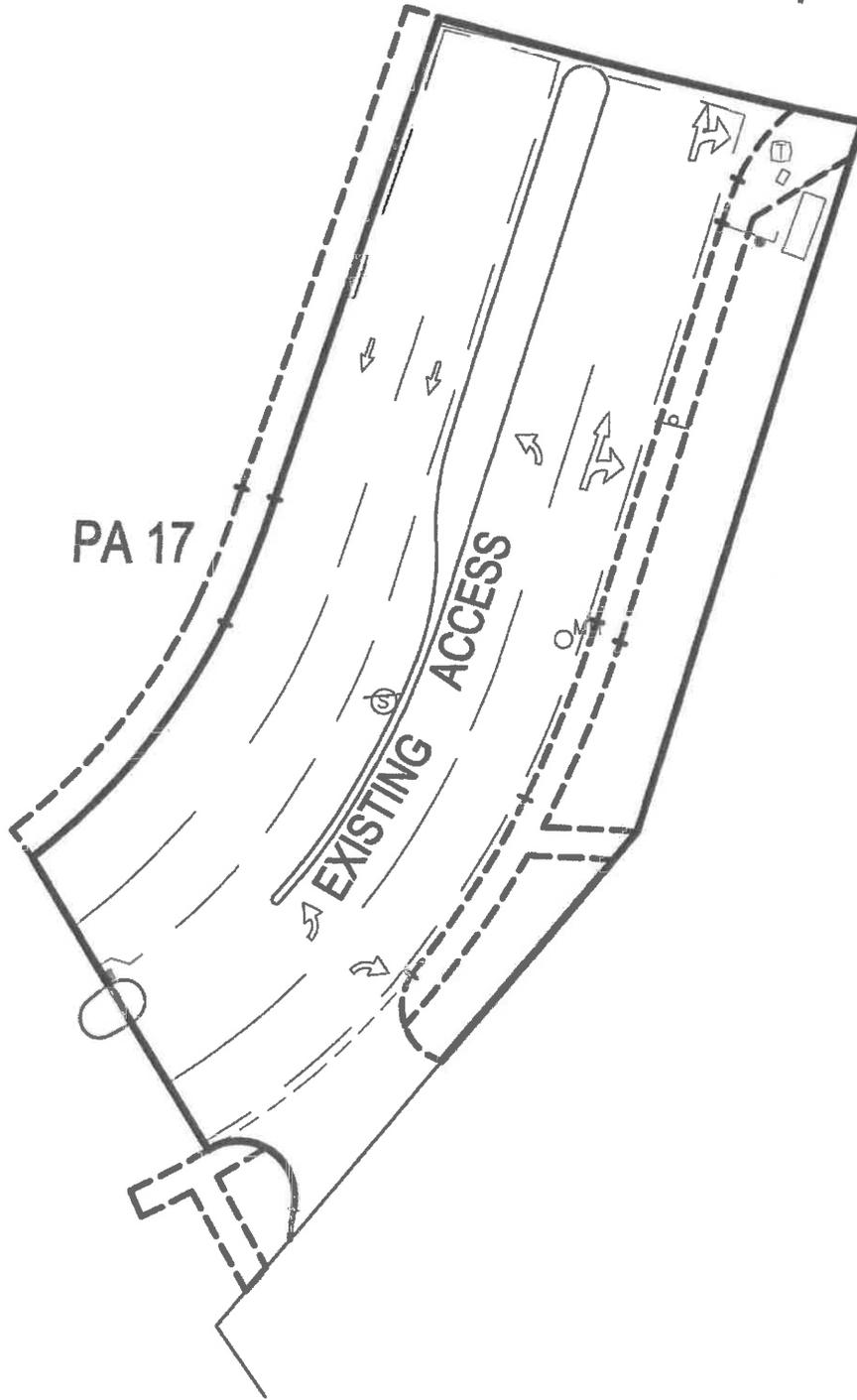
EXHIBIT F-2
SHARED ACCESS EASEMENTS

19TH STREET

PA 17

EXISTING ACCESS

#B# SCALE: 1" = 30'



ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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)
) ss.
County of _____)

On _____, before me, _____, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared _____
Name(s) of Signer(s)

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 of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Easement
Document Dated _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____
Capacity(ies) Claimed by Signer
Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

ALL-PURPOSE ACKNOWLEDGMENT

Civil Code §1189

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 _____)
County of _____) ss.

On _____, before me, _____, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared _____
Name(s) of Signer(s)

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.

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Signer's Name: _____ Right Thumbprint of Signer

- Individual
- Corporate Officer - Title(s): _____
- Co-Managing Member
- Attorney in Fact
- Trustee
- Guardian or Conservator

CONSENT AND SUBORDINATION TO EASEMENT

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Prudential Insurance Company of America, a New Jersey corporation (“*Holder*”), as the mortgagee under that certain Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents and Proceeds dated October 31, 2007, by The Colonies – Pacific 17, LLC, a California limited liability company (“*Borrower*”), in favor of Holder, filed of record on October 31, 2007, as Document No. 2007-0609244 in the Official Records in and for San Bernardino County, California (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the “*Security Instrument*”), which grants a lien on certain property more particularly described therein to secure, among other things, the indebtedness evidenced by that certain Promissory Note dated of even date with the Security Instrument in the stated principal amount of \$13,500,000.00 (the “*Note*”), does hereby (a) consent to the execution and recording of the foregoing Easement by and between Borrower, Albertson’s, LLC, a Delaware limited liability company, The Colonies Partners, L.P., a California limited partnership and CRP/WP Alta Upland Owner, L.L.C., a Delaware limited liability company (the “*Easement*”), and (b) subordinate the lien of the Security Instrument to said Easement such that in the event of foreclosure of the Security Instrument such foreclosure shall not disturb the Easement.

Notwithstanding the foregoing, however, in no event shall this agreement or the consent or subordination set forth above be deemed to (a) waive or modify any duties or obligations of Borrower or any other person or entity under the Note, the Security Instrument, or any other loan documents executed in connection therewith, or to release Borrower or any other person or entity from any such duties and obligations, or (b) consent to or to subordinate any lien, security interests, or security title of Holder in or to any portion of the property described in the Security Instrument to (i) any lien rights or monetary obligations arising under the Easement or (ii) any other document, agreement, encumbrance, or other instrument of any kind or nature whatsoever (including, without limitation, any such other document, agreement, encumbrance, or other instrument that may be referenced in the Easement), whether any such other document, agreement, encumbrance, or other instrument may have been entered into or recorded prior to the date of the Easement or is hereafter entered into or recorded.

Holder’s address for purposes of notices is provided below:

c/o Prudential Asset Resources, Inc.
2100 Ross Avenue
Suite 2500
Dallas, Texas 75201
Re: Loan No. 706107014

[Remainder of page is blank; signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination to Easement this ____ day of _____, 2018.

HOLDER:

Prudential Insurance Company of America,
a New Jersey corporation

By: _____
Name: _____
Title: _____

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

STATE OF _____
COUNTY OF _____

On _____, 2018, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the persons 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 signatures on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

CONSENT AND SUBORDINATION TO EASEMENT

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Prudential Insurance Company of America, a New Jersey corporation (“*Holder*”), as the mortgagee under that certain Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents and Proceeds dated October 31, 2007, by The Colonies – Pacific 17, LLC, a California limited liability company (“*Borrower*”), in favor of Holder, filed of record on October 31, 2007, as Document No. 2007-0609244 in the Official Records in and for San Bernardino County, California (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the “*Security Instrument*”), which grants a lien on certain property more particularly described therein to secure, among other things, the indebtedness evidenced by that certain Promissory Note dated of even date with the Security Instrument in the stated principal amount of \$13,500,000.00 (the “*Note*”), does hereby (a) consent to the execution and recording of the foregoing Easement by and between Borrower, Albertson’s, LLC, a Delaware limited liability company, The Colonies Partners, L.P., a California limited partnership and CRP/WP Alta Upland Owner, L.L.C., a Delaware limited liability company (the “*Easement*”), and (b) subordinate the lien of the Security Instrument to said Easement such that in the event of foreclosure of the Security Instrument such foreclosure shall not disturb the Easement.

Notwithstanding the foregoing, however, in no event shall this agreement or the consent or subordination set forth above be deemed to (a) waive or modify any duties or obligations of Borrower or any other person or entity under the Note, the Security Instrument, or any other loan documents executed in connection therewith, or to release Borrower or any other person or entity from any such duties and obligations, or (b) consent to or to subordinate any lien, security interests, or security title of Holder in or to any portion of the property described in the Security Instrument to (i) any lien rights or monetary obligations arising under the Easement or (ii) any other document, agreement, encumbrance, or other instrument of any kind or nature whatsoever (including, without limitation, any such other document, agreement, encumbrance, or other instrument that may be referenced in the Easement), whether any such other document, agreement, encumbrance, or other instrument may have been entered into or recorded prior to the date of the Easement or is hereafter entered into or recorded.

Holder’s address for purposes of notices is provided below:

c/o Prudential Asset Resources, Inc.
2100 Ross Avenue
Suite 2500
Dallas, Texas 75201
Re: Loan No. 706107014

[Remainder of page is blank; signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination to Easement this ____ day of _____, 2018.

HOLDER:

Prudential Insurance Company of America,
a New Jersey corporation

By: *Abeer Ghazaleh*
Name: Abeer Ghazaleh
Title: Second Vice President

WAP

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.

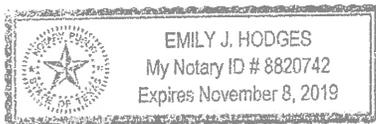
STATE OF TX
COUNTY OF Dallas

On March 23, 2018, before me, Emily J. Hodges, a notary public, personally appeared Abeer Ghazaleh, 2nd Vice President who proved to me on the basis of satisfactory evidence to be the persons 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 signatures on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Emily J. Hodges*

(This area for official notarial seal)





STAFF REPORT

ITEM NO. 11.E.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
BOB CRITCHFIELD, ENGINEERING MANAGER
SUBJECT: EMERGENCY PURCHASE AND INSTALLATION OF EQUIPMENT
AND PROFESSIONAL SERVICES FOR WATER SYSTEM
IMPROVEMENTS

RECOMMENDED ACTION

It is recommended that the City Council receive and file the status update.

GOAL STATEMENT

The proposed action supports the City's goal to maintain water facilities in good operable condition in order to provide safe reliable service to the community.

BACKGROUND

On October 10, 2016, the City Council adopted a Resolution declaring an emergency condition and approved the Emergency Work Plan Phase 1. Continuing progress update reports have been provided to the City Council. At this time, the City has completed the Well 7A, Reservoir 4, Well 20, temporary measures at the existing 7.5 million gallon reservoir, and the construction documents and entitlement work needed for the replacement reservoir of the Phase I emergency work program.

The remaining involves the implementation of the Replacement Reservoir at the northwest corner of 17th Street and Benson Avenue.

ISSUES/ANALYSIS

Reservoir at 17th and Benson Work:

Staff has completed the project plans and specifications for a 7.5 million gallon replacement reservoir; the environmental documentation and Notice of Determination; the property

appraisal; secured the Intent to Purchase a portion of the San Antonio Water Company property; and submitted all of the required documents to the State for the loan request necessary for up to a \$16.5 million Drinking Water State Revolving Loan.

The City Attorney's Office and staff are working on two items. The first item is the development of a purchase and sale agreement for the property acquisition from San Antonio Water Company required for this project. The second item is the development of the SRF loan agreement with the State. It is anticipated the purchase and sale agreement will be presented to City Council in early 2019. It is also expected to have the loan work completed in early 2019.

Once funding is secured it is anticipated the construction will take 12-18 months.

FISCAL IMPACTS

Sufficient funds are available in the FY 2018-19 budget to complete the Phase I emergency work program. Phase II, the construction, is dependent upon receiving the State loan. The FY 2018-19 budget includes sufficient funds to provide construction cash flow and will require fund draws under the loan. The actual amount of the loan will only be the amount of funds required to implement the emergency work.

Staff is also exploring other possible funding opportunities. However, the State loan appears to be the most cost effective funding mechanism.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

No Attachments Available



STAFF REPORT

ITEM NO. 11.F.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
KERI JOHNSON, CITY CLERK
SUBJECT: APPOINTMENT OF TRAFFIC SAFETY ADVISORY COMMITTEE MEMBERS

RECOMMENDED ACTION

It is recommended that the City Council ratify the following appointments to the Traffic Safety Advisory Committee: Eddie Limbaga, term to expire in December 2020, and Lisa Nassar, term to expire in December 2022.

GOAL STATEMENT

The proposed action supports the City's goal to provide opportunities for the citizenry to participate in local government through service on various committees, commissions, and boards.

BACKGROUND

The Traffic Safety Advisory Committee was formed to advise the Council and staff of community concerns regarding issues of traffic safety and to recommend solutions to those concerns. The Committee consists of a representative from the Chamber of Commerce, a representative from the School District Board, and five Citizens at Large. The remaining members consist of non-voting liaison staff members and an Upland School District representative.

On December 10, 2018, the City Council accepted Jim Stewart's resignation from the Traffic Safety Advisory Committee. Mr. Stewart was nominated by Mayor Stone. His resignation created an unscheduled vacancy, and the notice of vacancy was posted pursuant to Government Code Section 54974.

The Traffic Safety Advisory Committee is one of the five committees to which each member of the City Council makes an appointment. The second vacancy on the committee is Councilmember Felix's appointment which will have a term to expire in December 2022.

ISSUES/ANALYSIS

Mayor Stone has chosen Eddie Limbaga as her appointment to this committee, term to expire in December 2020 and Councilmember Felix has chosen Lisa Nassar as his appointment to this committee, term to expire in December 2022. The appointments require ratification by the Council.

FISCAL IMPACTS

There are no fiscal impacts associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Application - Limbaga

Application - Nassar



RECEIVED
UPLAND CITY
CLERK'S OFFICE

City of Upland

19 FEB 20 AM 7:09

Public Service Application for Boards, Committees, or Commissions

Name: Eddie Limbaga

Date: 2/19/2019

- I want to generally apply for all committees
- I am applying specifically for the following:
Traffic Safety Advisory

When are you available for meeting? (Check all that apply)

- Mornings
- Afternoons
- Evenings

General Information

INFORMATION REDACTED

Home Address: INFORMATION REDACTED

Home Phone: INFORMATION REDACTED

Email Address: _____

Present Employer: **Self Employed**
INFORMATION REDACTED

Business Address: INFORMATION REDACTED

Business Phone: REDACTED

Activities Information

Professional Activities: Own Property Management company, consult for other property management company, retail sales business, solar energy installs

Community Activities: Donated to Western Christian Schools
Involved in other cities and would like to bring my experience to Upland

Education Information

Studied Business and Economics Cal Poly Pomona

In 300 words or less, explain reasons for wanting to serve:

After applying for city council seat opening I am interested in becoming

more involved with the community. I hope to share some of the

experiences I have had at other cities and provide my input where

valuable.

Since I commuted very far and spent a lot of time in the Irvine area i feel

I have a strong grasp on the safety of traffic and the importance implement

the proper guidelines from the beginning of any change or new process.

List three (3) community references:

1. Ed Farraj 123 Car Buying ^{INFORMATION}
_{REDACTED}
2. Brandon Doolittle Western Christian Schools ^{INFORMATION}
_{REDACTED}
3. Micah Giles KSSN ^{INFORMATION}
_{REDACTED}

INFORMATION REDACTED

Signature



RECEIVED
UPLAND CITY
CLERK'S OFFICE

City of Upland

Public Service Application for Boards, Committees, or Commissions

19 JAN 31 PM 4:21

Name: Lisa Nassar

Date: Jan 31, 2019

I want to generally apply for all committees

I am applying specifically for the following:

Traffic Safety Advisory Committee

When are you available for meeting? (Check all that apply)

Mornings

Afternoons

Evenings

General Information

INFORMATION REDACTED

Home Address: _____

INFORMATION REDACTED

Home Phone: _____

INFORMATION REDACTED

Email Address: _____

Present Employer: Self Employed / UUSD

Business Address: _____

INFORMATION REDACTED

Business Phone: _____

Activities Information

Professional Activities: Pioneer Jr. High PTA Vice President 2017-18

Upland High School Site Council Committee -

Present

Community Activities: Upland Memorial Park Committee, Panhandling

Committee, Certificate of completion UPD Citizens

Academy 2017, Certificate of Completion Upland CERT

2018

Education Information

Santa Anita Christian Academy 1984

Rio Hondo Community College 1984-86

In 300 words or less, explain reasons for wanting to serve:

Having lived in Upland 15 years, I have served my community at different capacities. I currently work for Upland Unified School District as a substitute Proctor and Noon aide. I've had the privilege in working at all schools within our District. At some schools I was able to lend a hand as a crossing guard, so I am aware of some of the current traffic safety issues within our schools. I've completed the Upland Police Department Citizens Academy and have participated in many ride a longs with UPD. I've also attended a sit along with our Emergency Dispatch Operators, this experience has given me first hand knowledge of the many issues pertaining to traffic safety. My most resent accomplishment as a citizen was completing the Upland CERT training. This course has prepared me to protect my family and community in the event of a natural disaster, but it has also taught me the importance of traffic safety procedures during large events within our city. With my qualifications and certificate, I am prepared to assist the CERT team as a volunteer when needed in any traffic control, DUI check point and any city-wide emergency situations. I plan to pursue the CERT team and become an "At Large Member" by attending courses and furthering my training and education. For the last 7 years I have been the Administrator and Creator of "Upland Moms" a social network of over 2700 citizens in Upland and surrounding cities. This network has been a positive impact on our city as we have collaborated on most issues including Traffic Safety within Upland.

I sincerely hope that you would consider my application as I am confident, I would be an asset to the Traffic Safety Team.

List three (3) community references:

1. Pat Almazon ^{INFORMATION REDACTED} Upland Resident, Community Leader, and former Council Member Advisory Member.
2. Cori Roybal Carmet ^{INFORMATION REDACTED} Long Time Upland Resident, and School Teacher at Upland High School.
3. Yvette Walker ^{INFORMATION REDACTED} Upland Resident, Business owner, Planning Commissioner, Member of the Roatary Club of Upland.

INFORMATION REDACTED



STAFF REPORT

ITEM NO. 11.G.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
KERI JOHNSON, CITY CLERK
SUBJECT: APPOINTMENT TO THE BUILDING BOARD OF APPEALS

RECOMMENDED ACTION

It is recommended that the City Council ratify the appointment of Jason Gaudy to the Building Board of Appeals, term to expire in December 2022.

GOAL STATEMENT

The proposed action supports the City's goal to provide opportunities for the citizenry to participate in local government through service on various committees, commissions, and boards.

BACKGROUND

The Building Board of Appeals was established in 1977 pursuant to the Uniform Building Code. Board members are qualified by experience and training to determine the suitability of alternate materials and methods of construction, and to provide reasonable interpretations of the Uniform Building, Mechanical, Plumbing, Housing, and Abatement of Dangerous Buildings Codes, National Electrical Code and the Seismic Hazards Reduction Ordinance.

ISSUES/ANALYSIS

The Building Board of Appeals is one of five committees to which each member of the City Council makes an appointment. Councilmember Zuniga has chosen Jason Gaudy as his appointment to this board, term to expire in December 2022. The appointment requires ratification by the City Council.

FISCAL IMPACTS

There are no fiscal impacts associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Application - Gaudy



RECEIVED
UPLAND CITY
CLERK'S OFFICE

City of Upland

19 FEB 21 AM 11:

Public Service Application for Boards, Committees, or Commissions

Name: Jason Gaudy

Date: 02/21/2019

- I want to generally apply for all committees
- I am applying specifically for the following:
Business Appeals

When are you available for meeting? (Check all that apply)

- Mornings
- Afternoons
- Evenings

General Information

Home Address: INFORMATION REDACTED

Home Phone: INFORMATION REDACTED

Email Address: _____

Present Employer: Gaudy Law Inc.
INFORMATION REDACTED

Business Address: INFORMATION REDACTED

Business Phone: _____

Activities Information

Professional Activities: Owner / Attorney at Gaudy Law Inc. since 2003

Handling matters in Upland and surrounding communities in the areas of:

Probate, Trusts, Estates, Estate Planning, Business Law / law Professor

Community Activities: Fiscal Task Force, West End Water Board, Business

Appeals Board, Housing Board, Board member Life Bible Fellowship Church

Education Information

Trinity Christian College Palos Heights, IL BA Bus Admin

American College of Law, Juris Doctor



STAFF REPORT

ITEM NO. 11.H.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
SUBJECT: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR BENEFIT BROKER SERVICES

RECOMMENDED ACTION

It is recommended that the City Council approve a Professional Services Agreement for benefit broker services with Keenan and Associates; and authorize the City Manager to execute the agreement.

GOAL STATEMENT

The proposed action supports the City's policy to be fiscally responsible in providing fair and equitable benefits to its employees.

BACKGROUND

The City of Upland has contracted with Keenan and Associates for benefit broker services since 2013. On behalf of the City, Keenan and Associates negotiates with benefit providers for the healthcare benefits provided to the City employees. Council is asked to approve the professional services agreement for the current year.

ISSUES/ANALYSIS

Keenan and Associates has provided benefit broker services to the City of Upland since 2013. In 2016, Keenan assisted the City in exiting the Cal PERS medical plan and retaining healthcare benefits for City employees independent from Cal PERS. In 2017, Keenan placed the City with Anthem Blue Cross and Kaiser Permanente. This decision resulted in more plan options and lower premiums for employees.

At the time of the transition the City asked Keenan to remove any commissions from Kaiser offerings and instead asked to be billed the standard commission of 3.5%. Last year, the value

of this agreement was within the City Manager's signature authority and processed administratively. This year, the value of the agreement is \$63,415.49 and requires City Council authority.

The amount of the agreement is the amount Keenan would be receiving if commissions were included in the Kaiser medical premiums. Each year the consulting amount will be reconciled against actual paid premiums. If the consulting amount is more than 3.5% of paid premiums the City will receive a refund for the overage. If the consulting amount is less than 3.5% of paid premiums the City will not owe any additional fees.

FISCAL IMPACTS

The funding for this agreement has been included in the current budget. No further budget appropriation is necessary at this time.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Benefit Broker Services Agreement

**AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
BENEFIT BROKER**

THIS AGREEMENT is made and effective as of January 1, 2019, between the City of Upland, a municipal corporation ("City") and Keenan & Associates ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on January 1, 2019, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2019, unless sooner terminated pursuant to the provisions of this Agreement. The City may, upon mutual agreement, extend the contract for one (1) year additional terms. If applicable add the following language: If contract is extended beyond the original term, contract price shall be adjusted at the beginning of each calendar year in accordance with the changes in the Consumer Price Index for all Urban Consumers in the Los Angeles-Anaheim-Riverside Area published monthly by the United States Bureau of Labor Statistics (CPI).

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE.** Consultant shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks describe herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PAYMENT.** The City agrees to pay Consultant monthly, \$5,284.62 as a consulting fee in-lieu of commission normally paid to Consultant through Kaiser. The payment rates and terms and the schedule of payment are set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full,. Any terms in Exhibit B other than the scope of work to be performed, payment rates and schedule of payment are null and void. This amount shall not exceed \$63,415.49 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars (\$50,000.00.) In no event shall the total sum of the agreement (*basic agreement amount and additional work*) exceed fifty thousand dollars (\$50,000.00.) Any additional work in excess of this amount shall be approved by the City Council.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least thirty (30) days' prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

6. DEFAULT OF CONSULTANT.

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the

sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION.

a. If either Party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching Party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Consultant (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by one of City's employees, Plan beneficiaries, or Plan vendors ("Third-Party Demand") relating to the Services and such Third-Party Demand is not a direct result of Consultant's gross negligence or willful misconduct, then City shall defend, indemnify and hold Consultant harmless from all losses, payments, and expenses incurred by Consultant in resolving such Third-Party Demand.

b. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

9. **INSURANCE REQUIREMENTS.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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

- (1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.
- (2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.
- (4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. **Minimum Limits of Insurance.** Consultant shall maintain limits no less than:

- (1) General Liability: One million dollars (\$1,000,000) per

occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either for general aggregate limit shall apply separately, to this project/location or the general aggregate limit shall be twice the require occurrence limit.

- (2) Automobile Liability: One million dollars (\$1,000,000) per accident for bodily injury and property damage.
- (3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

c. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. **Other Insurance Provisions.** The general liability and automobile liability policies are to contain or be endorsed to contain, the following provisions:

- (1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased, hired or borrowed by the Consultant or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
- (2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.
- (4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Within three (3) days following Consultant's first notice or awareness of any actual or proposed cancellation of, or material changes in the required insurance coverage, Consultant will provide that information to City.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

10. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for the City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

c. PERS Eligibility Indemnification: In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

11. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for its own compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care

coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

12. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

13. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Upland
Mailing Address:
460 North Euclid Avenue
Upland, CA 91786
Attention: City Manager

To Consultant: Keenan & Associates
Mailing Address:
P. O. Box 4328
Torrance, CA 90501
2355 Crenshaw Blvd, Suite 200
Torrance, CA 90501
Attn: Keith Pippard, Corporate Secretary

14. **ASSIGNMENT.** The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

15. **LICENSES.** At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

16. **GOVERNING LAW.** The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Disputes arising out of or relating to this Agreement which cannot be resolved by negotiation between the parties shall be submitted to non-binding mediation. If the dispute is not resolved through mediation, it shall be resolved by final and binding arbitration administered by JAMS dispute resolution service pursuant to its Streamlined Arbitration Rules and Procedures, or such other arbitration procedures as agreed to in writing by the Parties. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between City and Consultant and their respective agents, employees and officers. The site of the arbitration shall be in the City of Upland at a location that is agreed to by the parties. A judgment of any court having jurisdiction may be entered upon the award. The prevailing Party shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

17. **PROHIBITED INTEREST.** No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/hertenure or for one year thereafter . The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

18. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

20. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent

jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

21. **WAIVER.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

22. **CONSTRUCTION.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

23. **COSTS.** Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

24. **RESPONSIBILITY FOR ERRORS.** Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

25. **ATTORNEYS' FEES.** In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF UPLAND

Jeannette Vagnozzi, City Manager

Attest:

Keri Johnson, City Clerk

Approved As to Form:

James L. Markman, City Attorney

CONSULTANT

Approved As to Form:

CONSULTANT

Keenan & Associates
Attn: Keith Pippard
P. O. Box 4328
Torrance, CA 90501
(310) 212 -0363 -phone
(310) 212 -0333 - fax

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

TASKS TO BE PERFORMED

The specific elements (scope of work) of this service include, but are not limited to:

1. Assisting the City of Upland in administering all group insurance plans, responding to questions from and providing information to staff, and providing other consulting services during the course of the plan year.
2. Researching and advising the City of Upland of any new developments in the law and employee benefit programs on an ongoing basis.
3. Reviewing claims experience, claim service, and claim administration to ensure maximum benefit of the City of Upland.
4. Determining and recommending the most economical funding methods for the benefit programs.
5. Representing the City of Upland in all negotiations with providers on all issues including those related to premiums, benefit levels, plan design, and special terms and conditions.
6. Meeting with and providing reports to various City of Upland representatives including City Council, City Manager, Human Resources staff and the Benefits Committee.
7. Assisting the City of Upland with the implementation and communication of new programs or changes to existing programs which will include attending and presenting information at Open Enrollment meetings.
8. As requested by the City of Upland, preparing bid specifications and soliciting proposals from insurance markets which specialize in group insurance plans as needed. Evaluate bids, and bidders, including administration, claim payment procedures, customer service, network, reserve establishment policies, financial soundness, and identifying the most cost-beneficial package from among the various bidders.
9. Provide Cobra Administration for the City of Upland during the length of the contract.
10. Provide an Online Benefits Open Enrollment System for employees.
11. Interface with insurance carriers as needed to assist the City of Upland in the resolution of problems associated with the benefit programs.

EXHIBIT B

PAYMENT RATES AND SCHEDULE

Keenan will not accept commission for the Kaiser Plan to maintain premiums for City employees. The City will pay the Broker commission rate of 3.5% totaling \$63,415.49 for one (1) year, or \$5,284.62 per month. This 3.5% rate will be estimated based on the annual Kaiser premium derived from the January Kaiser invoice. The amount received from the City will be reconciled at the end of each year but no later than March 1st. Any overage of 3.5% based on actual paid premiums will be refunded to the City. Any shortage based on actual paid premiums will not be billed separately by Broker. This shall be the understanding for the 2019 calendar year only, this calculation shall be reviewed annually for any subsequent calendar years.

The City will not be charged for the Online Benefit system, Benefit Bridge, as a member of - PACE.



STAFF REPORT

ITEM NO. 12.A.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
PONCE YAMBOT, PRINCIPAL ENGINEER
SUBJECT: CONTINUED PUBLIC HEARING: ALLEY VACATION AT 1148 SAN BERNARDINO ROAD AND ORDER TO VACATE

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution declaring the order to vacate 20-foot wide alley located at 1148 San Bernardino Road, approximately 813 linear feet.

GOAL STATEMENT

The proposed action supports the City's goal to adhere to a review schedule for the processing of development proposals in an efficient, professionally responsive, and courteous manner.

BACKGROUND

At the City Council meeting of February 11, 2019, the City Council declared its intention to vacate approximately 813 linear feet of 20-foot wide alley located at 1148 San Bernardino Road. The public hearing was continued to Monday, February 25, 2019 to ensure that all residents are properly notified. Exhibits "A" and "B" illustrate the detailed boundaries of the proposed vacation. Please see Location Map.

As part of the San Antonio Hospital Medical Office Building Project, the alley vacation is a component of the overall circulation improvement and parking requirement. Within the vacation limits, the current Hospital parcels originally owned and dedicated the alley to be vacated. As such, the full 20-foot to be vacated alley will revert ownership back to the Hospital.

ISSUES/ANALYSIS

The City is complying with the California Streets and Highways Code §8320 et seq containing specific proceedings in vacating public roadways as follows:

- City to declare its intention to vacate the street segments;
- City to set a public hearing by fixing the date, hour, and place of the hearing;
- City to cause the publishing and posting of the hearing notices; and,
- City Council to hold the public hearing and make its determination of approval or disapproval of the vacation.

Following the public hearing, the City Council may adopt a resolution ordering vacation of the alley.

FISCAL IMPACTS

There is no fiscal impact associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Resolution - Alley Vacation
Legal Description & Exhibits A and B
Location Map

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL DECLARING THE ORDER
TO VACATE 20-FOOT WIDE ALLEY LOCATED AT 1148 SAN
BERNARDINO ROAD APPROXIMATELY 813 LINEAR FEET

Intent of the Parties and Findings

(i) Epic Engineers, 101 E. Redlands Blvd, Redlands, CA 92373, filed an application for Alley Vacation, SV-18-01 to vacate approximately 813 linear feet of 20-foot wide alley located at 1148 San Bernardino Road, as described in Exhibits "A", attached hereto.

(ii) On the 28th day of January, 2019, City of Upland provided public notice of the intent to vacate and set a public hearing for the 11th of February. On the 11th day of February 2019 the City Council of the City of Upland declared its intent to vacate approximately 813 linear feet of 20-foot wide alley located at 1148 San Bernardino Road and continued the public hearing to 25th of February, 2019 at 7 p.m. in the Council Chamber.

(iii) The public hearing set on the 25th day of February, 2019, at the hour of 7:00 p.m. in the Council Chambers of the City Hall in the City of Upland, as the time and place where any person interested in supporting or objecting to the proposed vacation would be heard; and

(iv) The City of Upland, in accordance with the provisions of law, posted notices of the intention to vacate in the City of Upland at least fifteen (15) days prior to the date of hearing.

(v) At said time and place, said City Council heard and considered both oral and written evidence pertaining to the vacation of 20-foot strip described above.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds, determines and resolves as follows:

Section 1. The vacation is appropriate to satisfy the City of Upland's conditions of approval to accommodate necessary onsite parking for the proposed San Antonio Regional Hospital's Medical Office Building Project.

Section 2. The vacation is in the interest of the public health, safety, and general welfare by eliminating unnecessary right-of-way, and by making the most efficient use of the land.

Section 3. The Development Services Director has determined that the proposed vacation does not constitute a project as defined by the California Environmental Quality Act (CEQA).

Section 4. The City Council hereby adopts this Resolution approving Alley Vacation SV-18-01 subject to the conditions, as follows:

- A. The vacation of the twenty (20) foot strip previously described herein is subject to a reservation of access and easement to the public and the servicing utility companies, for the operation and maintenance of various main lines, services, and storm drain within the vacated right-of-way. Said easement shall remain in effect until a utility is relocated or abandoned.

- B. Prior to the recordation of the alley vacation document, the legal description for the subject strip shall be submitted for review and approval, to the satisfaction of the Public Works Director through the plan check process.
- C. Prior to recordation of merging existing lots and the vacated alley, the legal description for the proposed lot mergers shall be submitted for review and approval, to the satisfaction of the Public Works Director through the plan check process.
- C. The City of Upland does hereby reserve the right to construct, maintain, operate, replace, remove, and renew various utility main lines and appurtenant structures, together with any and all public utilities which the City may deem necessary or convenient to be placed in said property to be vacated as previously described herein, including access to protect such works and all hazards in, upon, and over the street or highway as previously described herein.
- D. Future alterations or changes of use to the proposed vacated area shall require review and approval from the Administrative Committee and Planning Commission.

Section 5. Certification. The City Clerk of the City of Upland shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 25th day of February, 2019.

Debbie Stone, Mayor

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 25th day of February, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST: _____
Keri Johnson, City Clerk

EXHIBIT "A"
ALLEY VACATION
SAN ANTONIO REGIONAL HOSPITAL – MEDICAL OFFICE BUILDING

AN EASEMENT FOR ALLEY AND RELATED PURPOSES IN, OVER, ALONG, AND ACROSS THAT PORTION OF LOTS 573 AND 550, MAP OF ONTARIO, IN THE CITY OF UPLAND, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 6 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF THE EASEMENT TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, AS RECORDED IN BOOK 3140, PAGE 71 OF OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER, WITH A LINE WHICH IS PARALLEL WITH AND DISTANT SOUTHEASTERLY 11.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE SOUTHEASTERLY LINE OF SAN BERNARDINO ROAD, 66 FEET WIDE;

THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF THE SAN BERNARDINO COUNTY FLOOD CONTROL EASEMENT 189.07 FEET TO THE POINT OF INTERSECTION WITH A LINE WHICH IS PARALLEL WITH THE DISTANT SOUTHEASTERLY 200.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID SOUTHEASTERLY LINE OF SAN BERNARDINO ROAD;

THENCE SOUTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE 624.68 FEET TO THE POINT OF INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND DISTANT EASTERLY 33.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF ELEVENTH AVENUE, 33.00 FEET WIDE;

THENCE NORTHERLY ALONG THE LAST DESCRIBED PARALLEL LINE 22.65 FEET TO THE POINT OF INTERSECTION WITH A LINE WHICH IS PARALLEL WITH THE DISTANT SOUTHEASTERLY 180.00 FEET, MEASURED AT RIGHT ANGLES FROM SAID SOUTHEASTERLY LINE OF SAN BERNARDINO ROAD;

THENCE NORTHEASTERLY ALONG THE LAST DESCRIBED PARALLEL LINE 584.82 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 10.00 FEET, SAID CURVE ALSO BEING TANGENT AT ITS NORTHERLY TERMINUS WITH A LINE WHICH IS PARALLEL WITH AND DISTANT SOUTHWESTERLY 20.00 FEET, MEASURED AT RIGHT ANGLES, FROM SAID SOUTHWESTERLY LINE OF THE EASEMENT TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°28'15" AN ARC DISTANCE OF 15.44 FEET TO THE POINT OF TANGENCY IN THE LAST DESCRIBED PARALLEL LINE;

THENCE NORTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE 159.32 FEET TO THE POINT OF INTERSECTION WITH THE PARALLEL LINE DESCRIBED ABOVE AS BEING DISTANT SOUTHEASTERLY 11.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE SOUTHEASTERLY LINE OF SAN BERNARDINO ROAD;

THENCE NORTHEASTERLY ALONG THE LAST DESCRIBED PARALLEL LINE 20.01 FEET TO **POINT OF BEGINNING**;

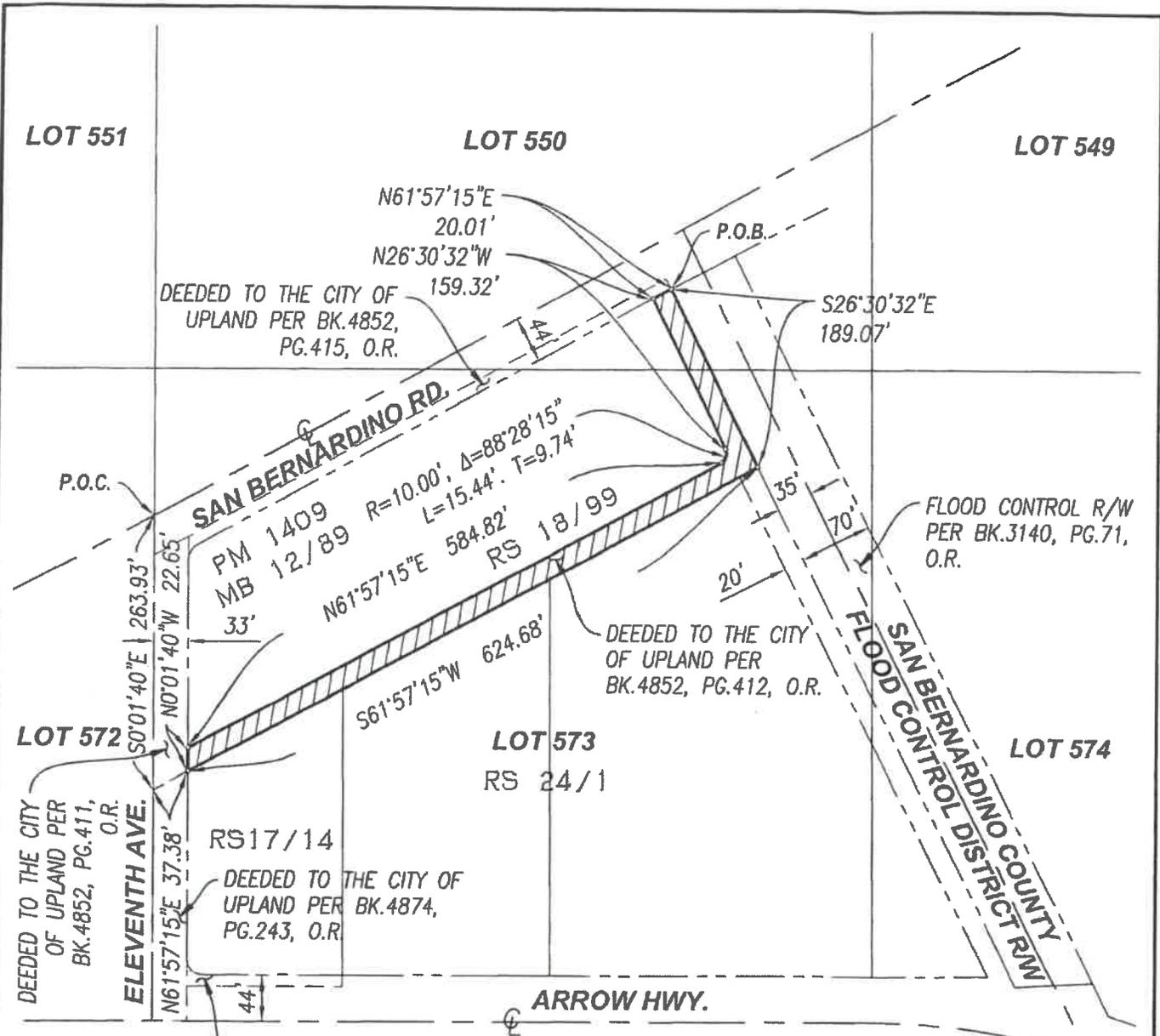
EXCEPTING AND RESERVING FROM THE VACATION AN EASEMENT FOR ANY EXISTING PUBLIC UTILITIES AND PUBLIC SERVICE FACILITIES, TOGETHER WITH THE RIGHT TO MAINTAIN, OPERATE, REPLACE, REMOVE, OR RENEW SUCH FACILITIES, PURSUANT TO SECTION 8340 OF THE STREETS AND HIGHWAYS CODE.

CONTAINING AN AREA OF APPROXIMATELY 0.37 NET ACRES, MORE OR LESS;

AS SHOWN ON EXHIBIT "B" AND BY THIS REFERENCE MADE A PART THEREOF.

PREPARED BY: Steve Leja 1/15/19
STEVE A. LEJA PLS 5933 DATE





DEEDED TO THE CITY OF UPLAND PER BK.4852, PG.411, O.R.

ELEVENTH AVE.

RS17/14

DEEDED TO THE CITY OF UPLAND PER BK.4874, PG.243, O.R.

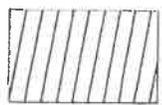
LOT 573
RS 24/1

ARROW HWY.

DEEDED TO THE CITY OF UPLAND PER BK.4874, PG.245, O.R.

FLOOD CONTROL R/W PER BK.3140, PG.71, O.R.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT R/W



INDICATES AREA OF VACATION

ALLEY VACATION CONTAINS 0.37 ACRES, MORE OR LESS.



1/15/19



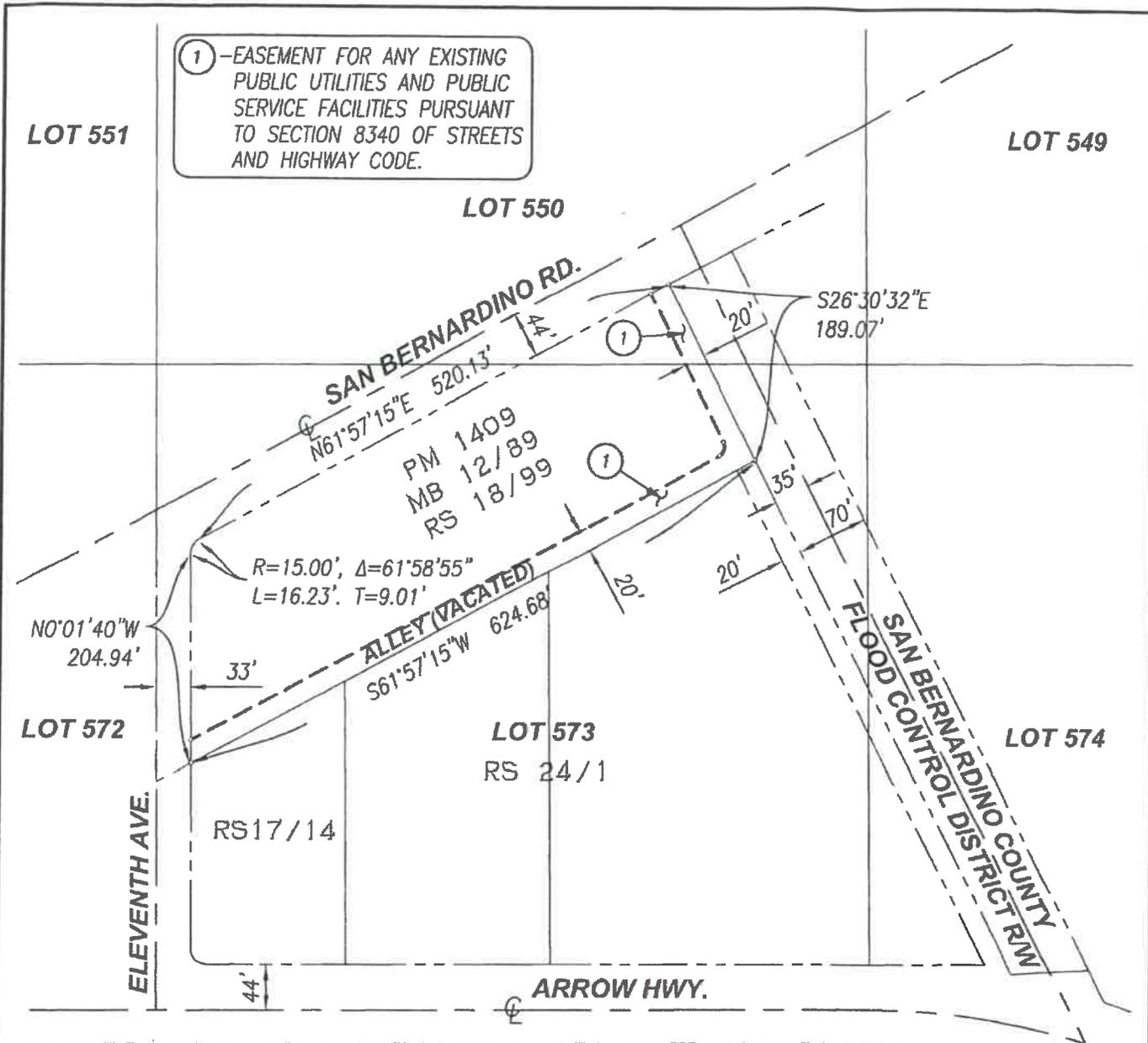
EPIC ENGINEERS

CIVIL ENGINEERING | LAND SURVEYING | PLANNING | STORMWATER MANAGEMENT
 101 E. REDLANDS BOULEVARD
 SUITE 146
 REDLANDS, CA 92373
 TEL: 909.792.5969
 FAX: 909.792.0869
 www.epicrce.com

EXHIBIT "B"
 BEFORE ALLEY VACATION
 AT ELEVENTH AVENUE & SAN
 BERNARDINO ROAD
 UPLAND, CA

W.O. 29.133
 BY: C.A.W.
 DATE: 10/12/2018
 SCALE: 1" = 150'
 SHEET: 1 OF 2

① - EASEMENT FOR ANY EXISTING PUBLIC UTILITIES AND PUBLIC SERVICE FACILITIES PURSUANT TO SECTION 8340 OF STREETS AND HIGHWAY CODE.



ALLEY VACATION CONTAINS 0.37 ACRES, MORE OR LESS.



EPIC ENGINEERS

CIVIL ENGINEERING | LAND SURVEYING | PLANNING | STORMWATER MANAGEMENT
 101 E. REDLANDS BOULEVARD
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 REDLANDS, CA 92373
 TEL : 909.792.5969
 FAX : 909.792.8869
 www.epicrce.com

EXHIBIT "B"
 AFTER ALLEY VACATION
 AT ELEVENTH AVENUE & SAN
 BERNARDINO ROAD
 UPLAND, CA

W.O. 29.133
 BY: C.A.W.
 DATE: 10/12/2018
 SCALE: 1" = 150'
 SHEET: 2 OF 2

LOCATION MAP



ALLEY VACATION





STAFF REPORT

ITEM NO. 14.A.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
HAL G. FREDERICKSEN, ADMINISTRATIVE CONSULTANT
SUBJECT: CONSIDER RENEWAL OF LIBRARY AGREEMENT

RECOMMENDED ACTION

It is recommended that the City Council direct staff to negotiate and prepare a draft Agreement for renewal of the existing Agreement with Library Systems and Services, LLC (LS&S) for continued operation of the Upland Public Library, for a period of five (5) years.

GOAL STATEMENT

The proposed action will support the City's goal to provide quality City services in a fiscally responsible manner.

BACKGROUND

This item was brought to the City Council to determine a level of conceptual support for a renewal of the City's contract for private operation of the Upland Public Library. Library Systems & Services, LLC (LS&S) currently, and since 2014, operates the Upland Public Library. LS&S is a private company and operates under a 5-year Agreement with the City. This Agreement is set to expire on July 31, 2019. The Agreement provides for up to two (2) one-year extensions. The Agreement requires that negotiations for any extension(s) be completed prior to April 31, 2019.

The 2014 LS&S Agreement was approved, by the City Council, as a means of cost savings during a very challenging economy. The Agreement essentially privatized the operation of the library, at a significant cost savings for the City. There was no request for proposals (RFP) process, with the staff report noting that no other firms in the United States were found to offer this type of contracted library service. There were apparently brief discussions about contracting library operations to the County of San Bernardino or the City of Rancho Cucamonga, but those discussions were apparently not pursued.

Staff has had preliminary discussions with LS&S about a potential renewal or replacement of the existing Agreement, and has determined that LS&S wishes to continue providing for operation of the library. Staff has found the library provides quality services to the Upland community, at a cost that is almost certainly significantly less than if the City were operating the library. No other firms, nationwide, were found to offer such library services.

ISSUES/ANALYSIS

The provisions of the existing Agreement provide for two (2) one-year extensions. However, staff has inquired whether LS&S would consider language in a new five (5) year Agreement that would provide for an adjustable fee structure should the City experience a significant economic downturn (e.g. recession). The terms of such a provision would need to be fair to both the City and contractor, and be well-defined.

LS&S is supportive of incorporating such an adjustable fee provision into a new five-year Agreement. Otherwise, they would also be supportive of all existing Agreement provisions. These include a "term without cause" provision, which allows cancellation by the City if needed, annually, effectively making the Agreement five (5) one-year options. Existing provisions also include annual 2.5% increases, any added federal or state costs (e.g. scheduled minimum wage increases), and annual material purchase provisions. Staff has already advised that the City would likely wish to "freeze" future material costs at existing levels, with any increases subject to annual City approval.

Staff would propose that there are three (3) basic options:

- A. To proceed with negotiations on a new 5-year Agreement, which includes the economic downturn adjustable fee provision.
- B. To proceed with a recommendation for 1 or 2 one-year extensions of the existing Agreement, which has no adjustable fee provision.
- C. To consider resuming City operation of the library or to consider some other method of operation.

Staff believes the proposed 5-year Agreement for renewal can best provide for the library's continued operation, while doing so in a fiscally responsible manner. Should Council so agree, staff would proceed to draft and negotiate the aforementioned Agreement for renewal.

FISCAL IMPACTS

Negotiating and preparation of a renewal agreement will have no fiscal impact in itself. The existing Library Agreement has an annual operating budget of \$1,362,634 and a library materials budget of \$187,329. These budgets will remain unchanged until such time as the City Council may approve an extension or new Agreement.

ALTERNATIVES

Provide alternative direction to staff

ATTACHMENTS:

No Attachments Available



STAFF REPORT

ITEM NO. 14.B.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
KERI JOHNSON, CITY CLERK
SUBJECT: APPOINTMENT TO PERSONNEL BOARD OF REVIEW

RECOMMENDED ACTION

It is recommended that the City Council select an appointment from the employee associations' nominees, Gifty Beets and Steve Bierbaum; and ratify the appointment to the Personnel Board of Review, term to expire June, 2019.

GOAL STATEMENT

The proposed action supports the City's goal to provide opportunities for the citizenry to participate in local government through service on various committees, commissions and boards.

BACKGROUND

Pursuant to the Upland Municipal Code, the Personnel Board of Review has been established. The Board consists of three members and one alternate. One member is nominated by the City Council, one member is nominated and mutually agreed upon by the City Council and the Employee Associations, and the third member is selected by the Employee Associations. The alternate member is also mutually agreed upon by the City Council and the Employee Associations.

On November 26, 2018, the City Council accepted the resignation of Board Member Marni Bobich who served as the Employee Associations' nomination to the Board. The vacancy was posted pursuant to the Government Code Section 54974.

ISSUES/ANALYSIS

The employee associations have submitted two nominees for consideration by the Council, Gifty Beets and Steve Bierbaum. Resolution No. 6397 states that the employee groups will submit names and the Council selects the appointment. Therefore, staff is requesting the Council choose from the proposed appointees and ratify the appointment, term to expire in June 2019.

In accordance with section 2.36.160 of the Upland Municipal Code, a four-fifths vote of all members of the Council is required to appoint a member to the board.

FISCAL IMPACTS

There are no fiscal impacts associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Application - Beets

Application - Bierbaum

Resolution No. 6397



RECEIVED
UPLAND CITY
CLERK'S OFFICE

19 JAN 30 AM 9:25 City of Upland

Public Service Application for Boards, Committees, or Commissions

Name: Gifty J. Beets

Date: Jan 16, 2019

- I want to generally apply for all committees
- I am applying specifically for the following:
Personnel Board of Review

When are you available for meeting? (Check all that apply)

- Mornings
- Afternoons
- Evenings

General Information

Home Address: INFORMATION REDACTED

Home Phone: INFORMATION REDACTED

Email Address: INFORMATION REDACTED

Present Employer: Los Angeles Unified School District

Business Address: INFORMATION REDACTED

Business Phone: INFORMATION REDACTED

Activities Information

Professional Activities: Certified Labor Relations Management Professional.

Member of SHRM, IPMA, and CalPelra. IPMA-HR designation in process.

Pepperdine's Straus Institute Dispute Resolution Courses.

Community Activities: AYSO: Sponsorship Coordinator, U12B Divisional Asst,

and Social Media Coordinator. Little League National Parents Committee.

Prior School Site Council Member at Foothill Knolls Elementary.

Education Information

BA in Political Science/Business Administration - UCLA

MBA with a Specialization in Human Resource Management, National U.

JD in process, NWCUC



In 300 words or less, explain reasons for wanting to serve:

I would love to get more involved in the community that I have lived in for the last 15 years. I am a Personnel and Human Resource Professional and feel that I can provide my skillset to enhance the City of Upland.

I have done this work for over 20 years working at a large public school district and also working in a large private engineering firm. My knowledge experience and willingness to work with others will make me an ideal person to serve on Upland's Personnel Board of Review.

List three (3) community references:

1. Ari Ruiz, AYSO Region 65, Regional Commissioner
INFORMATION REDACTED
2. Diana Wilds, Purpose Church Women's Group and HS Teacher
INFORMATION REDACTED
3. Teyanna Williams, Metro VP of HR
INFORMATION REDACTED

INFORMATION REDACTED

Signature



RECEIVED
UPLAND CITY
CLERK'S OFFICE
18 DEC 10 PM 11:42

City of Upland

Public Service Application for Boards, Committees, or Commissions

RECEIVED
UPLAND CITY
CLERK'S OFFICE
18 DEC 10 PM 11:42

Name: STEVEN D. BIERRAUM

Date: 12/10/18

- I want to generally apply for all committees
- I am applying specifically for the following:

PERSONNEL BOARD OF REVIEW

When are you available for meeting? (Check all that apply)

- Mornings
- Afternoons
- Evenings

General Information

Home Address: INFORMATION REDACTED

Home Phone: INFORMATION REDACTED

Email Address: INFORMATION REDACTED

Present Employer: NONE - RETIRED LOS ANGELES COUNTY FIRE DEPT.

Business Address: N/A

Business Phone: N/A

Activities Information

Professional Activities: NONE - RETIRED AFTER 34 YEARS OF PUBLIC SAFETY SERVICE. CURRENT PROFESSION IS PLAYING "MR. MOM" TO (2) TWO 12 YR OLDS. (2)

Community Activities: BOARD OF DIRECTORS - UPLAND COALITION OF CONCERNED CITIZENS; ADOPT-A-HIGHWAY CLEAN-UP PROGRAM.; FOSTER-PROGRAM FRIENDS OF UPLAND ANIMAL SHELTER.

Education Information

H.S. GRADUATE; POST SECONDARY EDUCATION 8 FIRE SCIENCE; POLICE SCIENCE; CERTIFIED HAZMAT RESPONDER + STATE INSTRUCTOR; URBAN SEARCH & RESCUE RESPONDER + INSTRUCTOR. NATIONAL FIRE ACADEMY INSTRUCTOR CERTIFICATION

In 300 words or less, explain reasons for wanting to serve:

HAVING BECOME INVOLVED IN THE INTERNAL WORKINGS OF THE CITY OF UPLAND, I HAVE A DEEP SEATED NEED TO BE A PART OF THE ORGANIZATION, THROUGH A VOLUNTARY PROCESS.

I HAVE 34 YEARS OF PUBLIC SAFETY BACKGROUND THAT I BRING TO THE TABLE. DURING THE COURSE OF THOSE YEARS OF SERVICE IN THE MILITARY, POLICE DEPT. & FIRE DEPT, I SERVED MANY TIMES IN INVESTIGATORY FUNCTIONS; BACKGROUND INVESTIGATIONS; UNION BOARD OF DIRECTORS ASSIGNMENTS & NEGOTIATING TEAM REPRESENTATION.

MY EXPERIENCE IN LAW ENFORCEMENT INVESTIGATIONS; INTERNAL INVESTIGATIONS/REVIEW PROCESSES & INTERNAL ISSUES RELEVANT TO DISCIPLINE & EMPLOYEE ASSOCIATION'S MAKES THIS BOARD MEMBER ASSIGNMENT RELEVANT. I BRING EXPERIENCE & PATIENCE & PASSION FOR OUR CITY TO BE THE BEST.

List three (3) community references:

1. COUNCIL MEMBER JANICE ELLIOTT INFORMATION REDACTED
UPLAND CITY HALL
2. DR. JOE GRAY INFORMATION REDACTED
INFORMATION REDACTED
3. MR. AL PATTISON INFORMATION REDACTED
INFORMATION REDACTED

INFORMATION REDACTED

Signature

RESOLUTION NO. 6397

A RESOLUTION OF THE CITY COUNCIL AMENDING THE POLICIES AND PROCEDURES RELATIVE TO THE ESTABLISHMENT AND OPERATION OF COMMISSIONS, COMMITTEES, BOARDS AND AUTHORITIES APPOINTED TO ADVISE THE CITY COUNCIL

Intent of the Parties and Findings

(i) The use of citizen Commissions, Committees, Boards and Authorities to advise the City Council on issues of public concern is an efficient and effective means of involving citizens in policy development; and

(ii) Chapter 2.16 and Section 2.20.030 of the Upland Municipal Code provide that the City Council shall by resolution, establish a process for the screening of individuals desiring to serve as City Commission, Committee, Boards or Authority members; and

(iii) The effective use of these Commissions, Committees, Boards and Authorities is furthered by clear guidelines governing their creation and operation; and

(iv) The City Council adopted Resolution No. 4331 which established guidelines governing the creation and operation of established Commissions, Committees, Boards and Authorities; and

(v) From time to time there is a need to eliminate or amend the established rules governing the operation and creation of commissions, committees, boards, and authorities, which was the basis for the adoption of Resolutions No. 5786, 6038, 6270; and

(vi) The City desires to provide a fair and equitable manner by which citizens are appointed to City Commissions, Committees, Boards, and Authorities, which is free of undue influence, but which advances the authority provided by Government Code Section 40605; and

(vii) The City Council may establish standing committees of the legislative body to provide an opportunity for fact finding prior to consideration by the entire Council; and

(viii) The City Council established the Recreation Committee by Resolution No. 4839 on June 9, 1997, and rescinded previously adopted Resolution Nos. 2600, 3324, 3626, 4212 and 4474 and amended Resolution Nos. 4331 and 5007; and

(ix) The City Council later amended the composition of the Recreation Committee with Resolution No. 5007, dated February 8, 1999, adding two School Board Members to the Committee; and

(x) The City Council added the Finance & Economic Development Committee, Police & Fire Committee, and Public Works Committee with Resolution No. 5290, dated December 10, 2001.

NOW, THEREFORE, the Upland City Council hereby finds, determines and resolves as follows:

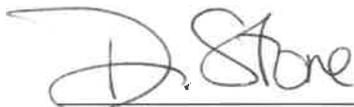
Section 1. The City Council hereby amends the established guidelines for Authorities, Boards, Committees and Commissions of the City (as attached) including incorporating, by reference, all prior actions taken by the City Council to eliminate or modify Committees, to the extent they are not inconsistent with the attached guidelines.

Section 2. Amend the standing legislative committees to include Economic Development Committee, Police & Fire Committee, Public Works Committee, and Investments Committee.

Section 3. The City Council hereby further amends the established guidelines for Authorities, Boards, Committees and Commissions of the City (as attached) to include guidelines for standing legislative committees.

Section 4. Certification. The City Clerk shall certify the adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 10th day of April, 2017.

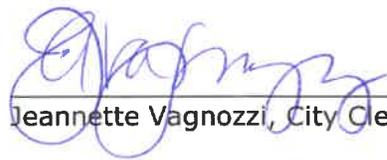


Debbie Stone, Mayor

I, Jeannette Vagnozzi, City Clerk of the City of Upland, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 10th day of April 2017, by the following vote:

AYES: Mayor Stone, Councilmembers Filippi, Elliott, Robinson, Timm
NOES: None
ABSENT: None
ABSTAINED: None

ATTEST:



Jeannette Vagnozzi, City Clerk

COMMISSIONS, COMMITTEES, BOARDS AND AUTHORITIES

SECTION 1. CREATION OF COMMISSIONS, COMMITTEES, BOARDS, AND AUTHORITIES

The Upland City Council shall have the power from time to time by resolution to create such Commissions, Committees, Boards, and Authorities which are necessary or deemed advisable by the Council to carry out the governmental functions of the City in the manner reflecting the best interest of its citizens. The number of members to each Commission, Committee, Board, and/or Authority shall unless otherwise required by law, correspond to the number of members of the appointing body as authorized by law. Each active member of the Upland City Council shall have an appointee on each Commission, Committee, Board and/or Authority. Each appointee shall be a citizen nominated by the Mayor or Councilmember, respectively, and approved by a majority vote of the City Council and appointed by the Mayor.

SECTION 2. DEFINITION

"Commission" shall be any group established pursuant to the Upland Municipal Code. "Committee" shall be any group of individuals which shall have any ongoing charge from the City Council and which are formed by resolution. "Committee" shall not include Committees composed solely of elected officials. "Board" shall be any group formed pursuant to State law providing for same. "Authority" shall be any group formed pursuant to State law providing for same. "Standing Legislative Committee" shall include committees comprised of elected officials who will review operational concerns prior to official council action.

SECTION 3. APPLICABILITY

The provisions of this resolution shall apply to all Commissions, Committees, Boards and Authorities hereafter created by resolution of the City Council and to existing Commissions, Committees, Boards, and Authorities as identified on the attachments hereto. The provisions of this resolution shall supersede any minute motion or resolution of any prior City Council of Upland which is in conflict with the provisions of this document. Insofar as possible, the provisions of this resolution shall govern the operation and creation of Commissions, Committees, Boards, and Authorities appointed by the City Council except in those instances where the provisions of this resolution conflict with provisions of State or Federal law.

SECTION 4. APPOINTMENT AND APPLICATION PROCESS

The City Clerk shall maintain a roster of individuals who expressed interest in serving on City Commissions, Committees, Boards, and Authorities, who may be nominated by a serving member of the City Council, and who have completed an application form in a manner established or approved by the City Council. Said application shall indicate among other things, the Commission, Committee, Board, or Authority on which said individual is interested in serving. Any application filed shall be valid for a period of three (3) years. Incumbent Commission, Committee, Board, or Authority members shall be deemed to be on said roster, unless City Clerk is in possession of a Resignation Letter from the incumbent member. Members of the City Council shall make appointments from this roster.

SECTION 5. SELECTION AND APPOINTMENT

Members of the City Council requiring representation on a particular Commission, Committee, Board, or Authority shall review the list of applicants and submit a nominee to the City Clerk. The City Clerk shall place nominations before the City Council for its review and approval as and when necessary.

For selections made by the Mayor and ratified by the City Council, the Mayor shall review the list of applicants and submit a nominee to the City Clerk. The City Clerk shall place the nominations before the City Council for its review and approval as and when necessary.

In appointing Planning Commissioners, the Mayor shall establish an interview panel composed of the Mayor (or another Councilmember appointed by the Mayor), the Mayor Pro Tem (or another Councilmember appointed by the Mayor), the Chair of the Planning Commission and the Development Services Director (advisory). All applicants will be interviewed and recommend to the Mayor at least one of those which a majority of the interview panel believe to be qualified. The Mayor shall appoint the Commissioners from those recommended for his/her consideration.

Appointments to standing legislative committees (Economic Development Committee, Police & Fire Committee, Public Works Committee, and Investments Committee) are made by the Mayor biannually to coincide with elections and may be reviewed and reassigned annually or as needed.

SECTION 6. TERMS OF COMMISSION, COMMITTEES, BOARDS, AND AUTHORITIES

For Council nominated appointments the term of each Commission, Committee, Board, and Authority member shall coincide with the holding of office by the nominating member of the City Council, unless otherwise prescribed by resolution creating the Commission, Committee, Board, or Authority.

For appointments made by the Mayor, the term shall be as outlined in the creation of the Commission, Committee, Board or Authority.

No Commission, Committee, Board, or Authority member shall serve for more than two (2) consecutive terms on any individual Committee, Commission, Board, or Authority without the prior approval of the Council, which approval requires a 4/5ths affirmative vote.

SECTION 7. REMOVAL FROM COMMISSION, COMMITTEES, BOARDS, AND AUTHORITIES

Any Committee, Commission, Board, or Authority member may be removed from office during his/her unexpired term upon 4/5ths vote of the City Council, when in the sole discretion of the Council said removal is deemed appropriate. Notwithstanding the foregoing, if the appointee's nominating Councilmember is no longer a part of the Upland City Council or Mayor, that appointee shall be deemed to have automatically resigned the seat they hold upon the filling of the City Council vacancy.

SECTION 8. RESIDENCY OF COMMISSION, COMMITTEE, BOARD, AND AUTHORITY MEMBERS

In order to be appointed to a Commission, Committee, Board, or Authority, a prospective appointee must be a resident of the City of Upland and must remain in residence throughout the term of their appointment, unless a member is appointed by another entity. This provision may be waived upon an affirmative 4/5ths vote of the Council.

SECTION 9. CHAIRPERSON SELECTION

With the exception of the Planning Commission, the Library Board and the Personnel Board of Review, the member appointed by the Mayor to any Commission, Committee, Boards, and/or Authorities shall serve as the Chairperson of that body. With regard to the Planning Commission, the Library Board and the Personnel Board of Review, the members of said bodies shall select, nominate, and appoint by majority consensus, a sitting member of the Body to the position of Chairperson. The term of the Chairperson shall be for 2 years. No Chairperson shall serve for more than two (2) consecutive terms without the approval of the City Council by an affirmative 4/5ths vote.

SECTION 10. POSTING REQUIRED

The City Clerk shall, before December 31st of each year, develop a listing of all scheduled vacancies on City Commissions, Committees, Boards, and/or Authorities expected during the next twelve (12) months. In addition to the requirement of the Government Code, said list shall be posted at City buildings and other locations as may be designated from time to time by City Council resolution, for a period of thirty (30) days and announced at a Council meeting in December. Said listing shall advise interested parties to obtain application forms and related materials at the City Clerk's office. In addition, the City Clerk shall publish said list in the city newsletter seeking applications from interested parties and listing scheduled vacancies during the same thirty (30) day period. Unscheduled vacancies shall be advertised in accordance with the Government Code and posted at the same location as scheduled vacancies.

SECTION 11. DUTIES

The Commissions, Committees, Boards, and Authorities established by the Council shall perform such duties and have such powers as may be established from time to time by the Council.

SECTION 12. ATTENDANCE

In any case where a Commission, Committee, Board and/or Authority member has missed three (3) regularly scheduled meetings in a twelve (12) month period without notifying the Chair of said Commission, Committee, Board, and/or Authority in advance of said meeting, the City Clerk shall contact the Commission, Committee, Board, and/or Authority member with a request to provide the reasons therefore, which shall be forwarded to the City Council.

SECTION 13. OPEN MEETINGS

All Commission, Committee, Board and Authority meetings shall be conducted pursuant to the provisions of the Ralph M. Brown Act and the City Clerk shall maintain a copy of all agendas and minutes of all meetings.

BUILDING APPEALS BOARD

PURPOSE

To determine the suitability of alternate materials and methods of construction and to provide reasonable interpretations of the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, the Uniform Housing Code, Uniform Code for the Abatement of Dangerous Buildings, national Electric Code, and the Seismic Hazards Reduction Ordinance.

MEMBERSHIP

5 Members Total

Selected from the following classifications:

- a. Architect or Engineer
- b. Attorney
- c. Contractor – Electrical, Mechanical, Plumbing or General

LENGTH OF TERM/FREQUENCY OF MEETINGS

4 Year Term / Meetings are scheduled as needed as appeals are received.

No member may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council

SELECTION PROCESS

- The City Clerk causes a request for volunteers to be posted.
- Using the criteria for membership, the building official determines if applicants are qualified and passes all qualified candidates to the City Clerk.
- Each member of the City Council shall submit their nomination from the list of qualified candidates to the City Clerk for consideration at a Council meeting.

CODE REFERENCES

Resolution 4107
Resolution 2725
Ordinance 1028

(effective July 27, 1992)

CITY COUNCIL ADVISORY COMMITTEE

PURPOSE

Review of any matters which may be referred to the Committee from time to time. If so directed, the City Council Advisory Committee will be responsible for performing an analysis and present recommendations to the City Council.

MEMBERSHIP

5 Members Total
Nominated by Councilmembers

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 year terms to coincide with the terms of Mayor and Councilmember making nomination
- No applicant may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- Meet on an as-needed basis

SELECTION PROCESS

Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

Council Minutes 7/3/72
Ordinance 1416, Section 1, 12/21/87
Ordinance 1428, Section 2, 6/20/88
Ordinance 1563, Section 1, 10/26/72
Ordinance 1812, 10/8/2006

COMMUNITY DEVELOPMENT BLOCK GRANT COMMITTEE

PURPOSE

Annually review applications for Community Development Block Grant funds, conduct hearings to determine the most effective use of the grant funds and provide recommendations to the City Council.

MEMBERSHIP

5 Members Total
Nominated by Councilmembers

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 year terms to coincide with the terms of Mayor and Councilmember making nomination
- No applicant may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- Meetings held from January through April, with additional meetings on an as needed basis.

SELECTION PROCESS

Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

- Council Minutes 3/14/89

LIBRARY BOARD

PURPOSE

The Upland Public Library serves the community by providing materials and staff assistance for meeting the informal and educational needs of the library users.

MEMBERSHIP

- 5 Citizens at Large
- 1 Council Liaison (advisory)
- 1 Friends of the Library Liaison (advisory)

LENGTH OF TERMS/FREQUENCY OF MEETINGS

- 3 Year Term
- Meetings held the second Wednesday of the month
- No applicant shall serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council

SELECTION PROCESS

Mayor shall appoint with Council ratification

CODE REFERENCES

California Library laws, Education Code 1990
UMC Section 2.28.010
Ordinance No. 99

PERSONNEL BOARD OF REVIEW

PURPOSE

The functions of the board shall be to hear appeals as provided by this part and by rule, except matters pertaining to the meet and confer process

MEMBERSHIP

3 Members Total

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 Year Term
- No applicant shall serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- On call by Human Resources Director

SELECTION PROCESS

- Council appointment shall be made by the Mayor, with Council ratification
- 1 Employee Group submits name(s) and Council selects appointment
- 1 Agreed by Council and Employee Groups

CODE REFERENCE

Minute Action 5/31/1945
Ordinance 1494
UMC Section 2.36.160

PLANNING COMMISSION

PURPOSE

The powers and duties of the Planning Commission shall be to:

1. Prepare, periodically review, and revise, as necessary the General Plan
2. Annually review the Capital Improvement Program of the City and the local public works projects of other local agencies for their consistency with the General Plan
3. Perform other functions as the City Council provides
4. Perform such other land use-related functions pursuant to State laws pertaining to conservation, planning and zoning as the council may direct or provide
5. Serve as the Airport Land Use Committee, applying the procedures and findings set forth in the Municipal Code in regards to all processes relating to a request for an implementation/land use compatibility decision, preparation, adoption and amendment to the Comprehensive Airport Land Use Plan of the City of Upland conforming to requirements set forth in Public Utilities Section 21670.1.
6. Serve as the Historic Preservation Committee as outlined in the Upland Municipal Code.

MEMBERSHIP

7 Members Total

Airport Land Use Committee consists of:
7 Planning Commissioners
2 ALUC members (possess expertise in aviation)

LENGTH OF TERM/FREQUENCY OF MEETINGS

- 4 year terms
- No applicant may serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
- Once a month, 4th Wednesday
- Commissioners receive \$100 compensation per meeting (not to exceed \$200 per month)

SELECTION PROCESS

- The City Clerk causes a request for volunteers to be posted
- Mayor (or Mayor designee), Mayor Pro Tem (or Mayor designee), Planning Commission Chair (or designee selected by Planning Commission), and Development Services Director (advisory) shall serve as an interview panel and interview each applicant
- Interview panel shall recommend at least one candidate per opening to the Mayor for ratification by the Council
- Airport Land Use Commissioners - Mayor shall appoint with Council ratification

CODE REFERENCE

Resolution 6270
UMC Chapter 17.04
Ordinance 415
Ordinance 1202
Resolution 4697

STREET TREE ADVISORY COMMITTEE

PURPOSE

This committee shall study and review the proposed Urban Forestry Management Plan and make appropriate recommendation to Council and staff regarding the matters contained therein; to provide an avenue for citizens to appeal special circumstantial tree problems (i.e., tree removals, street tree designations, spraying for fruit insects); and to review tree removal and other policies.

MEMBERSHIP

5 Members Total
Selected from 5 Citizens at Large

LENTH OF TERM

4 year term expiring in November of even years
No member shall serve more than two full consecutive terms without the approval of Council by a 4/5th vote.

MEETINGS

2nd Thursday of the month on an "on-call" basis.

SELECTION PROCESS

Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

Resolution 4462
Resolution 5201

TRAFFIC SAFETY ADVISORY COMMITTEE

PURPOSE

To advise Council and staff of community concerns regarding issues of traffic safety and to recommend solutions to those concerns.

MEMBERSHIP

12 Members Total
5 Citizens at Large
3 Upland Unified School District
1 Board of Trustees Representative
1 District Office Representative
1 Administration Representative
1 Chamber of Commerce Representative
1 Auto Club Representative
1 Upland Police Department Liaison
1 Engineering Department Liaison

LENGTH OF TERM/FREQUENCY OF MEETINGS

4 Year Term (except Police and Engineering Liaisons)
No applicant shall serve more than two full consecutive terms, unless approved by a 4/5ths vote of the Council
First Wednesday of each month – 8:30 a.m. Police Department on an as needed basis

SELECTION PROCESS

Citizens at Large - Each member of the City Council shall submit their nomination to the City Clerk for consideration at a Council meeting.

CODE REFERENCE

Upland Council Minutes, 10/6/64
Upland Council Minutes, 11/6/78

ECONOMIC DEVELOPMENT COMMITTEE

PURPOSE

The function of the committee is to provide an opportunity for review and fact finding relative to significant projects, programs, or activities in economic development operations prior to consideration by the entire Council.

MEMBERSHIP

2 City Council Members

LENGTH OF TERM/FREQUENCY OF MEETINGS

- Appointments may coincide with elections biannually or be reviewed and reassigned annually as desired by the Mayor.
- Meetings shall be scheduled as needed.

SELECTION PROCESS

All standing legislative committees are appointed by the Mayor with Council ratification.

CODE REFERENCE

UMC Section 2.16.010

Resolution No. 5290

Upland City Council Minutes, 12/01/2001

POLICE & FIRE COMMITTEE

PURPOSE

The function of the committee is to provide an opportunity for review and fact finding relative to significant projects, programs, or activities in public safety operations prior to consideration by the entire Council.

MEMBERSHIP

2 City Council Members

LENGTH OF TERM/FREQUENCY OF MEETINGS

- Appointments may coincide with elections biannually or be reviewed and reassigned annually as desired by the Mayor.
- Meetings shall be scheduled as needed.

SELECTION PROCESS

All standing legislative committees are appointed by the Mayor with Council ratification.

CODE REFERENCE

UMC Section 2.16.010
Resolution No. 5290
Upland City Council Minutes, 12/01/2001

PUBLIC WORKS COMMITTEE

PURPOSE

The function of the committee is to provide an opportunity for review and fact finding relative to significant projects, programs, or activities in public works operations prior to consideration by the entire Council.

MEMBERSHIP

2 City Council Members

LENGTH OF TERM/FREQUENCY OF MEETINGS

- Appointments may coincide with elections biannually or be reviewed and reassigned annually as desired by the Mayor.
- Meetings shall be scheduled as needed.

SELECTION PROCESS

All standing legislative committees are appointed by the Mayor with Council ratification.

CODE REFERENCE

UMC Section 2.16.010
Resolution No. 5290
Upland City Council Minutes, 12/01/2001

INVESTMENTS COMMITTEE

PURPOSE

The Committee shall be responsible for reviewing changes to the City investment reports, transactions, policies and procedures, and strategies, on a quarterly basis.

MEMBERSHIP

City Treasurer
2 City Council Members
Finance Officer (staff)

LENGTH OF TERM/FREQUENCY OF MEETINGS

- Appointments may coincide with elections biannually or be reviewed and reassigned annually as desired by the Mayor with the exception of the Finance Officer.
- Meetings shall be scheduled as needed.

SELECTION PROCESS

The City Treasurer is an established elected position and shall serve as the chair of the committee. All standing legislative committees are appointed by the Mayor with Council ratification.

CODE REFERENCE

UMC Section 2.16.010
Resolution No. 6394 (Investment Policy)



STAFF REPORT

ITEM NO. 14.C.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: LONDA BOCK-HELMS, CPA, FINANCE OFFICER
SUBJECT: MID-YEAR BUDGET FY 2018-19 REVIEW

RECOMMENDED ACTION

It is recommended that the City Council take the following actions:

- Receive and file the Mid-Year Budget Report for Fiscal Year 2018/19 (Attachment 1);
- Approve the Proposed Mid-Year Adjustments detailed on Attachment 2;
- Provide staff with direction regarding committing unreserved/undesignated fund balance.

GOAL STATEMENT

The proposed action supports the City's goal to provide fiscal stewardship for the City of Upland.

BACKGROUND

Between January and March each year, staff presents to the City Council and the citizens of Upland, a mid-year budget report. This report focuses on financial results through December 31, 2018, the end of the second quarter of the 2018-19 fiscal year. As part of this review, staff recommends changes to the budget based upon new information resulting from events that occurred thus far within the fiscal year, but were not included in the adopted budget. The focus of the Mid-Year review will be on the General Fund, as illustrated in Attachment 1.

ISSUES/ANALYSIS

In June 2018, the City Council adopted an operating and capital improvement budget for fiscal year 2018-19 that included \$110,435,580 in revenue and \$135,312,540 in expenditures.

The main focus of the mid-year budget review is on the City's largest fund, the General Fund. The adopted budget included General Fund revenue totaling \$41,180,920. Amendments have been made to that original budget through council action. Those budget adjustments resulted in an increase in revenue of \$14,301. During the mid-year review of General Fund revenues, projections were in line with actual revenues to date so there will be no changes to revenue projections at this time.

During the final review of the Comprehensive Annual Financial Report (CAFR), the City's audit firm (Van Lant and Fankhanel, LLC) determined the General Fund had a receivable from the Self Insurance Fund which had no possibility of being liquidated. The General Fund had advanced the Self Insurance Fund in excess of \$3 million in order to eliminate negative cash balances for financial statement purposes. As the General Fund is the majority funding source of the Self Insurance Fund, staff was required to eliminate the invalid receivable by transferring cash to the Self Insurance Fund in order to eliminate the long-term cash deficit. In order to avoid a longer delay in the completion of the CAFR, the transfer was made entirely from the General Fund. In actuality, the Water, Sewer and Refuse funds should have contributed their fair share (property insurance, worker's comp, general liability claims) in order to eliminate the negative cash balance.

Total General Fund original adopted budgeted expenditures were \$40,924,710. Amendments have been made to that original budget through council action which resulted in an increase in budgeted expenditures of \$189,942. At mid-year, staff recommends an increase of \$179,250 to the budgeted expenditures which are detailed in Attachment 2.

After taking into consideration the above budget amendments, the result is an overall increase in budget surplus of \$516,664 for a total budget surplus to date of \$597,233 as indicated in Attachment 2.

The current fund balance operating reserve equals 17.5% of budgeted expenditures for Fiscal Year 2018/19 or \$7,161,824. The fiscal responsibility committee recommended an ultimate goal of 20% of operating expenditures. The Government Finance Officers Association (GFOA) best practices recommends a minimum operating reserve of 2 months operating revenue, which equates to \$6,820,785 for the City of Upland. After adjusting the current operating reserve on 7/1/2018 as a result of the approval of the Fiscal Year 2018/19 operating budget, the expected unreserved fund balance has dropped to \$339,107. This amount is available for City Council to commit as they deem necessary.

FISCAL IMPACTS

Increase General Fund budgeted revenues/transfers (sources) by \$695,914, and increase budgeted expenditures/transfers (uses) by \$179,250. Approval of these items also requires adjustments to budgeted transfers out of the enterprise funds and an increase in the appropriate expenditure accounts in the building maintenance fund the detail of which is presented in Schedule 2.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Mid Year Report 12-31-18

Mid Year Budget Review 12-31-18

City of Upland
Quarterly Report Ended 12/31/2018
6/30/2019

Account Number	Account Description	12/31/2015 Actual	12/31/2016 Actual	12/31/2017 Actual	Original Budget	Amended Budget	12/31/2018 Actual	% to Date
GENERAL FUND								
Revenues and other sources								
40XX	Property Taxes	6,417,199	6,751,139	3,456,601	16,570,210	16,570,210	3,377,754	20.38%
4009	Weed Abatement	13,813	21,642	21,533	51,070	51,070	57,688	112.96%
4101	Sales Tax	3,457,234	4,677,896	4,804,278	13,975,790	13,975,790	5,299,057	37.92%
4102	Business License Tax	206,560	272,595	221,211	950,000	950,000	234,023	24.63%
4103	Rock Extraction Tax	63,456	59,366	75,085	240,000	240,000	65,756	27.40%
4104	Transient Occupancy Tax	43,696	46,052	41,979	155,530	155,530	44,702	28.74%
4105	Real Property Transfer Tax	162,884	140,308	161,728	345,000	345,000	161,695	46.87%
4121	Franchise Tax	211,902	177,164	197,866	1,230,000	1,230,000	178,871	14.54%
Various	Licenses and Permits	688,344	609,595	716,781	1,483,460	1,483,460	869,512	58.61%
various	Intergovernmental	336,269	117,561	794,851	114,860	114,860	18,000	15.67%
46XX	User Charges	1,795,017	1,869,212	1,143,038	2,205,930	2,205,930	1,241,900	56.30%
47XX	Fines & Forfeitures	214,664	225,424	195,966	429,950	429,950	319,020	74.20%
48XX	Use of Money and Property	288,355	196,110	675,461	1,390,480	1,390,480	649,557	46.71%
4910	Water Admin Service Fee	454,244	522,055	770,866	1,130,510	1,130,510	494,866	43.77%
4911	Solid Waste Admin Service Fee	163,532	171,632	146,212	376,130	376,130	61,965	16.47%
4912	Sewer Admin Service Fee	98,968	109,085	119,731	231,490	231,490	84,622	36.56%
49XX	Other Revenues	129,884	226,815	236,232	300,510	314,811	318,013	101.02%
	Total Revenues	14,746,021	16,193,651	13,779,419	41,180,920	41,195,221	13,477,001	32.71%
	Transfers In	-	-	-	-	-	28,209	0.00%
	Prior year carryovers	-	-	432,418	-	-	-	0.00%
	Fund Bal Designated for Animal Shelte	-	-	100,000	-	-	-	0.00%
	Fund Bal Designated for Library Impro	-	-	170,000	-	-	-	0.00%
	Fund Balance undesignated	-	-	400,000	-	-	-	0.00%
		14,746,021	16,193,651	14,881,837	41,180,920	41,195,221	13,505,210	32.78%

City of Upland
Quarterly Report Ended 12/31/2018
6/30/2019

Account Number	Account Description	12/31/2015 Actual	12/31/2016 Actual	12/31/2017 Actual	Original Budget	Amended Budget	12/31/2018 Actual	% to Date
Expenses and other uses								
1101	City Council	51,060	46,356	58,106	117,740	117,740	58,047	49.30%
1104	City Treasurer	6,968	3,541	1,525	1,790	1,790	1,005	56.15%
1201	City Administration	341,890	132,024	147,269	447,830	447,830	181,052	40.43%
1301	Accounting Services	673,492	621,291	663,492	2,191,460	2,187,101	585,455	26.77%
1302	Mail/Printing Services	36,315	42,697	28,836	76,390	76,390	28,249	36.98%
1504	Non-Departmental	11	-	26,419	2,821,790	2,821,790	258,951	9.18%
1510	Library	693,018	514,390	730,611	1,595,070	1,595,070	429,229	26.91%
1601	Human Resources	137,954	157,507	138,781	342,710	342,710	141,182	41.20%
1602	Development & Training	21,148	30,195	82,161	122,590	122,590	46,183	37.67%
1603	City Attorney	103,201	265,199	278,473	490,000	490,000	181,291	37.00%
1701	City Clerk	80,976	102,718	292,306	419,680	419,680	116,572	27.78%
2201	Building & Safety	252,258	186,293	316,444	738,940	738,940	292,421	39.57%
2202	Weed Abatement	4,937	6,592	9,099	51,460	51,960	8,660	16.67%
2203	Economic Development	28,295	36,362	53,911	235,540	249,341	79,327	31.81%
2204	Planning Commission	5,447	3,064	4,680	13,740	13,740	4,696	34.18%
2205	Planning	251,195	297,069	295,667	695,490	695,490	217,523	31.28%
2207	Santa Fe Depot	-	-	-	-	-	152	0.00%
3201	Police Administration	1,675,995	1,663,627	2,380,423	5,696,700	5,696,700	2,343,269	41.13%
3202	Police Investigations	882,775	1,082,915	1,072,820	2,562,870	2,562,870	1,001,556	39.08%
3205	Animal Services	-	-	256,334	660,220	660,220	241,634	36.60%
3206	Police Admin Support	276,004	306,869	29,341	-	-	4,014	0.00%
3208	Metrolink Station	-	-	-	-	-	46	0.00%
3210	Patrol Support	662,195	659,923	31,966	-	-	2,097	0.00%
3211	Police Patrol	4,319,876	4,587,927	5,110,451	12,822,260	12,822,260	5,398,188	42.10%
3231	Special Events & Comm Outreach	9,132	14,947	11,490	1,760	1,760	5,480	311.36%
3232	Police Reserves	561	735	646	3,000	3,000	-	0.00%
3233	Code Enforcement	61,687	108,341	125,384	562,860	562,860	238,711	42.41%
3501	Fire Administration	822,003	1,302,348	487,700	-	-	20,157	0.00%
3503	Fire Reserves	2,274	2,371	-	-	-	-	0.00%

City of Upland
 Quarterly Report Ended 12/31/2018
 6/30/2019

Account Number	Account Description	12/31/2015 Actual	12/31/2016 Actual	12/31/2017 Actual	Original Budget	Amended Budget	12/31/2018 Actual	% to Date
3511	Fire Station I	897,155	1,086,414	137,641	-	-	-	0.00%
3512	Fire Station II	855,794	834,901	371,265	15,000	15,000	8,500	56.67%
3513	Fire Station III	739,610	836,047	175,683	21,000	21,000	3,816	18.17%
3514	Fire Station IV	917,315	889,298	133,850	-	-	8,433	0.00%
3515	Emergency Medical Services	61,106	50,591	863	-	-	-	0.00%
3516	Special Operations	8,205	4,010	12	-	-	-	0.00%
3517	Air Ambulance	542,174	604,022	176,690	-	-	-	0.00%
3518	Historic Fire Station	9,600	11,502	11,802	22,740	22,740	11,977	52.67%
3521	Fire Prevention	105,181	80,963	33,347	-	-	-	0.00%
3522	Fire Training	15,369	18,973	97	-	-	-	0.00%
4201	Recreation Administration	312,373	384,818	266,871	641,340	641,340	271,391	42.32%
4202	Recreation Classes	97,895	95,861	93,438	200,500	200,500	86,523	43.15%
4203	Recreation Facilities	18,975	51,474	52,905	99,780	99,780	48,097	48.20%
4204	Youth Programs/Sports	43,114	35,180	36,581	103,800	103,800	43,637	42.04%
4205	Senior Center	150,184	159,056	140,839	363,360	363,360	174,276	47.96%
4206	Special Events	42,282	48,668	13,239	45,670	45,670	27,694	60.64%
4207	Community Outreach Services	9,860	14,628	4,281	45,520	45,520	14,382	31.59%
4208	Access	202,211	(1,215)	220	-	-	-	0.00%
4210	Landecena Center	6,194	14,066	16,004	65,600	65,600	27,013	41.18%
4402	Carnegie Library	27,150	29,079	33,321	72,690	72,690	36,425	50.11%
4409	Passports	5,021	5,792	6,848	19,590	19,590	6,768	34.55%
4501	Animal Services	426,097	200,232	8,045	-	-	-	0.00%
5201	Public Works Administration	133,773	227,314	329,644	664,370	664,370	305,391	45.97%
5301	Engineering Administration	112,803	131,419	106,751	286,980	286,980	142,065	49.50%
5302	Development/Traffic Engineering	153,079	222,807	81,817	395,350	575,350	185,099	32.17%
5401	Street Maintenance	228,836	202,027	328,314	847,400	847,400	301,567	35.59%
5402	Street Sweeping	50	5,460	7,139	17,890	17,890	7,683	42.95%
5403	Sidewalk Maintenance	502,497	63,307	53,747	185,870	185,870	45,614	24.54%
5404	Street Lighting	415,976	391,606	405,030	888,180	888,180	334,572	37.67%
5405	Traffic Control	48,006	65,817	91,451	162,020	162,020	68,291	42.15%

City of Upland
Quarterly Report Ended 12/31/2018
6/30/2019

Account Number	Account Description	12/31/2015 Actual	12/31/2016 Actual	12/31/2017 Actual	Original Budget	Amended Budget	12/31/2018 Actual	% to Date
5406	Traffic Facility Maintenance	52,366	86,612	95,388	294,800	294,800	79,171	26.86%
5407	Weed Abatement	13,137	8,506	19,850	47,460	47,460	18,247	38.45%
5408	Flood Control	5,220	1,725	10,185	24,990	24,990	4,446	17.79%
5409	Street Tree Maintenance	410,949	144,647	568,352	766,900	766,900	708,255	92.35%
5410	Parkway Maintenance	195,677	154,781	226,424	492,830	492,830	214,830	43.59%
5412	Maintenance-Main Street	20,453	21,622	27,205	60,780	60,780	22,048	36.28%
5413	Maintenance-Metrolink Station	4,254	3,571	9,304	20,000	20,000	6,596	32.98%
5416	Damage to City Property	-	497	48,733	54,000	54,000	10,882	20.15%
5420	Parkway Maintenance	240,924	245,597	387,411	686,760	686,760	307,917	44.84%
5421	Sports Field Maintenance	94,310	98,382	109,184	266,440	266,440	109,816	41.22%
5601	City Hall	101,367	99,808	130,782	373,210	373,210	172,699	46.27%
	Total Expense	19,627,209	19,805,166	17,384,888	40,924,710	41,114,652	15,699,268	38.18%
5070	Transfers out	447,469	-	170,000	-	-	3,213,001	0.00%
	Encumbrance/carryovers	-	-	-	-	-	-	-
	Undesignated fund balance	-	-	-	-	-	-	-
		20,074,678	19,805,166	17,554,888	40,924,710	41,114,652	18,912,269	46.00%
	Revenues Over/(Under) Expenses	(5,328,657)	(3,611,515)	(2,673,051)	256,210	80,569	(5,407,059)	

City of Upland
Mid-Year Budget Review
FY 2018-19

Attachment 2

Operating Revenues:

Approved Budget FY2018-19 Estimated Revenue and Available Sources	\$	41,180,920
Approved Budget Adjustments 7-1-2018 to 12/31/2018		14,301
		41,195,221

Recommended Mid-Year Budget Adjustments:

Transfer In from Water Fund	\$	431,166	
Transfer In from Refuse Fund		75,194	
Transfer In from Sewer Fund		189,554	695,914
Total	\$	695,914	

Projected Operating Revenues/Sources 6/30/2019 **\$ 41,891,135**

Operating Expenses:

Approved Budget FY 2018-19 Expenditures	\$	40,924,710
Approved Budget Adjustments 7-1-2018 to 12/31/2018		189,942
		41,114,652

Recommended Mid-Year Budget Adjustments:

Transfer to Building Maintenance Fund:			
Exterior painting	\$	36,000	
War Bag lockers		26,000	
Interior painting		117,250	179,250
Total	\$	179,250	

Projected Operating Expenditures/Uses 6/30/2019 **\$ 41,293,902**

General Fund Operating Surplus/(Deficit) **\$ 516,664** **\$ 597,233**

General Fund fund Balance June 30, 2018 (audited) **\$ 14,232,842**

Mid-Year General Fund Operating Surplus/(Deficit) 597,233

Estimated Fund balance at 6/30/2019 **\$ 14,830,075**

Current Designations:

Inventory and Prepaid Items	\$	48,121	
Notes Receivable		16,748	
Reserve for PARS 115 Pension Trust		6,175,389	
Disability Access Fees		33,886	
Facility Fuel Island Repair		50,000	
Mildura Conference Room HVAC		15,000	
Library Power System Upgrade		150,000	
Magnolia Center Rehabilitation		250,000	
Memorial Park Improvements		140,000	
Legal/Labor/Negotiations		450,000	
Operating Reserve (17.5% of \$40,924,710 (adopted budget))		7,161,824	14,490,968

Undesignated/Unreserved Fund Balance **\$ 339,107**

Recommended Mid-Year Fund Balance Designations:

None -

Projected Undesignated/Unreserved Fund Balance at 6/30/2019 **\$ 339,107**



STAFF REPORT

ITEM NO. 14.D.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR
SUBJECT: CONSIDERATION OF A SECOND AMENDMENT TO THE RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT BY AND BETWEEN THE CITY OF UPLAND AND FORD OF UPLAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (FORMALLY NAMED PARK PLACE, LLC)

RECOMMENDED ACTION

It is recommended that the City Council approve the Second Amendment to the Restated and Amended Owner Participation Agreement between the City of Upland and Ford of Upland, LLC, a California limited liability company.

GOAL STATEMENT

The proposed action supports the City's economic development goals related to business assistance in the relocation of a high quality retail business to a superior freeway location in the City.

BACKGROUND

Ford of Upland, LLC (FOU) is seeking City Council approval on a Second Amendment (See **Exhibit "A"**) to their existing Restated and Amended Owner Participation Agreement (the "OPA"). The amendment proposes an 18-month extension of the date in the OPA when the project must be completed and in operation (the "Commencement Date"), as well as the corresponding deadline that allows the City to terminate financial assistance if the dealership is not constructed. The existing OPA was approved by the City Council on February 8, 2016 (See **Exhibit "C"**), and was last amended on November 27, 2017 (the "First Amendment") which extended the Commencement Date to June 1, 2019 (See **Exhibit "B"**). The Second Amendment is proposing to extend the June 1, 2019 deadline to December 31, 2020.

The existing OPA provides a financial incentive to FOU that will facilitate the relocation and construction of their new Ford automobile dealership. The key terms in the existing OPA provides FOU a maximum reimbursement by the City of \$2.7 million in sales tax revenue. In return, FOU is required to complete the project by a specific deadline and enter into an Operating Covenant that requires FOU to operate the automobile dealership for a minimum of five (5) years after they receive the maximum reimbursement amount from the City.

The actual project entails FOU relocating the Ford automobile dealership from its existing 5.51-acre site on Foothill Boulevard to a new ±32,000 square foot facility. The new location is a 6.38 acre site located on the north side of the 210 Freeway and east of Campus Avenue in the Colonies at San Antonio Specific Plan area. The new facility received entitlements on March 15, 2016 and consists of a large outdoor display area of new and pre-owned Ford vehicles, a showroom, offices, retail auto parts, retail service center, and a future car wash. FOU intends to maintain the Foothill Boulevard site for commercial fleet sales and service, wholesale auto parts, body shop and used car sales of all brands, similar to an Auto Nation-type car lot. Ultimately, FOU will develop the Foothill Boulevard site consistent with the commercial/residential mixed-use zoning of the area; however, they do not have a specific timeline as to when redevelopment of the site would occur.

ISSUES/ANALYSIS

To date, FOU indicates the financial investment they've incurred to effectuate construction of the new facility is approximately \$7.5 million, which they have funded themselves. This cost includes acquisition of the subject site and additional land from Holliday Rock to fully widen 20th Street. The public infrastructure completed includes construction of a ±930 lineal feet of 20th Street (street, curbs and gutters, sidewalk, street lights, and retaining wall), and public utilities (sewer, water, storm drains, gas and electric lines, and telephone and cable lines). The cost also includes preparing the subject site for construction (rough grading), and a significant cost to protect a pipeline owned by Metropolitan Water District (MWD) that traverses through their property which is part of the subject site.

The project has experienced substantial delays because the site was raw land and a substantial amount of public infrastructure was required to be designed and constructed. Thus, FOU is facing a project completion deadline of June 1, 2019 (First Amendment) in the OPA, which is not possible to meet. They are requesting an 18-month extension to December 31, 2020 which would provide FOU the time necessary to complete the project and open the facility. FOU estimates that \$4.2 million remains to be expended to complete and open the facility. As indicated previously, the Second Amendment to the OPA only involves extending the project completion deadline, and the concurrent deadline that allows the City to terminate financial assistance if the dealership is not constructed. All existing terms in the OPA, including financial incentives, remain the same. Below summarizes the key financial terms in the existing OPA followed by the sections in the OPA that FOU is seeking to amend through the Second Amendment to the OPA.

Existing OPA Financial Terms (Unchanged):

1. Annual sales tax revenue produced by FOU up to \$312,000 is to be 100% retained by the City. This term ensures that the average annual sales tax revenue received by the City is retained before the division of sales tax revenue occurs per the OPA.
2. Annual sales tax revenue in excess of \$312,000 is to be divided, with 75% paid to FOU and 25% retained by the City. Payments are made in arrears from the previous year's sales tax revenue data, and verified using the data from the State Department of Tax and Fee Administration.

3. A cumulative cap of \$2.7 Million of financial assistance to FOU over the term of the OPA. The financial assistance will be the annual sales tax revenue generated by FOU in the prior year.
4. FOU will enter into an Operating Covenant that is recorded against title of the property and remain in place for 5-years after FOU receives the financial assistance cap (\$2.7 Million). This provision protects the City from the dealership closing prior to the period of time (Approx. 14 years estimated by the City's sales tax consultant) that the tax sharing will end, and the cap on financial assistance is received by FOU. The City will retain 100% of the sales tax revenue generated by the FOU after the cap is reached.
5. The City will divert 15% of FOU's annual sales tax reimbursement payment into an interest bearing account managed by the City. The intent of this provision is to ensure that FOU successfully completes the Operating Covenant period. Should FOU default on the Operating Covenant, the City will receive the escrowed funds, including all accrued interest. This has been estimated to exceed \$400,000.

Proposed Sections to be Amended in OPA:

1. Section 301 (City Financial Assistance). FOU proposes to delete subsection (1) (amended by First Amendment of the OPA) and re-write this section that basically establishes a revised deadline for project completion and operation date to be December 31, 2020. All of the existing text in the subsection remains the same relative to the City's discretion to extend the Commencement Date if unforeseen construction issues occur, and no obligation on the City's part to provide financial assistance if the Commencement Date is not met.
2. Section 304 (Termination of City Financial Assistance). This existing section provides four (4) occurrences that terminate the City's obligation to pay FOU financial assistance. FOU proposes to amend subsection (i) to provide consistency with Section 301 relative to the December 31, 2020 Commencement Date proposed. All existing text in this section remains the same.

Assembly Bill 562 Compliance

Assembly Bill 562 ("AB 562") added Section 53083 to the State Government Code and requires a public process before any economic development subsidy is approved by a local jurisdiction. Specific information regarding the economic development subsidy is required to be in written form and available to the public; as well as, a consideration of written and oral comments during the public hearing prior to approving the economic development subsidy. This process was completed concurrent with approval of the OPA on February 8, 2016, and again on November 27, 2017 with approval of the First Amendment (See **Exhibit "D"**). Since the AB 562 process was fully completed previously, the proposed Second Amendment does not require further review under AB 562, because this amendment only concerns an extension of the Commencement Date and no changes to the existing financial incentive terms are part of this amendment.

Below are some of the key benefits to extending the OPA in order to facilitate construction of the new Ford Dealership:

1. Facilitating the relocation and constructing of a new Ford dealership to a superior freeway-adjacent location at a gateway through the City, and will enable FOU to maximize their sales potential; thereby substantially increasing sales tax revenue to the City over the long term.
2. Receipt of additional revenue to the City in the form of new property taxes, estimated to be approximately \$16,000 annually from the new facility.
3. Job growth is estimated to be thirty-four (34) fulltime employees and four (4) part-time employees.
4. Existing Foothill site will remain a revenue generating source to the City through property tax and sales tax revenue, and will ultimately allow this site to be redeveloped

pursuant to the General Plan and zoning designation of this area, which is intended to be a commercial and residential mixed-use environment.

5. Once completed and operational, FOU will enhance the synergy of existing development along the north side of the 210 Freeway, and result in helping to attract other high quality development on the remaining vacant parcels in this area.

FISCAL IMPACTS

Sales tax data for automobile sales must be kept confidential, per California Revenue and Taxation Code Section 7056. Sales tax from automobile sales is a major component of the total sales tax revenue base the City receives. Per the conditions in the OPA, the sales tax reimbursements will only take effect when the new dealership has been operational for one year, and the sales tax revenue to the City exceeds the base amount of \$312,000. Annual sales tax in excess of \$312,000 would be distributed with 75% to FOU and 25% to the City, until FOU receives the "maximum payment amount". For the Council's reference, the City receives 1% of the 7.75% sales tax charged to purchases in the County of San Bernardino. The relocation of the dealership to a superior freeway location will overtime, substantially increase the amount of sales tax revenue the City currently receives from FOU.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

Exhibit A – Second Amendment to Restated and Amended Owner Participation Agreement for Ford of Upland

Exhibit B – First Amendment to Restated and Amended Owner Participation Agreement for Ford of Upland (November 27, 2017)

Exhibit C - Restated and Amended Owner Participation Agreement for Ford of Upland (February 8, 2016)

Exhibit D – AB 562 Report (November 27, 2017)

SECOND AMENDMENT TO RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT

THIS SECOND AMENDMENT TO RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT (“Second Amendment”) is dated as of February 25, 2019 and is entered into by and between the CITY OF UPLAND (the “City”) and FORD OF UPLAND, LLC, a California liability company (“FOU”).

RECITALS

A. City and FOU entered into a Restated and Amended Owner Participation Agreement dated February 8, 2016 (the “OPA”). Capitalized terms used but not defined in this Second Amendment shall have the meaning set forth in the OPA.

B. City and FOU entered into a First Amendment to Restatement and Amended Owner Participation Agreement dated November 27, 2017 (the “First Amendment”). Pursuant to the First Amendment, certain deadlines in the OPA were extended.

C. FOU has requested that City further extend certain deadlines in the OPA due to unforeseen construction issues.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms, consents and agreement hereinafter set forth, the parties agree as follows:

1. Section 301. The last sentence of Section 301 1. of the OPA is hereby deleted and the following is hereby substituted in lieu thereof:

“Notwithstanding anything herein to the contrary, if the Project is not fully completed, or the Commencement Date has not been fully established, on or before December 31, 2020, although the CITY at its discretion can extend the Commencement Date if necessary to accommodate unforeseen construction issues, then the CITY shall have no obligations to provide any Financial Assistance to OWNER.”

2. Section 304. Section 304 is hereby deleted and the following is hereby substituted in lieu thereof:

“(§304) Termination of City Financial Assistance.

CITY's obligation to pay the City Financial Assistance to OWNER shall terminate upon the occurrence of any of the following, whichever is first to occur:

(i) In the event the Project has not been completed according to the requirements of this Restated Agreement, and the Commencement Date has not been fully established in accordance with Section 301 by December 31, 2020;

(ii) The date upon which the total cumulative amount of all City Financial Assistance provided by CITY to OWNER shall equal Two Million

Seven Hundred Thousand Dollars \$2,700,000 ("the Maximum Payment Amount"), taking into account all payments made by CITY to OWNER under this Restated Agreement;

(iii) The discontinuation of the Dealership use at and from the Property (and CITY's payment in full of all amounts accrued and owing with respect to all of the full and partial Payment Periods prior to such event or occurrence); or

(iv) The date on which OWNER defaults in complying with any material provision of this Restated Agreement, including but not limited to a default in any of the use restrictions and covenants contained in Section 401 and 402, as to which any applicable cure period referred to in Section 601 hereof has expired."

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the day and year first above written.

CITY:

CITY OF UPLAND

By: _____
Print Name: _____
Title: _____

Attest: _____
_____, City Clerk

APPROVED AS TO FORM:

By: _____
James Markman, City Attorney

FORD OF UPLAND:

FORD OF UPLAND, LLC,
a California limited liability company

By: _____
Print Name: John Engelhardt
Title: Managing Member

FIRST AMENDMENT TO RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT

THIS FIRST AMENDMENT TO RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT (“First Amendment”) is dated as of November 27, 2017 and is entered into by and between the CITY OF UPLAND (the “City”) and PARK PLACE FORD LLC, a California liability company (“PPF”).

RECITALS

A. City and PPF entered into a Restated and Amended Owner Participation Agreement dated February 8, 2016 (the “OPA”). Capitalized terms used but not defined in this First Amendment shall have the meaning set forth in the OPA.

B. PPF has requested that City extend certain deadlines in the OPA.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms, consents and agreement hereinafter set forth, the parties agree as follows:

1. Section 204. The first sentence of Section 204 of the OPA is hereby deleted and the following is hereby substituted in lieu thereof:

“Not later than January 1, 2017, OWNER shall submit to CITY a complete set of “first submitted” building plans for the Project for CITY’s review and approval, and shall pay all applicable fees to CITY, and not later than August 1, 2017, OWNER shall submit final building plans for approval by the CITY.”

2. Section 301. The last sentence of Section 301 1. of the OPA is hereby deleted and the following is hereby substituted in lieu thereof:

“Notwithstanding anything herein to the contrary, if the Project is not fully completed, or the Commencement Date has not been fully established, on or before June 1, 2019, although the CITY at its discretion can extend the Commencement Date if necessary to accommodate unforeseen construction issues, then the CITY shall have no obligations to provide any Financial Assistance to OWNER.”

3. Section 304. Section 304 is hereby deleted and the following is hereby substituted in lieu thereof:

“(§304) Termination of City Financial Assistance.

CITY's obligation to pay the City Financial Assistance to OWNER shall terminate upon the occurrence of any of the following, whichever is first to occur:

(i) In the event the Project has not been completed according to the requirements of this Restated Agreement, and the Commencement Date has not been fully established in accordance with Section 301 by June 1, 2019;

(ii) The date upon which the total cumulative amount of all City Financial Assistance provided by CITY to OWNER shall equal Two Million Seven Hundred Thousand Dollars \$2,700,000 ("the Maximum Payment Amount"), taking into account all payments made by CITY to OWNER under this Restated Agreement;

(iii) The discontinuation of the Dealership use at and from the Property (and CITY's payment in full of all amounts accrued and owing with respect to all of the full and partial Payment Periods prior to such event or occurrence); or

(iv) The date on which OWNER defaults in complying with any material provision of this Restated Agreement, including but not limited to a default in any of the use restrictions and covenants contained in Section 401 and 402, as to which any applicable cure period referred to in Section 601 hereof has expired."

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the day and year first above written.

CITY:

CITY OF UPLAND

By: Debbie Stone
Print Name: Debbie Stone
Title: Mayor

Attest: Jeanette Vignozzi, City Clerk

APPROVED AS TO FORM:

By: James D. Markman
James Markman, City Attorney

PPF:

PARK PLACE FORD, LLC,
a California limited liability company

By: John Engelhardt
Print Name: John Engelhardt
Title: Managing Member

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 San Bernardino)

On December 11, 2017 before me, Keri Johnson, Notary Public
(insert name and title of the officer)

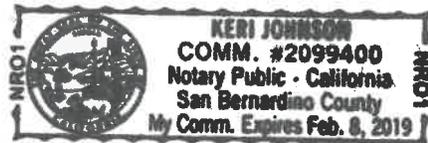
personally appeared Debbie Stone,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

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

WITNESS my hand and official seal.

Signature

(Seal)



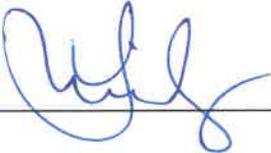
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

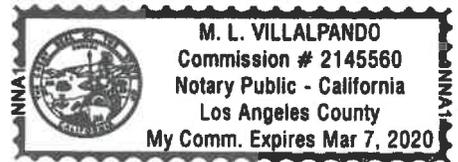
State of California
County of Los Angeles

On December 13, 2017, before me M. L. Villalpando, a Notary Public, personally appeared John Engelhardt, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)



**RESTATED AND AMENDED
OWNER PARTICIPATION AGREEMENT**

by and between the

**City of Upland,
a California municipal corporation,**

and

Park Place Ford LLC, dba Ford of Upland

**RESTATED AND AMENDED
OWNER PARTICIPATION AGREEMENT**

THIS RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT (the "Restated Agreement") is dated for reference purposes as of the 8th day of February 2016, and is being entered into by and between the CITY OF UPLAND, a California municipal corporation ("CITY"), and Park Place Ford LLC, a California Limited Liability Company, dba Ford of Upland ("OWNER"). CITY and OWNER are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties." The Parties enter into this Agreement with reference to the following recited facts (each a "Recital"):

RECITALS

A. OWNER is in escrow to become the owner of certain property in the City more specifically described in Attachment 1. In addition, the Metropolitan Water District ("MWD") is the owner of certain real property more specifically described in Attachment 1. OWNER has or immediately upon execution of this Agreement will enter into a lease agreement with the MWD for the use of MWD's property described in Attachment 1.

B. OWNER desires to open and operate a dealership on the Property, as that term is defined in Section 102.15, selling new and used vehicles and other directly related services (the "Dealership"). The term "Dealership" is further defined in Section 102 below.

C. The conversion of the formerly vacant Property to sales tax generating uses will provide substantial financial benefits to the CITY.

D. In order to enhance the viability of the Property for vehicle sales and servicing, it will be necessary for OWNER to invest substantial sums into the improvement of the Property.

E. In consideration of OWNER's commitment to utilize the Property for sales tax generating uses and the substantial financial commitments that OWNER will incur to improve the Property, the CITY is willing to make certain payments set forth in this Agreement, and subject to the terms and conditions contained herein.

F. On or about August 11, 2014 an Owner Participation Agreement ("Agreement") for the same purpose was entered into between the parties, and then was amended on September 14, 2015. The parties now desire to further restate and amend said agreement with revised terms contained herein.

COVENANTS:

BASED ON THE FOREGOING RECITALS, WHICH ARE INCORPORATED INTO THIS RESTATED AGREEMENT BY THIS REFERENCE, AND FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND COVENANTS OF THE PARTIES SET FORTH IN THIS RESTATED AGREEMENT, CITY AND OWNER AGREE AS FOLLOWS:

(§ 100) PURPOSE AND DEFINITIONS

(§101) Purpose of the Restated Agreement.

This Restated Agreement is intended to encourage the use and improvement of the Property and its surrounding neighborhoods by providing for OWNER's relocation to and improvement of the OWNER'S business operations thereon. OWNER's performance of its obligations as set forth in this Restated Agreement are in the vital and best interests of the CITY, the welfare of its residents, and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

(§102) Definitions

The following terms as used in this Restated Agreement shall have the meanings given unless expressly provided to the contrary:

1. The term "**Annual Payment Amount**" shall have the meaning ascribed in Section 301.4(a).

2. The term "**CITY**" shall mean the City of Upland, a municipal corporation, located at 460 North Euclid Avenue, Upland, California 91786. The term "CITY" as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the CITY.

3. The term "**City Financial Assistance**" shall have the meaning ascribed in Section 301.

4. The term "**City Portion of Sales Tax Revenues from the Property**" shall have the meaning ascribed in Section 301.4(d).

5. The term "**Commencement Date**" shall have the meaning ascribed in Section 301.1

6. The term "**Covenant Termination Date**" shall have the meaning ascribed in Section 401.

7. The term "**Dealership**" shall mean the vehicle dealership owned and operated by Owner, which will occupy the Property for the primary purpose of selling vehicles and not for storage. At least 50% of the vehicles sold on and from the Property during a Payment Period shall be new.

8. The term "**Effective Date**" shall mean the date this Restated Agreement is executed by both parties after approval by the Upland City Council at a public meeting as required by law.

9. The term "**Maximum Payment Amount**" shall mean the maximum amount that CITY will be required to pay OWNER, including all payments made from CITY to OWNER under this Restated Agreement, which is Two Million Seven Hundred Thousand Dollars (**\$2,700,000**).

10. The term "**MWD**" shall mean Metropolitan Water District or its successor in interest.

11. The term "**OWNER**" shall mean Park Place Ford LLC, dba Ford of Upland. The term "OWNER" as used herein also includes any permitted assignee of or successor to a possessory interest in the Property, as provided in Section 713.

12. The term "**Payment Date**" shall have the meaning ascribed in Section 301.4(b).

13. The term "**Payment Period**" shall mean a twelve-month calendar period commencing on the first day of the next full calendar year following the Commencement Date, and each consecutive twelve-month calendar period thereafter until the CITY's Financial Assistance obligation is met or this Restated Agreement is terminated as provided herein, whichever occurs first.

14. The term "**Point of Sale**" shall mean the location which is treated by the California Franchise Tax Board as the location where a sale is made for purposes of the Sales Tax Laws.

15. The term "**Project**" shall mean the improvement of the Property by OWNER as described in Attachment No. 2 to this Restated Agreement, and as otherwise provided in Section 200 of this Restated Agreement, including the plans and permits to be approved pursuant hereto. In the event of any inconsistency between the narrative description of the Project in this Restated Agreement and the plans and permits approved by the CITY, the approved plans and permits shall govern.

16. The term "**Property**" shall mean those certain parcels of real property more particularly described and depicted in Attachment No. 1 to this Restated Agreement. In the event OWNER desires to expand the Dealership onto any adjoining real property, acquired by lease or purchase and not described herein; or in the event OWNER, pursuant to the construction of the Project, merges, subdivides, adjusts, or otherwise alters the boundaries of the property described in Attachment 1; or should OWNER acquire real property in addition to or less than the property OWNER has committed to acquiring herein, OWNER shall immediately deliver to CITY an accurate updated legal description of the real property underlying the Project and upon CITY's approval of such change this Restated Agreement shall be amended to incorporate the updated legal descriptions as Attachment 1, which updated description shall thereafter mean the "Property" for purposes of this Restated Agreement.

17. The term "**Release of Construction Covenants**" shall have the meaning ascribed in Section 212 of this Restated Agreement. The form of the Release of Construction Covenants shall be as set forth in Attachment No. 3 to this Restated Agreement.

18. The term "**Sales Tax Law**" shall have the meaning ascribed in Section 301.4(d).

19. The term "**Sales Tax Revenue Reports**" shall have the meaning ascribed in Section 302.

20. The term "**Sales Tax Revenues from the Property**" shall have the meaning ascribed in Section 301.4(d).

21. The term "**Tenants**" shall refer to the Dealership and all other tenants located on the Property.

(§200) CONTROL OF THE PROPERTY AND DEVELOPMENT OF THE PROJECT

(§201) Control of the Property.

OWNER hereby represents to CITY that it is in escrow to purchase the portions of the Property identified as APN 1044-151-04, 1044-111-09, or portions thereof, in fee simple. OWNER further represents that Owner will enter into a lease agreement with MWD to lease the portion of the Property identified as APN 1044-151-02 ("Lease"). Owner further covenants and represents that, OWNER will acquire the right to construct the Project on the Property. Owner's acquisition of the right to complete the Project on the Property by purchase or lease, investment of a minimum of four million dollars (\$4,000,000) in the Project and the completed construction of the Project on the Property are conditions precedent to CITY's obligation to make any payments under this Restated Agreement. Prior to the commencement of construction of the Project, OWNER shall provide documentation evidencing OWNER'S right and ability to make the Project Improvements on the Property in accordance with the attached Schedule of Performance.

(§202) Scope of Development; Construction Covenants.

The Project shall consist of the completion of all the Project improvements described in Attachment No. 2 to this Restated Agreement in accordance with the terms of this Section 200, and as otherwise provided in this Restated Agreement. The construction of the Project shall be in accordance with the plans and permits to be approved by CITY pursuant to this Restated Agreement or under the requirements of law, except as such plans and permits may be changed in accordance with this Restated Agreement. In the event of any

inconsistency between the narrative description of the Project in this Restated Agreement and the plans and permits approved by the CITY, the approved plans and permits shall govern.

OWNER commits to investing a minimum of four million dollars (\$4,000,000) in development of the improvements to the Property and shall develop the Project in strict conformity with the permits and approvals referenced in Sections 203-205 of this Restated Agreement. If OWNER desires to make any change in any previously approved development or building plans, OWNER shall submit the proposed change to the appropriate body for approval. OWNER shall be responsible for all construction and installation and for obtaining all the necessary permits.

(§203) Land Use Approvals.

On or before September 1, 2016, OWNER shall prepare and submit to CITY a complete application for the required land use approvals for the Project and shall pay the applicable fees for CITY's review and approval. OWNER shall exercise its reasonable diligence to expeditiously pursue such land use approvals. CITY shall assist OWNER with the application; provided, however, that nothing herein shall be construed as a commitment by CITY that the land use approvals will be approved by CITY or as a limitation on CITY's legislative discretion.

(§204) Final Building Plans.

Within thirty (30) days following final approval of the land use approvals by the City and the expiration of all administrative and legal appeals, OWNER shall submit to CITY a complete set of Final Building Plans for the Project and pay the applicable fees to CITY for CITY's review and approval. The Final Building Plans shall be in strict conformity with the previously approved land use approvals and shall contain all information required to obtain all necessary building permits required for the Project. OWNER shall exercise its reasonable diligence to expeditiously obtain CITY's approval of said Final Building Plans. If the Final Building Plans are acceptable to CITY and meet applicable code requirements, CITY staff shall provide reasonable assistance to OWNER in obtaining the necessary approvals; provided, however, that CITY does not warrant or represent that approval shall be

forthcoming. If the CITY rejects the Final Building Plans as not in conformity, OWNER shall modify and resubmit the Final Building Plans and CITY approval prior to the issuance of building permits for the Project. In the event City requires modifications or changes to the Final Building Plans, OWNER shall make the necessary changes with reasonable diligence and resubmit to CITY.

(§205) Other City and Governmental Permits.

Before commencement of construction of the Project, OWNER, at its own expense, shall secure or cause to be secured any and all building and other permits and other approvals which may be required from all governmental agencies having jurisdiction over the Property and the Project (“Government Permits”).

Notwithstanding any other provision of this Restated Agreement, CITY's obligations hereunder shall be contingent and conditional upon OWNER submitting and processing, and the governing authorities of CITY approving, as necessary, all documentation and information required to construct the Project, including but not limited to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the California Public Resources Code). OWNER shall comply with all environmental mitigation measures imposed as conditions of approval on the Project. Nothing herein is intended nor shall be construed as a pre-commitment or prejudgment by CITY regarding the matters required to be considered as part of the environmental review for the Project or relating to approval of the Project in general. If the CITY's governing authorities disapprove the Project on environmental grounds, or impose environmental mitigation conditions which OWNER reasonably determines renders performance hereunder impracticable or economically infeasible, either CITY or OWNER may terminate this Restated Agreement by delivery of written notice to the other party. In the event of a termination for such cause, neither party shall have any further rights against or obligations to the other party hereunder.

(§206) Cost of Development.

Except as expressly provided in Article III of this Restated Agreement, OWNER shall be responsible for all costs of developing the Project, including but not limited to pre-development costs incurred for items such as planning, design, engineering, and environmental remediation; all development and building fees; any cost incurred to demolish and clear any and all existing improvements, furnishings, fixtures, and equipment from the Property as necessary to complete the Project; costs for insurance and bonds (as required); costs for financing; all on-site and off-site construction costs; costs for extending or relocating utility services; costs incurred for construction, installation, repair, or replacement of improvements within the public rights-of-way around the Property; costs for required landscaping (if any); and any development impact fees and other applicable CITY or other fees.

(§207) Schedule of Performance- Progress Reports.

Within thirty (30) days of the final approval of the Final Building Plans and all other required City and Government Permits, OWNER shall commence construction. Once construction is commenced, it shall be continuously and diligently pursued to completion, except when due to causes beyond the control and without the fault of OWNER, as set forth in Section 703 of this Restated Agreement. During the course of construction, and prior to CITY's issuance of its Release of Construction Covenants for the Project, OWNER shall keep CITY informed of the progress of construction on a monthly basis, which progress reports shall be in writing and submitted to the Development Services Director upon either party's request.

(§208) Compliance with Permits and Laws; Prevailing Wages

OWNER shall plan, design, and carry out the development of the Project in conformity with all applicable laws, regulations, and rules of the City and other governmental agencies having jurisdiction, including without limitation all conditions and requirements of the permits and approvals to be approved by the CITY as set forth in Sections 202-205 herein. Nothing in this Restated Agreement is intended to limit or restrict OWNER's right to challenge the validity of any such laws, regulations, or rules, or the applicability of such laws, regulations, or rules to OWNER, the Project, or the Property.

With respect to the development and construction activities undertaken by OWNER on the Property pursuant to this Restated Agreement, OWNER asserts that it is aware of the requirements of Labor Code Section 1720 et seq., concerning the payment of prevailing wages. OWNER acknowledges that OWNER shall be independently responsible for reviewing and understanding the applicable law and regulations with respect to the payment of prevailing wages, and complying therewith. In addition to any other OWNER indemnifications of CITY set forth in this Restated Agreement, OWNER shall indemnify, defend, and hold CITY, its officers, officials, employees, agents and volunteers harmless from and against any claims, injury, liability, loss, damage, cost or expenses (including reasonable attorneys' fees, expert witness fees, and court costs) arising from, or which are in any way related to, the failure of OWNER, its officers, employees, agents, volunteers, contractors or subcontractors, to pay prevailing wages if legally required or otherwise to comply with applicable law.

(§209) Indemnification for Construction Activities.

To the fullest extent permitted by law, excepting only as expressly provided in Section 210, OWNER agrees to and shall indemnify, defend, and hold harmless CITY, its officers, officials, employees, and agents (collectively, the "Indemnatee") from and against any and all claim, liability, loss, damage, costs, and expenses (including attorney's fees and court costs) arising from or as a result of the death or injury of any person or any accident, injury, loss, or damage whatsoever (whether or not covered by insurance) caused to any person or to the property of any person which shall occur on or adjacent to the Property and which shall be caused by any acts done thereon or any errors or omissions of OWNER or any of its officers, agents, servants, employees, contractors or subcontractors in developing the Project, regardless of whether the Indemnatee is guilty of any active or passive negligence.

(§210) Rights of Access.

For the purpose of assuring compliance with this Restated Agreement, representatives of CITY shall have the reasonable right of access to the Property, without charges or fees, at normal construction hours during the period of construction for the purposes of this Restated Agreement, including but not limited to the inspection of the work

being performed by OWNER in constructing the Project. Such representatives of CITY shall be those who are so identified in writing by the City Manager of CITY. CITY shall indemnify, defend, and hold harmless OWNER and their respective officers, employees, and agents from any damage caused or liability arising out of its exercise of this right of access; provided, however, that it is understood that CITY does not by this Section waive any defense or immunity from suit that it would have in the absence of this Restated Agreement, nor does CITY assume any responsibility or liability for a negligent inspection or failure to inspect or for a failure to enforce compliance with any applicable law.

(§211) Estoppels.

At the request of OWNER or any holder of a mortgage or deed of trust, CITY shall, from time to time and upon the request of such holder, timely execute and deliver to OWNER or such holder a written statement of CITY that no default or breach exists (or would exist with the passage of time, or giving of notice, or both) by OWNER under this Restated Agreement, if such be the case, and certifying as to whether or not OWNER has at the date of such certification complied with any obligation of OWNER hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or OWNER and shall be at no cost to CITY; OWNER shall reimburse CITY for any costs incurred in connection therewith, including CITY's legal expenses, upon submission to OWNER of an invoice therefore by CITY.

(§212) Release of Construction Covenants.

Upon the satisfactory completion of construction of the Project, CITY shall furnish OWNER with a final release of the construction covenants set forth in this Article II in the form of the Release of Construction Covenants attached hereto as Attachment No. 3, upon written request therefore by OWNER. Such Release of Construction Covenants shall be in a form so as to permit recordation in the Office of the Recorder of the County of San Bernardino.

The Release of Construction Covenants shall be, and shall so state, a conclusive determination of satisfactory completion of OWNER's development obligations under this Restated Agreement, and of full compliance with the terms of this Restated Agreement

relating to construction of the Project on the Property. However, parties acquiring interests in the Property shall be bound by the following: (i) the indemnity obligations referred to in Section 209, and (ii) the obligations set forth in Article III that are a prerequisite to CITY's payment of the CITY Financial Assistance, and (iii) any other obligation of Owner under this Restated Agreement, all of which shall survive issuance of the Release of Construction Covenants. CITY shall not unreasonably withhold or delay issuance of the Release of Construction Covenants. If CITY refuses or fails to furnish the Release of Construction Covenants after written request from OWNER, CITY shall, within ten (10) business days after such written request, provide OWNER with a written statement of the reasons CITY refused or failed to furnish the Release of Construction Covenants. The statement shall also contain CITY's opinion of the action OWNER must take to obtain the Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, CITY will issue its Release of Construction Covenants upon the posting of a cash deposit by OWNER with CITY in an amount representing the fair value of the work not yet completed.

The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of OWNER to any holder of a mortgage or any insurer of a mortgage on or with respect to the Property. The Release of Construction Covenants is not a notice of completion as referred to in California Civil Code Section 3093.

III. (§300) CITY FINANCIAL ASSISTANCE

(§301) City Financial Assistance.

In consideration for OWNER's undertakings to pursuant to this Restated Agreement, CITY shall periodically pay to OWNER the amounts set forth herein (the "**City Financial Assistance**").

1. Notwithstanding any other provision set forth in this Restated Agreement to the contrary, CITY's obligation to make periodic City Financial Assistance payments to OWNER shall be conditioned and contingent upon OWNER's satisfaction of all of the following requirements (with the understanding that the requirements in clauses (i), (ii) and (iii) shall be satisfied as a condition to CITY's initial obligation to start making any City Financial Assistance payments hereunder, and the

requirements in clauses (iv), (v) and (vi) shall be satisfied during and with respect to each Payment Period as a condition to CITY's obligation to make City Financial Assistance payments with respect to that particular Payment Period): (i) OWNER shall have timely acquired the right to complete the Project on the Property by lease or purchase; (ii) OWNER shall have timely completed construction of the Project in accordance with all requirements of this Restated Agreement and obtained the Release of Construction Covenants as required in Section 212; (iii) OWNER shall have delivered to CITY the executed and recordable Memorandum of Restated Agreement pursuant to Section 407 herein; (iv) OWNER shall have remitted to the State Board of Equalization, and CITY shall have received and have the legal right under state law to control, the City Portion of Sales Tax Revenues from the Property for the Payment Period in question; (v) OWNER shall have delivered to CITY the Sales Tax Revenue Reports required pursuant to Section 302, and any other reasonably required information requested by CITY, to enable CITY to verify the amount of the Annual Payment Amount for each applicable Payment Period; and (vi) OWNER shall not be in material default of any of its obligations hereunder at the time payments become due. The date on which conditions (i)-(ii) in the preceding sentence are first met is the "**Commencement Date.**"

Notwithstanding anything stated herein to the contrary, if the Project is not fully completed, and the Commencement Date has not been fully established on or before December 1, 2017, although the City, at its discretion, can extend the Commencement Date if necessary to accommodate unforeseen construction issues, this Restated Agreement shall be terminated and CITY shall have no obligation to provide any Financial Assistance to OWNER.

2. The City Financial Assistance shall be payable from any source of funds legally available to CITY. In this regard, it is understood and agreed that the City Portion of Sales Tax Revenues from the Property is being used merely as a measure of the amount of City Financial Assistance payments that are periodically owing by CITY to OWNER and that CITY does not and legally cannot pledge any portion of the actual City Portion of Sales Tax Revenues from the Property to OWNER.

3. The City Financial Assistance shall be paid to OWNER annually until the Maximum Payment Amount is reached or this Restated Agreement is otherwise terminated as provided in Section 304.
4. CITY shall pay the City Financial Assistance to OWNER based upon the City Portion of Sales Tax Revenues from the Property in the following amounts and in the following manner:
 - a. For each of the Payment Periods, CITY shall utilize the City Portion of Sales Tax Revenues from the Property to calculate an annual payment amount (or in the case of the first and the last Payment Periods, a prorated payment amount) that CITY will be required to pay to OWNER (the “**Annual Payment Amount**”). For each Payment Period for which CITY is required to make a City Financial Assistance payment to OWNER under this Restated Agreement, the Annual Payment Amount shall be calculated in accordance with the following formula:
 1. 0% of all City Portion of Sales Tax Revenue up to \$312,000.
 2. 75% of City Portion of Sales Tax Revenue in excess of \$312,000.

For example, if the City Portion of Sales Tax Revenues from the Property for a Payment Period is \$700,000, the Annual Payment Amount for that Payment Period shall be \$291,000: Seventy Five percent (75%) of Three Hundred and Eighty Eight Thousand (\$388,000) (Amount in excess of \$312,000), which is equal to Two Hundred and Ninety One Thousand dollars (\$291,000).

The OWNER covenants to operate the Dealership for a minimum of five (5) years (“Five Year Covenant”), as defined in § 401 herein, after CITY has satisfied the Maximum Payment Amount . **Escrow:** To provide assurance for the aforementioned Five Year Covenant, from each Annual Payment to OWNER, fifteen percent (15%) of such payment shall be deducted and held in an interest bearing escrow account. Said deductions shall remain in said account for a period of five (5) years (“Escrow Period”) after the Maximum

Payment Amount has been satisfied by CITY. If the Dealership is operational upon the expiration of the Escrow Period, the escrow funds shall be paid to OWNER. However, if this Agreement is terminated early for cause or the Dealership should cease operation prior to the expiration of the aforementioned Escrow Period, the funds held in escrow shall be returned to CITY.

Notwithstanding anything stated herein to the contrary, the maximum amount CITY will be required to pay OWNER, including all payments made from CITY to OWNER under this Restated Agreement, is Two Million Seven Hundred Thousand Dollars \$2,700,000. Once the Maximum Payment Amount has been paid by CITY, all further payment obligations to OWNER under this Restated Agreement will cease.

The City Portion of Sales Tax Revenues from the Property attributable to a particular Payment Period shall be determined based on all taxable sales occurring from the Property (including all Tenants) during that Payment Period, not on the date that the City Portion of Sales Tax Revenues from the Property are ultimately remitted to the CITY. Thus, for example, if during the first Payment Period the Property generates taxable sales transactions that ultimately generate \$320,000 of revenues that meet the definition of "City Portion of Sales Tax Revenues from the Property," the entire \$320,000 of such revenues shall be considered as attributable to the first Payment Period and the Annual Payment Amount to OWNER for the first Payment Period shall be \$6,000.

Each year there shall be a reconciliation of the City Portion of Sales Tax Revenues from the Property pursuant to the terms of Section 303 of this Restated Agreement.

- b. Notwithstanding the foregoing, it is understood and agreed that no payment shall be owing to OWNER until the CITY is able to verify that the full amount of the City Portion of Sales Tax Revenues from the Property asserted by OWNER has in fact been received by CITY. In addition, the Annual Payment Amount shall not be calculated or be due and payable by CITY to OWNER until the entire Payment Period has ended and the OWNER has delivered to CITY the annual Sales Tax Revenue Report covering the entire Payment Period, as required by Section 302. CITY shall pay OWNER the entire Annual Payment Amount for each Payment Period no later than the earlier of the following dates (each, a "Payment Date"): (i) six (6) months after the end of the applicable Payment Period; or (ii) following delivery to CITY of OWNER's Sales Tax Revenue Report for the applicable Payment Period, thirty (30) days after the date on which CITY receives information from the State Board of Equalization and the CITY's auditor sufficient to enable CITY to determine the exact amount of the Annual Payment Amount owing to OWNER for that Payment Period. If CITY has insufficient information by the applicable Payment Date to determine the exact Annual Payment Amount owing to OWNER for that Payment Period within six (6) months after the end of the applicable payment period, CITY shall make the payment at that time based on the best information then available to CITY, subject to the adjustment process provided for in Section 303 when additional information becomes available.
- c. Each payment to OWNER shall be accompanied by a written statement itemizing how the Annual Payment Amount (or any adjustment to the initial payment, if applicable), was calculated.
- d. As used herein, the term "**Sales Tax Revenues from the Property**" shall mean the total of all sales tax revenues paid by, on behalf of, or to the Owner or Tenants on the Property, pursuant to the Bradley-Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code Section 7200, et seq.) (the "**Sales Tax Law**"), as the Sales Tax Law may be amended from time to time, where the Property is the point of sale. The "**City Portion of Sales**

Tax Revenues from the Property” shall mean the net percentage of Sales Tax Revenues from the Property ultimately remitted by the State Board of Equalization to CITY, the disposition of which is controlled by CITY under state law, which amount, for purposes of this Restated Agreement, shall never exceed a maximum of one percent (1%) of the combined total taxable sales revenues generated by all Tenants from the Property. For purposes of this Restated Agreement, the City Portion of Sales Tax Revenues from the Property shall not be considered to have been received by CITY until CITY is able to confirm CITY’s receipt of such revenues from the State Board of Equalization. In this regard, CITY covenants to promptly take any and all actions reasonably necessary to verify CITY’s receipt of the City Portion of Sales Tax Revenues from the Property.

5. Notwithstanding the definition of the "City Portion of Sales Tax Revenues from the Property" set forth above, in the event that the Sales Tax Law is amended after the Effective Date of this Restated Agreement and the result is a reduction in the amount of the City Portion of Sales Tax Revenues from the Property that would have been received by the CITY and calculated under this Restated Agreement pursuant to the law currently in effect, the term "City Portion of Sales Tax Revenues from the Property" also shall be deemed to include any identifiable replacement funds under the Sales Tax Law as so amended which CITY receives in lieu of the revenues that are so reduced. For example, if the Sales Tax Law is hereafter amended in a manner such that sales tax revenues from the sale of vehicles become distributed to cities in whole or in part on the basis of population (or some criterion or combination of criteria other than the point-of-sale) and the result in Upland is that the CITY receives the same amount of sales tax revenues CITY-wide as it would have received had there been no such change in the Sales Tax Law, there shall be no reduction in the City Portion of Sales Tax Revenues from the Property for purposes of calculating the amount of City Financial Assistance payments to OWNER hereunder. Using the same example of a change in the Sales Tax Law, if the result in Upland is that the CITY receives ten percent (10%) less sales tax revenues CITY-wide as it would have received had there been

no such change in the Sales Tax Law, there shall be a corresponding reduction in the City Portion of Sales Tax Revenues from the Property for purposes of calculating the amount of City Financial Assistance payments (i.e. the Annual Payment Amount) due to OWNER hereunder. Using another example, if the Sales Tax Law is hereafter amended in a manner such that CITY receives less sales tax revenues CITY-wide as it would have received had there been no such change in the Sales Tax Law but such loss in revenue is offset by another change in law that increases the amount of revenues received by CITY from other sources that would not have been received under the law currently in effect, and provided that there is a traceable nexus between the two changes in law, the calculation of the City Portion of Sales Tax Revenues from the Property shall be made by calculating the net percentage change in both categories of revenues received by CITY.

In the event of any such change in law such as projected in the above-stated examples and the data is not available to CITY that is needed to calculate the precise amount of either (i) the City Portion of Sales Tax Revenues from the Property that would have been received by CITY and calculated under this Restated Agreement pursuant to the law currently in effect or (ii) the amount of the replacement funds received by CITY under the law as so amended in lieu of the revenues that would have been received had there been no such change in law, CITY and OWNER shall meet and confer in good faith and exercise reasonable diligence to estimate such amount(s) based upon the best information that is then available.

In addition to the foregoing, CITY and OWNER agree that in the event that California law is amended after the Effective Date of this Restated Agreement, and the result is a reduction in the amount of the City Portion of Sales Tax Revenues from the Property that would have been received by CITY under the law currently in effect, and an appropriate adjustment in the definition of such terms cannot be made in accordance with the preceding two paragraphs, CITY shall enter into good faith negotiations with OWNER to determine if, based upon such amended law, an

amendment to this Restated Agreement can be effectuated to preserve the interests of the parties. If following such good faith negotiations CITY determines an amendment cannot be agreed upon between the parties, the amount owed by CITY for each Payment Period will be reduced to same degree as the City Portion of Sales Tax Revenues from the Property is reduced as a result of the amendment in California law.

(§302) Sales Tax Revenue Reports.

On or before thirty (30) days after the end of each calendar quarter during the Payment Period, OWNER shall submit to CITY a copy or copies of all statements and quarterly reports OWNER and Tenants are required to file and have filed with the State Board of Equalization to support OWNER's calculation of Sales Tax Revenues from the Property for said Payment Period (herein, collectively, the "**Sales Tax Revenue Reports**"); provided, that to the extent any such report contains confidential business information or confidential customer information that is not needed by CITY to calculate or verify the City Portion of Sales Tax Revenues from the Property for the applicable Payment Period, OWNER and Tenants shall have the right to redact such information from the copy of the report(s) delivered to CITY.

(§303) Adjustments to Annual Payment Amounts.

If after CITY makes a payment to OWNER hereunder CITY determines that it has overpaid OWNER and that an adjustment to a prior payment amount is warranted, CITY shall have the right to provide a written notice to OWNER itemizing the information supporting the adjustment and either (1) requiring OWNER to pay the amount of the overpayment within thirty (30) days from the date such notice is delivered or (2) deduct the amount of the overpayment from the next Annual Payment Amount otherwise owing to OWNER. The Parties shall cooperate with one another and share such information as may be reasonably required to ensure that any required adjustments (either an additional payment to OWNER or a refund or credit to CITY) can be promptly made.

(§304) Termination of City Financial Assistance.

CITY's obligation to pay the City Financial Assistance to OWNER shall terminate upon the occurrence of any of the following, whichever is first to occur:

(i) In the event the Project has not been completed according to the requirements of this Restated Agreement, and the Commencement Date has not been fully established in accordance with Section 301.1;

(ii) The date upon which the total cumulative amount of all City Financial Assistance provided by CITY to OWNER shall equal Two Million Seven Hundred Thousand Dollars \$2,700,000 ("the Maximum Payment Amount"), taking into account all payments made by CITY to OWNER under this Restated Agreement;

(iii) The discontinuation of the Dealership use at and from the Property (and CITY's payment in full of all amounts accrued and owing with respect to all of the full and partial Payment Periods prior to such event or occurrence); or

(iv) The date on which OWNER defaults in complying with any material provision of this Restated Agreement, including but not limited to a default in any of the use restrictions and covenants contained in Section 401 and 402, as to which any applicable cure period referred to in Section 601 hereof has expired.

IV. (§400) USES OF THE PROPERTY; OPERATING COVENANTS

(§401) Use of the Property.

OWNER recognizes that a material consideration for CITY's entering into this Restated Agreement is to assist in the generation of additional sales and property tax revenues to CITY from the operation of a Dealership on the Property, the additional jobs anticipated to be provided by the Dealership, the increased valuation of said Property,

and to assist in the development of the area and the immediate neighborhood in which the Property is located. Accordingly, OWNER covenants and agrees, which covenants shall run with the land and bind all successors, assigns, and every successor in interest of OWNER's interest in the Property, that commencing on the Commencement Date and continuing thereafter until the end of the Five Year Covenant period (see § 301 herein) ("Covenant Termination Date"), OWNER shall not use the Property for any purpose other than for the operation of the Dealership (or another vehicle, automobile, truck or motorcycle dealership preapproved by CITY in writing, whose primary purpose is the sale of new vehicles), including related incidental retail, service and repair facilities, and such other uses as may be consistent with this Restated Agreement and applicable land use regulations of CITY and pre-approved by CITY in writing. In addition, from and after the Commencement Date until the Covenant Termination Date, OWNER covenants to exercise commercially reasonable diligence to help keep the Dealership, or its approved replacement, open during normal business hours for similar businesses, subject to temporary closures in the event of casualty losses, maintenance and repairs, and events of force majeure.

In the event that OWNER commits a material default of any of the provisions of this Restated Agreement, including but not limited to any of the use covenants or restrictions set forth in this Section 401 during the time period(s) during which such covenants and restrictions are in effect, as set forth in the preceding paragraph, and such default continues for a period of thirty (30) days after CITY has given OWNER the notice required by Section 601 in compliance with Section 601, then CITY shall have the right to terminate this Restated Agreement, in which case (a) CITY shall cooperate in causing the Memorandum of Restated Agreement to be terminated and removed of record and (b) CITY shall have no obligation to make any further City Financial Assistance payments to OWNER; and

(§402) Point-of-Sale.

Commencing on the Commencement Date and continuing until the Covenant Termination Date, OWNER shall use its best efforts to ensure that the Property, shall be the point-of-sale and lease of all new and used vehicles and other products or services

(or, if CITY approves a change in dealerships, such other make of vehicles, motor homes, trailers, automobiles, trucks, motorcycles or other products or services) which are displayed, sold or leased by or through the Dealership (or its authorized replacement), any other Tenant on the Property, or any of their respective officers, officials, employees, subsidiaries or parent companies, within a fifteen (15) mile radius of the Property. OWNER shall notify Dealership and other Tenants of this requirement, and shall ensure that language is included in all Tenant agreements requiring them to comply with the requirements of this section. Failure to cure a breach of the terms and conditions of this Section 402 shall constitute a material default of this Restated Agreement.

(§403) Effect of Covenants.

CITY is deemed a beneficiary of the terms and provisions of this Restated Agreement and of the restrictions and covenants running with OWNER's fee interest in the land as set forth in Article II and this Article IV for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of CITY shall run without regard to whether CITY has been, remains, or is an owner of any land or interest therein in the Property or in the Project. CITY shall have the right, if any of the covenants set forth in this Restated Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of such covenants may be entitled.

(§404) Memorandum of Restated Agreement

On or before the Commencement Date, and as a condition to CITY's performance of its obligations hereunder, OWNER shall deliver to CITY the fully executed and recordable Memorandum of Restated Agreement referencing the foregoing Covenants in the form set forth in Attachment No. 4 incorporated herein by this reference. CITY shall have the right to record the Memorandum of Restated Agreement. Upon the termination of this Restated Agreement, CITY shall cooperate with OWNER to record a document

prepared by OWNER, at no expense to CITY, memorializing the termination of this Restated Agreement.

V. (§ 500) CREATION OF JOBS

During the term of the Agreement, Owner will increase the number of full-time employees by 45% and part-time employees by 100%. Currently, Owner employs 75 full-time employees and 4 part-time employees. Within 18 months of opening the new dealership, Ford of Upland is proposing to add 34 new full-time and 4 new part-time employees, totaling 117 employees. No temporary positions with Ford of Upland have been identified. Commencing with first Sales Tax revenue Report, and with each such report thereafter, required by Section 302 herein, Owner shall also provide a "Job Creation Report" on a Template to be prepared by City. The shall include, but not be limited to, the number of jobs created, full-time and part-time, whether or not they are Upland residents, etc.

VI. (§ 600) DEFAULTS, REMEDIES, AND TERMINATION

(§601) Defaults - General.

Subject to the extensions of time set forth in Section 703, failure or delay by a Party to perform any term or provision of this Restated Agreement constitutes a default under this Restated Agreement; provided, however, such Party shall not be deemed to be in default if (i) it cures, corrects, or remedies such default within thirty (30) days after receipt of a notice from the other Party specifying such failure or delay, or (ii) for defaults that cannot reasonably be cured, corrected, or remedied within such time period, if such Party commences to cure, correct, or remedy such failure or delay within such time period after receipt of a notice from the other Party specifying such failure or delay, and diligently prosecutes such cure, correction, or remedy to completion. The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. Copies of any notice of default given to OWNER shall also be given to any leasehold mortgagee requesting such notice. Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure, correction, or remedy of a default has expired. Except as otherwise expressly provided in this Restated Agreement, any failure or delay by a Party

in giving a notice of default or in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(§602) Legal Actions.

Institution of Legal Actions.

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Restated Agreement. Such legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, or in any other appropriate court in that county.

Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Restated Agreement.

Acceptance of Service of Process.

In the event that any legal action is commenced by OWNER against CITY, service of process on CITY shall be made by personal service upon the City Clerk of CITY, or in such other manner as may be provided by law. In the event that any legal action is commenced by CITY against OWNER, service of process on OWNER shall be made in any manner as may be provided by law, and shall be valid whether made within or without the State of California.

(§603) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Restated Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party. Notwithstanding any other provision set forth in this Restated Agreement to

the contrary, in no event shall CITY have the right of specific performance or other mandatory injunctive relief to compel OWNER to operate the Dealership, and CITY's sole remedies for a failure to continuously operate the Dealership (or its authorized successor) from the Commencement Date until the Covenant Termination Date shall be: (i) the termination of this Restated Agreement; (ii) the prospective termination of the City Financial Assistance payments as provided in Section 401 of this Restated Agreement; and (iii) the payment of litigation expenses as provided in Section 604.

(§604) Litigation Expenses.

If either Party to this Restated Agreement is required to initiate or defend litigation in any way connected with this Restated Agreement, the prevailing Party in such litigation, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable litigation expenses, including without limitation attorney's fees, expert witness fees, and other costs incurred with respect to such litigation. If either Party to this Restated Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Restated Agreement by the other Party, then the Party so litigating shall be entitled to reasonable litigation expenses from the other Party to this Restated Agreement. All such litigation expenses shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

VII. (§700) GENERAL PROVISIONS

(§701) Notices, Demands and Communications Between the Parties.

Formal notices, demands, and communications between CITY and OWNER shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To CITY:

City of Upland
460 N. Euclid Avenue
Upland, California 92835

Attn: City Manager
Phn: 909-931-4148

With a copy to: Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, California 92835
Attn: Richard L. Adams II, City Attorney
Phn: 714-446-1400

To OWNER: Park Place Ford LLC
dba Ford of Upland
555 West Foothill Blvd.
Upland, CA 91786
Attn: John Engelhardt
Phn: 909-946-5555

With a copy to: The Law Office of Jason D. Annigian, APC
114 N. Indian Hill Blvd., Ste E
Claremont, CA 91711
Attn: Jason D. Annigian
Phn: 909-981-0475

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective at Noon on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

(§702) Nonliability of City Officials and Employees; Conflicts of Interest

CITY officers, officials, employees, agents and contractors, shall not be personally liable to OWNER in the event of any default or breach by CITY or for any amount which may become due to OWNER or on any obligations under the terms of this Restated Agreement. No officer, official, employee, agent or contractor of CITY shall have any direct or indirect interest in this Restated Agreement, nor participate in any decision relating to this Restated Agreement which is prohibited by law.

(§703) Enforced Delay; Extension of Times of Performance.

In addition to specific provisions of this Restated Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to causes beyond the control and without the fault of such Party, including as applicable: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; litigation not involving a default or other tortious or wrongful acts or omissions by the Party claiming an extension of time to perform; inclement weather; acts of the other Party; and acts or the failure to act of any other governmental entity having jurisdiction (except that any act or failure to act of or by CITY shall not excuse performance by CITY). Notwithstanding the foregoing, in no event shall OWNER's inability to secure satisfactory financing, interest rates, or market or economic conditions entitle OWNER to an extension of time to perform.

An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. If no written notice is sent within thirty (30) days, the enforced delay shall commence to run from the date written notice is sent to the other Party. Times of performance under this Restated Agreement may be extended by mutual written agreement of CITY and OWNER. The City Manager of CITY shall have the authority on behalf of CITY to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days.

(§704) Inspection of Books and Records.

CITY shall have the right at all reasonable times to inspect the books and records of OWNER pertaining to the construction of the Project on the Property, the proper calculation of the City Financial Assistance to be paid, or with OWNER's compliance with the terms and conditions of this Restated Agreement, but only to the extent necessary and appropriate to enable CITY to enforce its rights and perform its obligations set forth in this Restated Agreement and subject to OWNER's right to redact any confidential

business and customer information that is not needed to enable CITY to verify OWNER's performance of its obligations hereunder or the amount of the City Portion of Sales Tax Revenues from the Property with respect to the Payment Periods for which CITY is obligated to make City Financial Assistance payments. Prior to the Effective Date of this Restated Agreement OWNER will provide CITY with written authority from Dealership (or any authorized replacement), and from all other Tenants, authorizing CITY to access Dealership documents for the purposes and to the degree described in this section. OWNER shall also ensure that all subsequent agreements between Dealership (or OWNER) and any subsequent Tenants, include substantially similar provisions authorizing CITY to have access to that Tenant's documents as described in this Section.

(§705) Interpretation.

The terms of this Restated Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Restated Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Restated Agreement.

(§706) Entire Agreement; Waivers and Amendments.

This Restated Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Restated Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of CITY and OWNER.

(§707) Consent; Reasonableness.

Except when this Restated Agreement specifically authorizes a Party to withhold its approval or consent in its sole discretion, when either CITY or OWNER shall require the consent or approval of the other Party in fulfilling any agreement, covenant, provision, or condition contained in this Restated Agreement, such consent or approval shall not be

unreasonably withheld, conditioned, or delayed by the Party from whom such consent or approval is sought.

(§708) Severability.

If any term, provision, covenant, or condition of this Restated Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Restated Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Restated Agreement. In the event that all or any portion of this Restated Agreement is found to be unenforceable, this Restated Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Restated Agreement or that portion which is found to be unenforceable

(§709) Third Party Beneficiaries.

Nothing herein is intended to create any third party beneficiaries to this Restated Agreement, and no person or entity other than CITY and OWNER, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Restated Agreement.

(§710) Authority of Signatories to Bind Principals.

The persons executing this Restated Agreement on behalf of their respective principals represent that they have been authorized to do so and that they thereby bind the principals to the terms and conditions of this Restated Agreement.

(§711) Representations and Warranties.

OWNER and each person executing this Restated Agreement on behalf of OWNER represents and warrants that: (i) OWNER has all requisite right, power, legal capacity, and authority to enter into and perform its obligations under this Restated

Agreement; (ii) any persons executing this Restated Agreement on behalf of OWNER are authorized to do so; (iii) the execution of this Restated Agreement by OWNER does not violate any provision of any other agreement to which OWNER is a party; and (iv) except as may be specifically set forth in this Restated Agreement, no approvals or consents not heretofore obtained by OWNER are necessary in connection with the execution of this Restated Agreement by OWNER or with the performance by OWNER of its obligations hereunder.

(§712) Execution.

This Restated Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

(§713) Assignment.

Beginning on the Effective Date and continuing until the Covenant Termination Date, OWNER shall not transfer or assign its fee interest or leasehold interest in the Property, any of its rights or obligations set forth in this Restated Agreement, or any shares, membership interests, or other ownership interest in OWNER of twenty five percent (25%) or more, without first obtaining CITY's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, and shall be granted if the transfer or assignment is to another business intending to continue the operation of a Dealership on the Property satisfying the definition of that term in Section 200 of this Restated Agreement (with the exception of the change in ownership and control thereof). In addition, the foregoing restriction on transfers and assignments shall not apply and CITY approval shall not be required for any of the following: (i) a transfer or assignment to an entity in which OWNER or any shareholder or shareholders owning a minimum of fifty percent (50%) of the beneficial interest in OWNER as of the Effective Date individually or collectively own a minimum of fifty percent (50%) of the beneficial interest; (ii) a transfer or assignment of an ownership interest in OWNER resulting from the death or mental or physical incapacity of an individual; provided that only the ownership interest of the individual who dies or becomes mentally or physically

incapacitated may be transferred without CITY approval pursuant to this clause (ii); (iii) a transfer of an ownership interest in OWNER in trust for the benefit of a family member or members, provided the trustees of the trust are the same persons as the persons who are transferring the ownership interest; (iv) a transfer of stock in a publicly traded corporation or real estate investment trust; (v) a transfer or assignment of a security interest in the Property, the City Financial Assistance payments or the right to receive same; (vi) the foreclosure or transfer or assignment in lieu of foreclosure of any security interest referred to in clause (v); or (vii) the granting of an easement, license agreement, or similar conveyance pertaining to the Property consistent with the operation of the Dealership on the Property. In the event of a permitted transfer or assignment requiring CITY approval hereunder, or a permitted transfer under clause (i), (ii) or (vii) of the preceding sentence, and as a condition to such right of transfer and assignment, the transferor and transferee shall enter into an assignment and assumption agreement in a form reasonably approved by CITY's legal counsel that provides for the transferor's assignment and the transferee's assumption of all of the transferor's rights and obligations set forth in this Restated Agreement and the Restated Agreement Containing Covenants Affecting Real Property from and after the effective date of the transfer and assignment. Upon the effective date of said transfer and assignment, the transferor shall be released from any rights and obligations hereunder, but only with respect to transfers and assignments which either have been approved in advance by CITY, as provided herein, transfers and assignments occurring pursuant to clauses (ii)-(vii) of the second sentence of this Section 713, and transfers and assignments occurring pursuant to clause (i) of the second sentence of this Section 713 as to which CITY approves the release (which release shall not be unreasonably withheld, delayed, or conditioned). Not by way of limitation of the foregoing, after the effective date of any such transfer and assignment, CITY's payments of the City Financial Assistance shall be made to the transferee.

(§714) Estoppels.

At the request of OWNER or any existing or prospective holder of a mortgage or deed of trust encumbering OWNER's interest in the Property, CITY shall, from time to time and upon the request of OWNER or such holder, timely execute and deliver to

OWNER or such holder a written statement of CITY that no default or breach exists (or would exist with the passage of time, or giving of notice, or both) by OWNER under this Restated Agreement, if such be the case, certifying as to whether or not OWNER has at the date of such certification complied with any obligation of OWNER hereunder as to which OWNER or such holder may inquire, providing reasonably detailed information regarding the nature and type of any OWNER breach or default that CITY may contend exists and the measures required to be taken by OWNER to cure or remedy such breach or default, if such be the case, and informing OWNER and such holder of the status of City Financial Assistance payments to the extent of CITY's knowledge with respect thereto at the time such request is made. The form of the estoppel letter shall be prepared by OWNER or the holder and shall be at no cost to CITY. OWNER shall reimburse CITY for any costs reasonably incurred by CITY in connection therewith, including CITY's legal expenses, upon CITY's submittal of an invoice therefor to OWNER.

(§ 715) Indemnity – Relocation Benefits.

OWNER represents to CITY that, pursuant to the requirements of state and federal law, no relocation benefits are due or payable by CITY to any of the current or prior tenants located on the Property related to the construction of the Project or to this Restated Agreement. OWNER shall indemnify, defend, and hold CITY, its officers, officials, employees, agents and volunteers, harmless from and against any liability, loss, damage, cost, obligations or expenses (including reasonable attorneys' fees, expert witness fees, and court costs) arising from the failure or alleged failure of OWNER or CITY, or any of their respective officers, officials, employees, agents or volunteers, to pay relocation benefits as a result of the Project or as a result of this Restated Agreement.

(§ 716) Compliance with Laws.

OWNER will comply with all federal, state and local laws applicable to this Restated Agreement, to the Project work, and to the City Financial Assistance. To the fullest extent permitted by law, OWNER agrees to and shall indemnify, defend, and hold harmless CITY, its officers, officials, employees, and agents (collectively the "Indemnitee") from and against any and all claims, liabilities, injuries, damages, losses, costs, suits, expenses (including

attorney's fees and court costs), and adverse determinations made by a governing court or administrative body, which are in any way related to the failure of OWNER or Indemnitee to comply with any law, rule or regulation associated with this Restated Agreement, the Project, or the City Financial Assistance payments, including but not limited to any duty to comply with Government Codes 53083 or 53084. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Indemnitee, but shall be required whenever any claim, action, complaint or suit asserts liability against the Indemnitee, related to the failure of OWNER or Indemnitee, or their respective officers, officials, employees, agents, volunteers, or subcontractors, to comply with any law, rule or regulation associated with this Restated Agreement, the Project or the City Financial Assistance payments, whether or not the OWNER is specifically named or otherwise asserted to be liable.

[PARTY SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Restated Agreement as of the Effective Date specified herein.

CITY OF UPLAND

By: 
Mayor, Ray Musser

ATTEST


Jeannette Vagnozzi, City Clerk

PARK PLACE FORD LLC
a California limited liability company
dba FORD OF UPLAND

By: JMK Auto, LLC
Its: Managing Member

By: 
Its: MANAGING MEMBER

APPROVED AS TO FORM:


Richard L. Adams II, City Attorney

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 SAN BERNARDINO

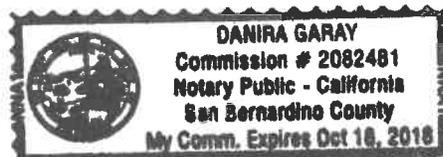
On JAN 21 2016, before me DANIRA GARAY, a notary public, personally appeared JOHN BENGAHARDT, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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

Danira Garay

Seal



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 San Bernardino

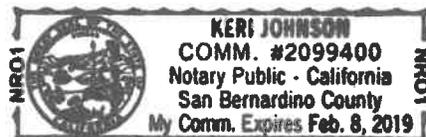
On May 10 2016, before me Keri Johnson, a notary public, personally appeared Kay M. Musser, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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

Keri Johnson

Seal



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 _____

Seal

ATTACHMENT NO. 1

LEGAL DESCRIPTIONS AND MAP OF THE PROPERTY

Assessor Parcel Number 1044-111-09

TRACT 16198-1 LOT 3 BOOK 296 PAGE 43 AND INT IN COMMON AREA

Assessor Parcel Number 1044-151-04

TRACT 16198-1 LOT 4 BOOK 296 PAGE 43 AND INT IN COMMON AREA

Assessor Parcel Number 1044-151-02

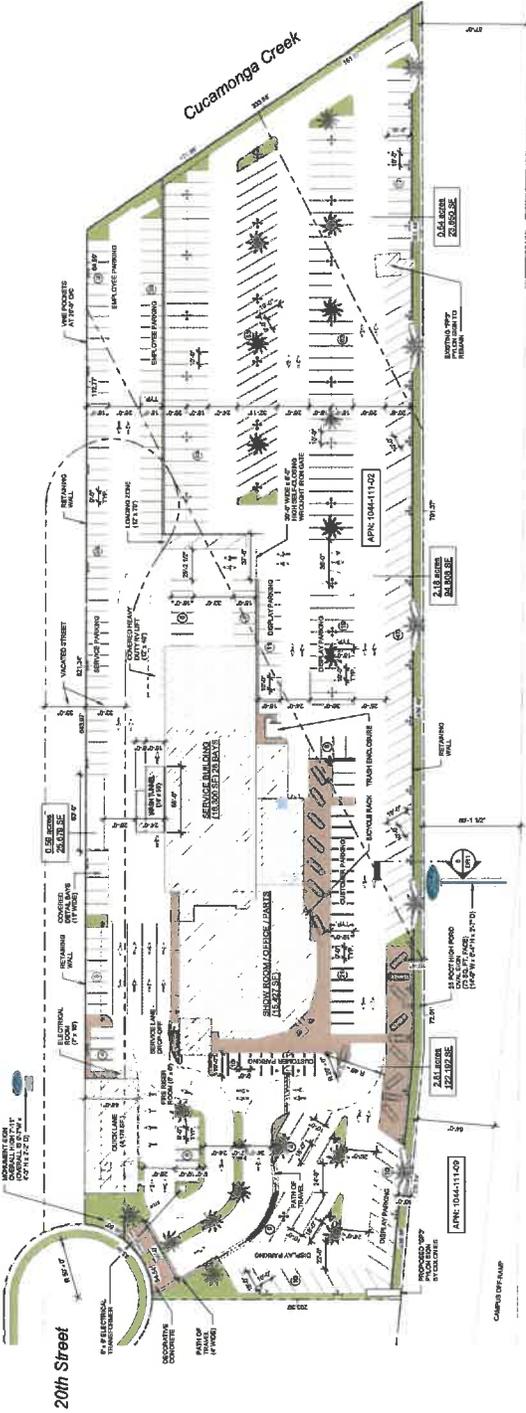
ONTARIO COLONY LANDS PTN LOT 276 BEING 200 FT WIDE BEING PARALLEL WITH AND 75 FT NWLY MEAS AT R/A FROM FOL LI COM AT PT ON LI THAT IS PARALLEL WITH AND 15 FT NLY MEAS AT R/A FROM C/L 18TH ST AS SHOWN ON TRACT NO 6422 SD PT BEING N 89 DEG 59 MIN 00 SECONDS W 46.59 FT FROM INTERSECTION SD PARALLEL LI WITH SLY PROLONGATION E LI LOT 4 SD TRACT NO 6422 SD PT BEING BEG OF TANGENT CURVE CONCAVE NWLY HAVING RAD 800 FT A RADIAL LI OF SD CURVE TO SD PT HAVING BEARING S 00 DEG 01 MIN 00 SECONDS W TH NELY ALG SD CURVE THRU CENTRAL ANGLE 34 DEG 15 MIN 45 SECONDS AN ARC DISTANCE 478.39 FT TH N 55 DEG 45 MIN 15 SECONDS E 636.61 FT TH N 62 DEG 59 MIN 48 SECONDS E 4777.23 FT TO PT ON COMMON BNDRY LOTS 10 AND 11 CUCAMONGA HOMESTEAD ASSN SD PT BEING N 89 DEG 59 MIN 55 SECONDS W 1195.10 FT FROM INTERSECTION OF ELY PROLONGATION SD COMMON BNDRY WITH C/L SAPPHIRE ST AS SHOWN ON PLAT OF CUCAMONGA HOMESTEAD ASSN TH ALG SD BNDRY AND SD LAST ELY PROLONGATION S 89 DEG 59 MIN 55 SECONDS E 1195.10 FT TO LAST MENTIONED INTERSECTION EX ST AND EX HWY

ATTACHMENT NO. 2

DESCRIPTION OF PROJECT IMPROVEMENTS

Owner will construct a new 32,607 square foot state-of-the-art automotive facility consisting of a showroom, office, parts, service, and wash tunnel along with a 4,178 square foot detached quick lane tire and auto center on 6.1 acres near the northeast corner of I-210 and Campus Avenue within the Colonies at San Antonio development. The financial investment to acquire land and construct improvements totals approximately \$12 million dollars.

Proposed Dealership for:
Ford of Upland
 Campus Ave, Upland, CA



Interstate 210



Site Plan
 1"=40'-0"

OWNER:
 FORD OF UPLAND
 1700 CHAMBERLAIN WAY
 UPLAND, CA 91786

ARCHITECT:
 ANDRESEN ARCHITECTURE INC.
 1700 CHAMBERLAIN WAY
 UPLAND, CA 91786
 909.355.6688
 www.andresenarch.com

APR:
 09/11/14, 09/17/14, 10/14/14

CONTRACT NO.:
 14-0001

PROJECT DESCRIPTION:
 PROPOSED DEALERSHIP WITH DRIVE-THRU CAR WASH AND SERVICE LANE FOR FORD OF UPLAND

NOTES:
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 4. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 5. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

FINISHES:
 1. EXTERIOR WALLS: CONCRETE
 2. EXTERIOR WALLS: CONCRETE
 3. EXTERIOR WALLS: CONCRETE
 4. EXTERIOR WALLS: CONCRETE
 5. EXTERIOR WALLS: CONCRETE

FINISHES:
 1. EXTERIOR WALLS: CONCRETE
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 5. EXTERIOR WALLS: CONCRETE

FINISHES:
 1. EXTERIOR WALLS: CONCRETE
 2. EXTERIOR WALLS: CONCRETE
 3. EXTERIOR WALLS: CONCRETE
 4. EXTERIOR WALLS: CONCRETE
 5. EXTERIOR WALLS: CONCRETE



View from Driveway



View from Parking



View from Freeway



View from Freeway

Edge Condition

Proposed Dealership for
Ford of Upland
 10 July 2015
 13-1706

Architecture • Planning • Engineering
ANDRESEN ARCHITECTURE INC.
 909.355.6688
 10000 Orange Avenue, Upland, CA 91786

DR1
 Site Plan

ATTACHMENT NO. 3

RELEASE OF CONSTRUCTION COVENANTS

[See Following Page]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Upland
460 N. Euclid Avenue
Upland, California 91786
Attn: City Manager

(Space Above Line for Recorder's Use)

[Attn Recorder: Index as Partial Release
of Restated Agreement]

This Release is recorded at the request and for the benefit of the City of Upland and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF UPLAND

By: _____
Mayor, Ray Musser

Dated: _____, 2016

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, FORD OF UPLAND, a California corporation("Owner"), is the owner of certain real property in the City of UPLAND hereinafter referred to as the "Property", and legally described in Exhibit "A" hereto; and

WHEREAS, on February 8, 2016, the CITY OF UPLAND, a California municipal corporation ("City"), and Owner entered into an Restated and Amended Owner Participation Agreement (hereinafter referred to as the "Restated Agreement");

WHEREAS, pursuant to the terms of the Restated Agreement, Owner was required to make certain improvements to the Property (the "Project Improvements").

WHEREAS, pursuant to Section 212 of the Restated Agreement, promptly after completion of all construction work to be completed by Owner on the Property, City shall furnish Owner with a Release of Construction Covenants upon written request therefore by Owner; and

WHEREAS, the issuance by City of the Release of Construction Covenants shall be conclusive evidence that Owner has complied with the terms of the Restated Agreement with respect to the development of the Project Improvements on the Property; and

WHEREAS, Owner has requested that City furnish Participant with the Release of Construction Covenants; and City has determined that the development of the Project Improvements have been satisfactorily completed as required by the Restated Agreement;

NOW, THEREFORE:

1. As provided in the Restated Agreement, City does hereby certify that development of the Project Improvements, as described in the Restated Agreement, have been fully and satisfactorily performed and completed, and that such development is in compliance with said Restated Agreement. City hereby releases Owner from the terms of the Restated Agreement that pertain to Owner's performance and completion of the Project Improvements, and as such this Release of Construction Covenants constitutes a partial release of the Restated Agreement by City in favor of Owner.

2. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Property, or any part thereof. Nothing contained herein shall modify or diminish in any way any other provision of said Restated Agreement.

3. This Release of Construction Covenants shall not constitute evidence of Owner's compliance with those covenants in the Restated Agreement that survive the issuance of this Release.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

IN WITNESS WHEREOF, City has executed this Release as of this _____ day of _____, 201_.

THE CITY OF UPLAND

By: _____

Mayor, Ray Musser

On behalf of Owner I hereby consent that this document be recorded against the Property, or any other interest in the Property described herein.

PARK PLACE FORD LLC
a California limited liability company
dba FORD OF UPLAND

By: _____

Its: _____

By: _____

Its: _____

ATTACHMENT NO. 4
MEMORANDUM OF RESTATED AND AMENDED AGREEMENT

[See Following Page]

B. City and Owner have entered into an Restated and Amended Owner Participation Agreement (the "OPA") dated as of February 8, 2016, concerning Owner's operation of a vehicle dealership (the "Dealership") on the Property, which OPA is incorporated herein by this reference and is a public record available for public inspection at City's offices located at 460 N. Euclid Ave., Upland, California 91786.

C. City has fee or easement interests in various streets, sidewalks, and other property within the City of Upland (the "Benefitted Public Property"), and is responsible for planning of land use within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. The Benefitted Public Property is legally described in Attachment 2, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, IN CONSIDERATION OF CITY'S AGREEMENT TO PERFORM ITS OBLIGATIONS SET FORTH IN THE OPA, INCLUDING WITHOUT LIMITATION ITS PROVISION OF THE CITY FINANCIAL ASSISTANCE REFERRED TO IN ARTICLE III THEREOF, OWNER, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS TO THE FEE INTEREST AND LEASEHOLD INTEREST IN THE PROPERTY, AND EACH SUCCESSOR IN INTEREST TO OWNER'S FEE INTEREST OR LEASEHOLD INTEREST IN THE PROPERTY, HEREBY COVENANTS AND AGREES AS FOLLOWS:

1. The defined terms in this Agreement shall have the same meanings ascribed to those terms in the OPA. In the event of any inconsistency between the provisions set forth in this Agreement and the OPA, the provisions set forth in the OPA shall govern and control.

2. Owner's use of the Property shall be restricted to use for the operation of the Dealership, including related incidental retail, service, and repair facilities and such other uses as may be consistent with the applicable land use regulations of City and pre-approved by City in writing, all as described in the OPA. Owner agrees to use the Property for no other purposes. Owner further covenants to (i) exercise its commercially reasonable diligence to keep the Dealership open during all normal business hours for similar businesses, subject to temporary closures in the event of casualty losses,

maintenance and repairs, and events of force majeure, and (ii) exercise its best efforts to maximize long-term sales, consistent with market conditions and prudent business practices.

The use covenants and restrictions set forth in this Paragraph 2 shall terminate and be of no further force or effect upon the Covenant Termination Date as defined in Section 401 of the OPA.

In the event that Owner or any successor or assign commits a material default of any of the provisions of this Agreement or the OPA, including but not limited to any of the use covenants or restrictions set forth in this Paragraph 2 prior to the Covenant Termination Date and such default continues for a period of thirty (30) days after City has given Tenant the notice required by Section 601 of the OPA in compliance with Section 601 of the OPA, then both of the following shall apply:

(i) City shall have the right to terminate the OPA and this Agreement, in which case (a) City shall cooperate in causing this Agreement to be removed of record and (b) City shall have no obligation to make any further City Financial Assistance payments to Tenant pursuant to the OPA; and

(ii) Owner shall immediately return to City as liquidated damages the full amount of City Financial Assistance paid by City to Owner for the last Payment Period in which a payment was made from City to Owner under the OPA and the Escrow funds provided in Section 301 of the OPA.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH ABOVE CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO A DEFAULT BY OWNER OF THE USE COVENANTS AND RESTRICTIONS SET FORTH IN THIS PARAGRAPH 2, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY AND ACCOMPLISHMENT OF CITY'S PURPOSE IN ENTERING INTO THIS AGREEMENT, THE DIFFICULTY AND

IMPRACTICABILITY OF DETERMINING ACTUAL DAMAGES INVOLVING SUCH ISSUES AS THE LOSS OF PUBLIC TAX REVENUES AND THE DELAY IN IMPLEMENTATION OF THE GOALS OF THE CITY'S ECONOMIC DEVELOPMENT PLAN, AND THAT THE PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THS LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS:



CITY'S INITIALS:

1. Owner covenants that from the Effective Date of the OPA until the Covenant Termination Date, Owner shall ensure that the Property, or (subject to first obtaining the prior written approval of City's City Manager, which approval may be given or withheld in the City Manager's sole and absolute discretion) another location within the City, shall be the point of sale and lease of all new and used vehicles (or, if City approves a change in dealerships, such other make of vehicles, motor homes, trailers, automobiles or trucks displayed, sold or leased from the Property) which are sold and leased within a fifteen (15) mile radius of the Property (or other approved location within the City) by or through Owner or its Tenants, or their officers and employees, subsidiaries or parent companies, and all other new or used recreational vehicles, motor homes and trailers which are displayed for sale or lease on the Property.

2. Owner shall maintain all improvements that exist on the Property from time to time in good condition and repair (and, as to landscaping, in a healthy condition) in accordance with the standard of maintenance typical for similar businesses in the San Bernardino County region and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. In addition, Owner shall keep the Property free from all graffiti and any

accumulation of debris or waste material. Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

In the event that Owner breaches any of the covenants contained in this Paragraph, and fails to cure such default for a period of thirty (30) days after written notice from City, or, in the event that any such cure cannot reasonably be completed within said time period(s), if Owner fails to commence such cure within said time period(s) and thereafter diligently prosecute such cure to completion, then City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. All of City's costs in curing the default (including a fifteen percent (15%) administrative charge) shall be immediately due and payable by Owner. Provided that City complies with the notice requirements in this Paragraph, and without limiting City's right to recover costs in any other permissible manner under applicable law, Owner agrees that City's costs to cure (including the administrative charge) may be assessed as a lien against the Property as provided for public nuisances, and in this regard Tenant waives any other public notice, hearing, and other procedures that may be provided for under public nuisance laws and ordinances that are a prerequisite to the assessment of such a lien.

The covenants set forth in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

3. Owner agrees for itself and its successors and assigns not to discriminate upon the basis of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin in the sale, lease, or rental or in the use, occupancy, or enjoyment of the Property hereby conveyed or any part thereof. Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or

segregation of, any person or group of persons on account of race, color, creed, national origin, ancestry, sex, sexual or gender orientation, pregnancy, disability, marital status, or religion in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner itself or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees, or vendees in the Property or any portion thereof. The covenants in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

4. Owner agrees for itself and any successors in interest that Owner shall refrain from restricting the rental, sale, or lease of any portion of the Property, or contracts relating to the sale, lease, transfer, use, occupancy, tenure, or enjoyment of the Property, on the basis of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself , or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub lessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sub lessees, subtenants, or vendees in the land herein leased.

c. In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub lessees, or vendees of land.

The covenants in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

5. To the fullest extent permitted by law, Owner covenants for itself and its successors and assigns to defend, indemnify, and hold harmless City, and its respective officers, employees, and agents (collectively, the "Indemnitee") from and against any liability, loss, damage, costs, and expenses (including attorney's fees and costs) arising from or as a result of the death or injury of any person or any accident, injury, loss, or damage whatsoever (whether or not covered by insurance) in any way related to

Owner's construction of the Project, or lease and occupancy of the Property and operation of the Dealership thereon, including without limitation with respect to Owner's performance of its obligations set forth in the OPA and this Agreement to the extent such liability, loss, damage, cost, or expense is caused by or arises out of any acts, errors, or omissions of Owner or its agents, servants, or employees in operating the Dealership or construction the Project. Notwithstanding the foregoing, the foregoing indemnity and defense obligations shall not be deemed to limit or restrict City's obligations set forth in the OPA and Owner shall not be responsible for the defense or indemnification of the Indemnitees for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of any of the Indemnitees.

The covenants in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date unless extended by written agreement of both parties; provided, that such covenants shall continue in effect after the Covenant Termination Date with respect to any liability, loss, cost, or expense arising from an event or occurrence prior to the Covenant Termination Date. The requirements of this Paragraph shall not limit any other indemnity provisions set forth in the OPA.

6. Owner shall not, whether voluntarily, involuntarily, or by operation of law, and except as permitted in Section 713 of the OPA, assign or transfer all or any part of its obligations under this Agreement or any rights hereunder or in the Property or in any portion thereof or in the Dealership (as defined in the OPA) or any part thereof without City's prior written approval. The procedures to be followed in obtaining such approval, the criteria to be utilized by City in determining whether to grant such approval, and certain exceptions to the foregoing prohibitions and restrictions are set forth in Section 713 of the OPA.

The restrictions set forth in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

7. The Parties intend and agree that all conditions, covenants, and restrictions contained herein shall run with the Owner's fee interest in the Property and the leasehold estate created under the Lease or any other leasehold, fee, or other interest in the Property held by Owner (but not MWD) and Owner's successors or assigns, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, and to the fullest extent permitted by law and equity and for the period or periods of time that such covenants remain in effect as provided herein, be binding for the benefit and in favor of, and enforceable by City and its successors and assigns against Owner and Owner's successors and assigns in and to any interest in the Property.

8. This Agreement is designed to create equitable servitudes and covenants appurtenant to the Benefitted Public Property and running with Owner's (but not MWD) interest in the Property for the period or periods of time that such covenants remain in effect as provided herein, in accordance with the provisions of Civil Code Section 1468. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with Owner (but not MWD's) interest in the Property and shall be binding upon Owner (but not MWD) and any successor or assignee in or to all or any portion of Owner's (but not MWD's) right, title or interest in the Property, shall inure to the benefit of City and its successors and assigns and successors in interest with fee or easement interests in the Benefitted Public Property; shall be binding upon Owner (but not MWD) and its successors and assigns; and may be enforced by City and its successors and assigns and successors in interest in and to the Benefitted Public Property. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land. Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Benefitted Public Property by the citizens of City and by furthering the health, safety and welfare of the residents of City. City shall have the right to designate other real property as benefitted by the covenants contained herein during the term of this Agreement.

9. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the agreements and covenants provided herein both for and in their own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies against Owner (but not MWD) and its successors and assigns, and to maintain any action at law or suit in equity or other proper proceedings against Owner (but not MWD) and its successors and assigns to enforce the curing of such breach of agreement or covenant.

10. Except as provided herein, the covenants and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property or any person or entity having any interest in any such other real property.

11. The covenants contained in this Agreement shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title.

[END – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date first written above.

CITY OF UPLAND, a municipal corporation

By: 
Mayor Ray Musser *Debbie Stone*

ATTEST:

By: 
Jeannette Vagnozzi, City Clerk

APPROVED AS TO FORM:

By: 
~~Richard L. Adams II, City Attorney~~
James L. Markman

Owner:

PARK PLACE FORD LLC
a California limited liability company
dba FORD OF UPLAND

By: _____
Its: _____

By: _____
Its: _____

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.

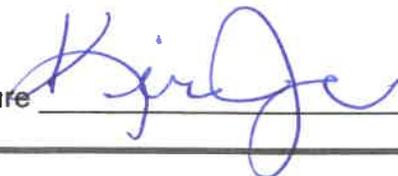
State of California
County of San Bernardino)

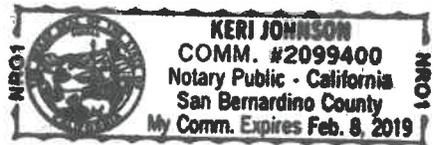
On June 13, 2017 before me, Keri Johnson, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



**CITY OF UPLAND ECONOMIC DEVELOPMENT
PARTICIPATION AGREEMENT REPORT
BETWEEN CITY OF UPLAND AND PARK PLACE FORD LLC (DBA Ford of Upland)
PURSUANT TO AB 562**

The City of Upland, to maintain sustainable economic development, community vitality and recovery from the annual loss of approximately \$11 million in redevelopment tax increment revenues previously received by the former Redevelopment Agency, is implementing economic development strategies and programs that include the application of Assembly Bill 562. The City of Upland and Park Place Ford LLC, dba Ford of Upland (“Ford of Upland”), propose to enter into a Restated and Amended Owner Participation Agreement (the “Restated Agreement”). The Restated Agreement requires Ford of Upland to relocate and construct a new dealership near Campus Avenue and the I-210 Freeway (the “New Dealership Site”), and for the City to provide a sales tax sharing agreement with Ford of Upland for a term that ends once Ford of Upland receives its maximum payment obligation from the City of Upland in the amount of \$2,700,000.

The California Legislature, based on direction from Governor Brown, made the decision to terminate all Redevelopment Agencies throughout the State resulting in the elimination of this major economic development tool previously available to local agencies. Following the decision to terminate redevelopment, the Governor and Legislature recognized the necessity of cities, counties and the State to encourage employment, retain jobs and promote expansion of sales tax producers for each community.

Assembly Bill 562, which added Section 53083 to the Government Code, requires public input prior to approving an economic development subsidy, by requiring, among other things:

- A public hearing prior to approving an economic development subsidy.
- A report regarding the economic development subsidy including the terms and details of said subsidy; and,
- An additional public hearing, not less than 5-years after the approval of the Agreement, reporting on the economic development subsidy.

This report includes the information required by AB 562 and the fiscal analysis to describe the projected revenue generated to the City, as well as the financial subsidy provided to Ford of Upland.

AB 562 Reporting Requirements:

Effective January 1, 2014, each local agency shall, before approving any Economic Development Subsidy within its jurisdiction, provide all of the following information in written form available to the public and through its Internet Website, if available:

- 1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.**

Park Place Ford, LLC, 555 West Foothill Blvd., Upland, CA, 91786 is doing business as Ford of Upland. Park Place Ford, LLC will continue to retain 100% ownership of Ford of Upland. Engelco, LLC, 555 West Foothill

Blvd., Upland, CA 91786, is an entity that was formed by the owners of Ford of Upland for the sole purpose of holding title to the real property at the New Dealership Site. Park Place Ford, LLC and Engelco, LLC each have the same owners, i.e., John Engelhardt and his family.

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

The commencement date for the Restated Agreement shall begin after receipt of a certificate of occupancy but no later than June 1, 2019, although the City, at its discretion, can extend the Commencement Date if necessary to accommodate unforeseen construction issues. The proposed end date for the Restated Agreement shall be 5 years after the attainment of the \$2,700,000 maximum financial assistance amount.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

In furtherance of the City's economic development strategies, a Restated Agreement with Ford of Upland is being proposed. AB 562 defines an economic development subsidy as an expenditure of public funds or loss of revenue to local agency in the amount of one hundred thousand dollars (\$100,000) or more, for the purpose of stimulating economic development within the jurisdiction of a local agency. The City of Upland and Ford of Upland are proposing entering into a revenue sharing agreement that will be mutually beneficial. Ford of Upland remains one of the City's top sales tax producers and contributor to the City's General Fund. Providing an economic development subsidy in the form of revenue tax sharing is a financial incentive for Ford of Upland to stay in the City, and to ensure they are able to continue as one of the City's top sales tax producers. Failure to offer a financial incentive may ultimately cause loss of revenue to the City if they stay in their current location, or at worse case, contribute to the closure of the current location and relocation to another city.

Sales tax revenue from automobile/transportation business group accounts for 22.2% of the City of Upland's total sales tax revenue, of which a significant portion is attributable to Ford of Upland. Sales tax data for specific businesses such as Ford of Upland is required to be kept confidential per California Revenue and Taxation Code Section 7056. To comply with the provisions of California Assembly Bill AB 562, which became effective January 2014, as well as adhere to disclosure requirements contained in California Revenue and Taxation Code Section 7056, a range of potential sales tax revenue projections was generated based on possible increased sales volumes. The economic development subsidy is based on a sales tax sharing methodology that includes the following:

- Annual sales tax revenue produced by FOU up to \$312,000 shall be 100% retained by the City of Upland;
- Annual sales tax in excess of \$312,000 shall be split with 75% to FOU and 25% to the City of Upland (up to the limit set forth immediately below); and
- A cumulative cap of \$2,700,000 will limit the maximum financial assistance for FOU to \$2,700,000.

It is understood and agreed that the City portion of sales tax revenues from the Property is being used merely as a measure of the amount of the subsidy payments that will be provided and that the subsidy will be paid from any source of funds legally available to City.

The term for the Restated Agreement shall be 5 years after attaining the maximum financial assistance amount of \$2,700,000.

The maximum amount of subsidy to FOU shall be \$2,700,000. Sales tax revenue for the City of Upland is dependent on actual sales performance generated by FOU, with estimates projecting a range of \$4,000,000 to \$4,500,000 (using conservative or optimistic sales performance numbers) in sales tax revenue to the City of Upland.

All sales taxes are collected by the State Board of Equalization with a local tax rate of 8%, with 1% of said sales taxes apportioned back to the City. Payments from sales tax receipts will be paid to Ford of Upland, on an annual basis, after the taxes have been collected by the state and analyzed by the City's sales tax consultants, HdL.

4. A statement of the public purpose for the economic development subsidy.

The proposed Restated Agreement is consistent with City's economic goals and objectives and is in the best interests of the general public. The loss of redevelopment throughout the state has significantly impacted the City's major economic development program. Providing a financial incentive to a local business to relocate and develop a new, larger auto dealership in a superior location will work to prevent a loss of significant sales tax to the City in the event Ford of Upland would choose to close their existing facilities and move to another City, thus reducing Upland's General Fund revenues. Ford of Upland is proposing to move from the current location at 555 West Foothill Boulevard, and develop a new, 65% larger, state-of-the-art auto dealership that will be freeway adjacent and will generate increased sales tax revenue due to its superior location and larger area. Ford's corporate office is pushing for this type of location that will provide a modern dealership, with the contemporary Ford branding and advertising and enhanced customer amenities. During the term of the proposed Restated Agreement, Ford of Upland will increase the number of full time employees by 45% and part-time employees by 100% which will have a long-lasting, positive impact to Upland's work force.

Relocating the Ford of Upland dealership to the New Dealership Site will also provide development opportunities to redevelop the current 555 West Foothill Boulevard site. The property owners of 555 West Foothill are proposing to redevelop the site into a new, development with retail, office and/or residential land uses. A new development will provide additional sales-tax revenue as well as additional property tax revenue for the City. In addition, this site may provide additional services for the residents of Upland in the short term, by providing auto service/repairs and sales at the Foothill Site.

5. Projected tax revenue to the local agency as a result of the economic development subsidy.

The maximum amount of subsidy to FOU shall be \$2,700,000. Sales tax revenue for the City of Upland is dependent on actual sales performance generated by FOU, with estimates projected to range from \$4,000,000 to \$4,500,000.

6. Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

During the term of the proposed Restated Agreement, Ford of Upland will increase the number of full-time employees by 45% and part-time employees by 100%. Currently, Ford of Upland employs 75 full-time employees and 4 part-time employees. Within 18 months of opening the new dealership, Ford of

Upland proposes adding 34 new full-time employees and 4 new part-time totaling 117 employees. No temporary positions with Ford of Upland have been identified



STAFF REPORT

ITEM NO. 14.E.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: ROSEMARY HOERNING, PUBLIC WORKS DIRECTOR
SUBJECT: PROXY FOR SAN ANTONIO WATER COMPANY

RECOMMENDED ACTION

It is recommended that the City Council appoint Tom Thomas as proxy to vote all shares at the annual stockholder's meeting of the San Antonio Water Company for the slate of directors; and to include the appointment of John Navarro and Councilmember Rudy Zuniga to the proposed Board slate

GOAL STATEMENT

The proposed action supports the City's strategic efforts to maintain reasonable water rates by developing a long-term systematic strategy to develop facilities in need of improvement, and by implementing management and financial controls.

BACKGROUND

The City of Upland owns controlling interest (approximately 68% of all outstanding shares) in San Antonio Water Company (SAW Co.), a private mutual water company. The City Council has selected the person carrying the proxy to vote for the slate of directors for the SAW Co. Board. Tom Thomas has served on the Board for a number of years and has indicated his willingness to serve as requested.

The SAW Co. Board members serve a four year term. SAW Co. will hold its annual meeting on April 9, 2019 to conduct annual business of the company. There are three vacant seats this year. Both Directors John Gerardi and Sue Sundell have indicated they enjoyed their assignments on the Board; however, they are unable to serve for an additional four-year term. As such, the City will need to provide two new Board candidates.

ISSUES/ANALYSIS

SAWCo will hold its annual meeting on April 9, 2019, to conduct annual business of the company. At this meeting three seats for the Board will be considered. The current Board members' seats which are up for consideration are Directors Sue Sundell, Will Elliott and John Gerardi.

On February 11, 2019, a slate consisting of Will Elliott, Sid Robinson and Linden Brouse was presented to the City Council for consideration. The City Council approved the appointment of Will Elliot for the SAW Co. Board. The person to carry the City's Proxy and the appointments for the two other Board vacancies were discussed; however, action on these matters was continued to the February 25, 2019 City Council meeting to allow more time to review potential candidates.

The following is a summary of Board member positions for consideration.

Existing Director Term Expiration Proposed Director Term Expiration

Tom Thomas	2021		
Gino Fillipi	2021		
Bob Cable	2021		
Jose Sanchez	2021		
Will Elliott	2019	Will Elliott	2023
Sue Sundell	2019	John Navarro	2023
John Gerardi	2019	Rudy Zuniga	2023

As the majority shareholder, the City must authorize a person to carry the City's proxy and to vote the City's shares at the annual meeting. Tom Thomas was recommended and has served on the Board for several years and will present the City's proxy and vote the City's shares at the annual meeting.

FISCAL IMPACTS

There is no fiscal impact associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

**Letter - Navarro
Proxy**

JOHN NAVARRO

RECEIVED
UPLAND CITY
CLERK'S OFFICE

19 FEB 14 PM 2:54

February 14, 2019

Mayor Debbie Stone
City of Upland
460 N. Euclid Avenue
Upland, California 91786

Dear Mayor Stone,

I am interested in the opening on the San Antonio Water Company Board of Directors. I am a share holder and a resident of San Antonio Heights, a former resident of the City of Upland and a huge supporter of the San Antonio Water Company. I currently serve as Vice-President on The San Antonio Heights Association Board, The Vice-President of the Ontario Masonic Lodge Hall Association and the Mile Square Foundation.

The San Antonio Water Company is extremely important and critical to the economic growth and development of our community. This organization is something that I wish to be a part of knowing that I can contribute and make a difference.

A brief synopsis of myself, I was born in Upland and have been a resident of Ontario and Upland for the majority of my life. After graduating from Chaffey High School, I served in the United States Marine Corps. I served as an Officer for the Ontario Police Department, then moved on to the San Bernardino County Sheriff's Department from which I retired.

Respectfully submitted,
INFORMATION REDACTED

John Navarro

INFORMATION REDACTED

SAN ANTONIO WATER COMPANY
Annual Meeting of the Shareholders
OFFICIAL PROXY AUTHORIZATION
(2019)

INSTRUCTIONS TO PROXY HOLDER(S)

Shareholders: Complete this form as noted below if you desire to instruct your chosen proxy holder, regarding the voting of your shares with respect to the election of members of the Board of Directors from the list of nominees set forth below.

Any shareholder completing this proxy, but failing to indicate in writing how the shares are to be voted on candidates or proposals before the meeting, will be deemed to have given the proxy holder(s) complete discretion in voting his, her, or its shares on any matter voted on at the meeting. If instructions are provided, your shares shall be voted in accordance with your instructions. Please return your proxy to: San Antonio Water Company, 139 N. Euclid Ave., Upland, CA 91786

ELECTION OF DIRECTORS

FOR ALL NOMINEES listed below (except as marked to the contrary).

To withhold authority to vote for any individual or all nominees, strike a line through the nominee's name in the list below:

Rudy Zuniga
John Navarro
Will Elliott

The undersigned appoints **Tom Thomas** as the proxy of the undersigned, with full power of substitution, to attend and vote all shares of the undersigned in the Corporation at the Annual Meeting to be held on Tuesday, April 9, 2019, and all adjournments thereof according to the number of votes the undersigned would be entitled to cast if personally present, for or against any proposal, including the election of members of the Board of Directors, and any and all other business that may come before the meeting, except as otherwise indicated in the written instructions hereon.

Please sign exactly as your name(s) appear(s) on your stock certificate. Joint owners should sign personally. If signed by attorney-in-fact, power of attorney must also be attached.

Dated 2/25/2019

Signature(s)

460 N Euclid Ave
Address

Signature(s)

Upland, CA
City/State

Debbie Stone, Mayor
Name(s) Typed or Printed



STAFF REPORT

ITEM NO. 14.F.

DATE: February 25, 2019
TO: MAYOR AND CITY COUNCIL
FROM: JEANNETTE VAGNOZZI, CITY MANAGER
PREPARED BY: JEANNETTE VAGNOZZI, CITY MANAGER
SUBJECT: CREATE TWO AD HOC COMMITTEES

RECOMMENDED ACTION

It is recommended that the City Council take the following actions:

1. Create an ad hoc committee to discuss concerns related to Historic Downtown Upland and consider an application process for future appointments to the committee.
2. Create an ad hoc committee to discuss facility use with Upland Unified School District and appoint members to the committee.

GOAL STATEMENT

The proposed action supports the City's goal to provide opportunities for the citizenry to participate in local government through service on various committees, commissions, and boards.

BACKGROUND

Council direction was provided at the request of Mayor Pro Tem Elliott with a second by Council Member Felix to establish an ad hoc committee to address concerns in Historic Downtown Upland.

Council direction was provided at the request of Council Member Zuniga with a second by Council Member Felix to establish an ad hoc committee with the Upland Unified School District to discuss the use of shared facilities.

ISSUES/ANALYSIS

Historic Downtown Upland Ad Hoc Committee

It is recommended to keep the committee to a manageable number of five members and one staff liaison. It is recommended that the committee consist of two (2) business owners, two (2) property owners, and an additional at-large member. The at-large member may be a resident, employee, or another person with a vested interest in the Historic Downtown Upland boundaries. Upon approval of this committee, applications will be accepted and a slate will be presented for ratification at a future Council meeting.

City-School District Ad Hoc Committee

Council direction included the suggestion that the committee consist of Council Members Zuniga, Council Member Felix, a staff liaison, and two representatives of Upland Unified School District. Upon approval of this committee an invitation will be sent to the Upland Unified School District Superintendent to coordinate the first meeting.

FISCAL IMPACTS

There are no fiscal impacts associated with this action.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS:

No Attachments Available