

DUE TO THE ONGOING EMERGENCY CONCERNING THE COVID-19 VIRUS, PLANNING COMMISSION MEETINGS WILL BE CONDUCTED PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER N-29-20 WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT.

RESIDENTS MAY OBSERVE THE MEETING REMOTELY VIA [LIVESTREAM](#) ON THE CITY WEBSITE OR ON SPECTRUM CABLE TV CHANNEL 3 AND FRONTIER CABLE TV CHANNEL 26

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AGENDA ATTACHED



REGULAR MEETING OF THE UPLAND PLANNING COMMISSION AGENDA

**March 25, 2020 at 6:30 PM
Council Chambers**

**ROBIN ASPINALL, CHAIR
GARY SCHWARY, VICE CHAIR
CAROLYN ANDERSON, COMMISSIONER
SERGE MAYER, COMMISSIONER
ALEXANDER NOVIKOV, COMMISSIONER
PATRICK SHIM, COMMISSIONER
YVETTE WALKER, COMMISSIONER**

CALL TO ORDER OF THE PLANNING COMMISSION REGULAR MEETING

PLEDGE OF ALLEGIANCE

ROLL CALL OF THE PLANNING COMMISSION

Chair Aspinall, Vice Chair Schwary, Commissioners
Anderson, Mayer, Novikov, Shim and Walker

PRESENTATION

Presentation to outgoing Commissioner Linden Brouse

APPROVAL OF MINUTES

February 26, 2020

COUNCIL ACTIONS

Robert D. Dalquest, Development Services Director
March 9, 2020, March 13, 2020 and March 23, 2020

FUTURE AGENDA ITEMS

Mike Poland, Contract Planning Manager

ORAL COMMUNICATIONS

This is the time for any citizen to comment on any items that are not listed on the agenda under "Public Hearings" but within the Planning Commission's purview. Anyone wishing to address the Planning Commission should submit a speaker card to the Planning Secretary prior to speaking. The speakers are requested to keep their comments to five (5) minutes. The use of visual aids will be included in the time limit. Under the provisions of the Brown Act, the Planning Commission is prohibited from taking action on items not listed on the agenda.

PUBLIC HEARINGS

1. PUBLIC HEARING FOR A PROPOSED AMENDMENT (DA 20-0002) TO DEVELOPMENT AGREEMENT NO. DA 15-01 FOR “THE ENCLAVE AT UPLAND SPECIFIC PLAN”.

Project Description: A proposed amendment to extend the term of Development Agreement No. 2015-01 for “The Enclave at Upland Specific Plan” for an additional one year period to July 27, 2021.

Project Location: Property is bound by Foothill Boulevard to the north and 11th Street to south. Dewey Way is located to the west and Central Avenue is located to the east. APN: 1007-051-02, 03, 04 and 1007-041-05, 06, and 07.

STAFF:	Mike Poland, Contract Planning Manager
APPLICANT:	Adam Collier, Lewis Land Developers, LLC 1156 N. Mountain Avenue Upland, CA 91784
RECOMMENDATION:	That the Planning Commission: 1. Receive staff’s presentation; and 2. Hold a public hearing and receive testimony from the public; and 3. Find that the Project requires no further environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations); and 4. Move to adopt a Resolution recommending that the City Council approve the Amendment to Development Agreement No. 15-01 for The Enclave at Upland Specific Plan thereby extending the term to July 27, 2021, as set forth in the draft resolution dated March 25, 2020; and 5. Recommend that the City Council introduce an Ordinance approving the Amendment to The Enclave at Upland Specific Plan Development Agreement.
COUNCIL HEARING REQUIRED:	Yes
APPEAL PERIOD:	None

2. PUBLIC HEARING FOR CONDITIONAL USE PERMIT NO. CUP-19-0001, DEVELOPMENT PLAN REVIEW NO. DPR-19-0002, AND ENVIRONMENTAL ASSESSMENT REVIEW NO. EAR-19-0001, FOR THE ESTABLISHMENT OF A NEW DRIVE-THROUGH RESTAURANT IN THE REGIONAL COMMERCIAL (RC) DISTRICT.

Project Description: Request to establish a new 5,001 square foot drive-through restaurant (Chick-Fil-A) within the Mountain Green Shopping Center.

Project Location: 335 S. Mountain Avenue. APN: 1008-131-04 and 1008-131-05.

STAFF:	Joshua Winter, Associate Planner
APPLICANT:	Kelsey WU PO Box 270571 San Diego, CA 92198
RECOMMENDATION:	That the Planning Commission: 1. Receive staff's presentation; and 2. Hold a public hearing and receive testimony from the public; and 3. Find that the project is Categorically Exempt from environmental proceedings pursuant to Section 15332, Class 32, in that it consists of a project characterized as in-fill development per the California Environmental Quality Act Guidelines; and 4. Move to adopt a Resolution approving Conditional Use Permit No. CUP-19-0001 and Development Plan Review No. DPR-19-0002, subject to conditions of approval as set forth in the draft resolution dated March 25, 2020.
COUNCIL HEARING REQUIRED:	No
APPEAL PERIOD:	March 26, 2020 - April 6, 2020

BUSINESS ITEMS

1. A request for General Plan Conformity Determination to find if the disposition of City-Owned surplus land located at the southwest corner of Euclid Avenue and Interstate 210 and on the north side of Laurel Avenue (APNs: 1044-061-42, 43, 44 and 45), in regards to a potential in-fill development, conforms to the City of Upland's General Plan. Staff - Melecio Picazo, Economic Development Coordinator.

COMMISSION COMMUNICATIONS

ADJOURNMENT

Adjourn to the next regular scheduled Planning Commission meeting on April 22, 2020.

NOTICE TO PUBLIC: All maps, environmental information, and other data pertinent to this item are filed in the City of Upland Development Services Department and will be available for public inspection by appointment prior to the meeting at 460 North Euclid Avenue during normal business hours. To schedule an appointment, please call 931-4305.

If you wish to appeal a decision of the Planning Commission, you must do so within ten (10) calendar days following the meeting. Please contact the Planning Division for information regarding the appeal procedure.

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.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division at 931-4305. 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 March 19, 2020, at least 72 hours prior to the meeting, a true and correct copy of this agenda was posted at 460 N. Euclid Avenue (Upland City Hall), 450 N. Euclid Avenue (Upland Public Library), and the City's website at www.uplandca.gov per Government Code Section 54954.2.



**MINUTES OF A REGULAR MEETING OF THE
UPLAND PLANNING COMMISSION
HELD WEDNESDAY, FEBRUARY 26, 2020
AT 6:30 P.M.**

CALL TO ORDER OF THE PLANNING COMMISSION SPECIAL MEETING

Chair Aspinall called the Regular Meeting of the Upland Planning Commission to order in the Council Chambers of the Upland City Hall at 6:30 P.M.

PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by *Commissioner Anderson*.

ROLL CALL

MEMBERS PRESENT: Commissioners Anderson, Brouse, Novikov, Walker, Vice Chair Schwary, and Chair Aspinall

MEMBERS ABSENT: None

ALSO PRESENT: Development Services Director and Planning Commission Secretary Dalquest, Contract Planning Manager Poland, Assistant Planner Winter, Associate Planner Hong, Senior Administrative Assistant Davidson, Deputy City Attorney Shah

APPROVAL/MINUTES January 22, 2020 and February 12, 2020

Chair Aspinall made corrections to the January 22, 2020 and February 12, 2020 meeting minutes.

Moved by *Vice Chair Schwary*, to approve of the minutes of the Planning Commission meeting of January 22, 2020 and February 12, 2020, as corrected.

The motion was seconded by *Commissioner Anderson*.

The motion carried by the following vote (5 – 0 – 1):

AYES: *Commissioners Anderson, Brouse, Walker, Vice Chair Schwary, and Chair Aspinall*

NAYS: None ABSTAINED: *Commissioner Novikov*

ABSENT: None

COUNCIL ACTIONS Robert D. Dalquest, Development Services Director
February 10, 2020 and February 24, 2020

Development Services Director Dalquest reported there was no Council action related to the Planning Commission at the February 10, 2020 City Council meeting.

On February 24, 2020 Council approved the Starbuck's project by a 3 – 2 vote.

FUTURE AGENDA ITEMS Mike Poland, Contract Planning Manager

Contract Planning Manager Poland discussed upcoming items to be considered by the Planning Commission including a proposed amendment to extend the length of time for the Development Agreement on Enclave at Upland specific plan; a Condition Use Permit for a proposed daycare within the existing building behind the 7-Eleven on Foothill Boulevard at Campus Avenue; a Conditional Use Permit for a Chick-fil-a Restaurant along with a drive-thru

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at the Mountain Green Shopping Center, and potentially a draft ordinance related to ADU regulations.

ORAL COMMUNICATIONS

Chair Aspinall stated this is the time for any citizen to comment on any items that are not listed on the agenda under “Public Hearings” but within the Planning Commission’s purview. Anyone wishing to address the Planning Commission should submit a speaker card to the Planning Secretary prior to speaking. The speakers are requested to keep their comments to five (5) minutes. The use of visual aids will be included in the time limit. Under the provisions of the Brown Act, the Planning Commission is prohibited from acting on items not listed on the agenda.

Roger Stephenson, LaVerne, spoke in support of denying the recommendation for the Site Plan No. 19-09 and Design Review No. 19-17 noting the size of the operation and van trips are grossly understated; indicated there is insufficient automobile parking for the vans and personal vehicles; addressed impacts from the number of van trips; felt that zoning has not been addressed correctly and noted inconsistencies within the documents.

Steve Bierbaum, Upland, urged the Commission to indicate in the agenda whether or not cases are appealable; reported submitting a Challenge to Public Hearings and Environmental Determinations made at the Joint Special Meeting of the Planning Commission and Airport Land Use Committee on February 12, 2020; noted an EIR must be prepared; indicated there were documents missing in the Planning Commission Agenda Packet and expressed concerns with transparency, indicating he addressed this on February 12, 2020; and noted concerns with using Upland Rock as a baseline for Kimley Horn’s analysis.

Tim Nguyen, Frontier, discussed community workshops and surveys; noted they have made changes to their proposed project and urged the Planning Commission to vote "No" on the resolution to let the City Council know the Commission supports high-quality housing, economic growth and community engagement.

Noting there were no other members of the public wishing to address the Commission, *Chair Aspinall* closed oral communications.

Vice Chair Schwary asked Deputy Attorney Shah to clarify the appealable action listed in the agenda for the public’s knowledge.

In response to *Vice Chair Schwary’s* inquiry regarding appealable items, *Deputy City Attorney Shah* reported an item is appealable once a decision is final. In stating whether a Council hearing is required, a no in the chart indicates the Commission’s determination is final, in which the item is appealable. A yes in the chart, indicates the Commission is a recommending body and the item is not appealable until the City Council makes a final determination.

Development Services Director Dalquest clarified within the agenda, the title and recommendation section also indicates whether the Planning Commission is making a recommendation to City Council.

Vice Chair Schwary clarified the meeting on February 12, 2020, there was only one (1) appealable action which was the Airport Land Use Determination and the other four (4) items were not appealable since they were recommendations.

PUBLIC HEARINGS

- 1. PUBLIC HEARING FOR CONDITIONAL USE PERMIT NO. 19-0002 TO ESTABLISH A NEW RESTAURANT AND BANQUET HALL WITH ANCILLARY LIVE ENTERTAINMENT, OUTDOOR PATIO SEATING FOR DINING AND HOOKAH, AND TO ALLOW THE SALE OF BEER AND WINE (TYPE 41 LICENSE).**

Project Location: 345 W. Foothill Boulevard. APN: 1045-571-37.

STAFF:	Jacqueline Hong, Assistant Planner
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APPLICANT:	Alaaldin Almuzian 1651 Via Galicia Street Corona, CA
RECOMMENDATION:	That the Planning Commission: 1. Receive staff's presentation; and 2. Hold a public hearing and receive testimony from the public; and 3. Move to adopt a Resolution of the Planning Commission of the City of Upland approving Conditional Use Permit No.19-0002.
COUNCIL HEARING REQUIRED:	No
APPEAL PERIOD:	10 days, ending March 9, 2020

Commissioner Anderson announced her residence is within a 500-1,000 feet “grey area” of the proposed project site, recused herself from hearing the item and departed the Chambers.

Assistant Planner Jacqueline Hong presented details of the staff report addressing location, description of the project, surrounding uses, zoning, operating hours, site plan, floorplan, review by the Technical Review Committee and the Upland Police Department, CEQA exemption and staff recommendation. She made corrections to the wording of Condition No. 40.22, "The applicant shall not engage in or permit the smoking of tobacco products in enclosed spaces of employment, in accordance with Labor Code Section 6404.5" and reported hookah is allowed in the patio, only.

Vice Chair Schwary inquired as to whether no tobacco pertains to outside and whether other forms of tobacco other than hookah will be permitted outside.

In response to *Vice Chair Schwary's* inquiry, *Planning Manager Poland* responded that it would be up to the owner as well as whether food will be served outside.

Commissioner Brouse inquired as to what hookah is.

In response to *Commissioner Brouse's* inquiry, *Assistant Planner Hong* responded that she would defer to the applicant.

Chair Aspinall opened the Public Hearing and invited the applicant to the podium.

Omar Almuzian, applicant's son, described hookah and reported the restaurant will serve Iraqi food, which is a mixture of Persian and Indian food; reported choosing Upland for its strategic location; addressed enforcement of drinking and smoking regulations; identified the location of the banquet hall and discussed renovations to the interior of the building and the projected opening date.

There being no other speakers, *Chair Aspinall* closed the public hearing.

Assistant Planner Hong discussed *Mr. Almuzian's* efforts in working closely with staff on this project and noted the upstairs of the building can only be used as an office area, due to ADA accessibility and reported on another hookah restaurants in the City.

Members of the Commission commented positively on the project.

Moved by *Vice Chair Schwary*, to adopt a Resolution of the Planning Commission of the City of Upland approving Conditional Use Permit No.19-0002 with the amended Condition of Approval No. 40.22, as discussed.

The motion was seconded by *Commissioner Novikov*.

The motion carried by the following vote (5 – 0 – 1):

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AYES: Commissioners Brouse, Novikov, Walker, Vice Chair Schwary, and Chair Aspinall

NAYS: None ABSTAINED: Anderson

ABSENT: None

Commissioner Anderson returned to the Chambers and took her place on the dais.

BUSINESS ITEMS

1. Adoption of a resolution with findings in support of the Planning Commission's recommendation to the City Council regarding Site Plan No. 19-09 and Design Review No. 19-17 for the Bridge Point Upland Project.

Commissioner Novikov announced he was unable to attend the meeting of February 12, 2020 due to work obligations, but he was able to review all of the materials including the audio and is prepared to review the item.

Deputy City Attorney Shah reported the item tonight is a review of the site plan item; noting there was action taken that was different than the staff recommendations and staff prepared a resolution reflecting the action from the previous meeting and the original resolution; and clarified the Commission is not reviewing any of the other items related to this project.

Chair Aspinall clarified the item they were considering was identified as "Attachment A" of the materials and asked for clarification on the vote.

In response to *Chair Aspinall's* inquiry, *Deputy City Attorney Shah* responded this is a new vote and is not taking away the previous vote. She further clarified the Commission is voting on which resolution they are adopting and recommending to City Council.

Commissioner Brouse referenced his vote on the Site Review Plan No. 19-09 and Design Review No. 19-17; noted he made an error and requested the record show that he is in favor and support of this project, the revenues, jobs and benefits it will bring to the City.

Vice Chair Schwary announced that after reviewing numerous emails regarding the matter and reviewing it further, he is more in favor, now, of the project, than he was in the previous meeting.

Commissioner Anderson stated she is supportive of the project and asked if the Commission may vote to consider the original resolution recommending approval.

Deputy City Attorney Shah noted that the Planning Commission may adopt either resolution at this time, whether to deny or approve staff recommendations based on the findings or can direct staff to draft a new resolution; she also indicated the original staff report and resolution are included in the packet as "Attachment B"; and advised the Commission that regardless of their vote this evening, each item of the project will be considered by the City Council.

Moved by *Commissioner Anderson*, to adopt a Resolution of the Planning Commission of the City of Upland recommending City Council approval for the Site Plan No. 19-09 and Design Review No. 19-17 for the Bridge Point Upland Project.

The motion was seconded by *Chair Aspinall*.

Chair Aspinall asked *Deputy City Attorney Shah* to clarify the motion before the Commission votes.

In response to *Chair Aspinall's* request, *Deputy City Attorney Shah* clarified the motion is to recommend that the City Council approve the resolution for the Site Plan; noting the City Council would be the final body.

The motion carried by the following vote (4 – 2):

AYES: Commissioners Anderson, Brouse, Vice Chair Schwary, and Chair Aspinall

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NAYS: Commissioners Novikov and Walker ABSTAINED: None

ABSENT: None

Chair Aspinall indicated there is no public comment.

There was an outburst from the audience in which *Mr. Bierbaum* approached the lectern shouting his discontent with the Commission's action and used profane language at the Planning Commission.

Vice Chair Schwary addressed *Mr. Bierbaum* indicating this is not the time or the place.

Chair Aspinall reiterated there is no public comment for this item and asked *Mr. Bierbaum* to leave. *Mr. Bierbaum* refused to leave and continued shouting at the Planning Commission. As Staff began to call the police, *Mr. Bierbaum* left the building.

2. Resolution recommending that the City Council deny Specific Plan No. 18-02, General Plan Amendment No. 18-04, Zone Change No. 18-04, Tentative Tract No. 20245 (TT 18-03), Site Plan No. 18-10, Design Review No. 18-14, and Environmental Assessment Review No. 0070 regarding the Villa Serena Specific Plan Project located on the north side of 15th Street, approximately 0.25 miles east of Campus Avenue.

Commissioner Anderson reported she was absent at the original meeting but reviewed the records of the meeting including the audio and is prepared to participate in this item.

Deputy City Attorney Shah noted recommendations from the Planning Commission at the original hearing were to recommend denial of the staff recommendation. Accordingly, staff prepared a new resolution reflecting the action at the previous meeting; advising the Commission can vote to recommend approval, denial or direct staff to prepare a revised draft resolution similar to the previous item.

Chair Aspinall asked for clarification as to who is able to vote.

In response to *Chair Aspinall's* inquiry, *Deputy City Attorney Shah* replied that all of the Commissioners are able to vote on this item.

Moved by Vice Chair Schwary to adopt a Resolution recommending that the City Council approve Specific Plan No. 18-02, General Plan Amendment No. 18-04, Zone Change No. 18-04, Tentative Tract No. 20245 (TT 18-03), Site Plan No. 18-10, Design Review No. 18-14, and Environmental Assessment Review No. 0070 regarding the Villa Serena Specific Plan Project located on the north side of 15th Street, approximately 0.25 miles east of Campus Avenue.

Deputy City Attorney Shah clarified that the motion at the previous hearing was to recommend denial and sought clarification whether the motion is for approval of the project or approval of the resolution recommending denial.

Vice Chair Schwary withdrew his motion.

Moved by *Commissioner Anderson*, to adopt a Resolution recommending that the City Council deny the Mitigated Negative Declaration for Specific Plan No. 18-02, General Plan Amendment No. 18-04, Zone Change No. 18-04, Tentative Tract No. 20245 (TT 18-03), Site Plan No. 18-10, Design Review No. 18-14 for a residential specific plan for a gated residential community that consists of 65 single-family detached residential units at a density of 7.1 dwelling units per acre and on-site active and passive recreational amenities to be provided within the common area open space on an existing 9.2-acre portion of the 15th Street flood control detention basin with modifications to the remainder detention basin.

The motion was seconded by *Commissioner Brouse*.

Chair Aspinall asked for clarification on the motion.

Deputy City Attorney Shah clarified that a yes vote is to recommend denial to the City Council,

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Development Services Director Dalquest noted that a no vote would deny the motion.
Deputy City Attorney Shah further clarified the vote.

Discussion ensued regarding the vote, findings and future actions.

The motion failed by the following vote (3 – 3):

AYES: *Commissioners Anderson, Brouse and, Novikov*

NAYS: *Commissioner Walker, Vice Chair Schwary and Chair Aspinall* ABSTAINED: None

ABSENT: None

Discussion followed regarding clarification of the motion and efforts by Frontier to get input from the community and make appropriate changes.

Deputy City Attorney Shah reported the action now is not to take new information, but rather what has already been received in the record. She added that each resolution should be looked at, in isolation, without assumptions and inferences and identified various options available to the Commission

Discussion ensued regarding the possibility of opening 15th Street and specific changes made by the applicant.

Moved by *Commissioner Anderson*, to adopt a Resolution recommending that the City Council deny Specific Plan No. 18-02, General Plan Amendment No. 18-04, Zone Change No. 18-04, Tentative Tract No. 20245 (TT 18-03), Site Plan No. 18-10, Design Review No. 18-14 for a residential specific plan for a gated residential community that consists of 65 single-family detached residential units at a density of 7.1 dwelling units per acre and on-site active and passive recreational amenities to be provided within the common area open space on an existing 9.2-acre portion of the 15th Street flood control detention basin with modifications to the remainder detention basin, based on the project as designed/presented on January 22, 2020.

The motion was seconded by *Chair Aspinall*.

The carried by the following vote (4 – 2):

AYES: *Commissioners Anderson, Brouse, Novikov, and Chair Aspinall*

NAYS: *Commissioner Walker and Vice Chair Schwary* ABSTAINED: None

ABSENT: None

COMMISSION COMMUNICATIONS

Commissioner Anderson announced she will be attending an upcoming Lunch and Learn event in Riverside regarding housing and the California League of Cities Planning Academy.

Commissioner Novikov inquired as to the status of the vacancy on the Planning Commission's vacant. Staff reported interviews have taken place and the two top candidates may be on City Council's March 9th agenda.

Commissioner Walker asked about considering an ordinance that would require developments meeting a certain threshold to have an EIR prior to the Planning Commission's consideration. It was noted that is already a State law, under CEQA. *Commissioner Walker* inquired as to the opportunity to create individual thresholds that could identify the uniqueness and inquired as to the possibility of considering a noise ordinance relative to the train that goes by residential areas. Staff reported that designating a quiet zone might be an option but would need to review state law regarding public transportation that could restrict such actions.

Chair Aspinall asked for an update on activities at Campus Avenue by the CNC and it was noted the property owner is stockpiling dirt for a potential future project. *Chair Aspinall* discussed training with the City Attorney for new Planning Commissioners.

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ADJOURNMENT

There being no further business to come before the Planning Commission, *Chair Aspinall* adjourned the meeting at 8:08 P.M., to the regular meeting of the Planning Commission on March 25, 2020, at 6:30 P.M.

Respectfully submitted,

Robert D. Dalquest, Secretary
Upland Planning Commission



PLANNING COMMISSION REPORT

ITEM NO. 1

DATE: MARCH 25, 2020

TO: PLANNING COMMISSION

FROM: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR

PREPARED BY: MIKE POLAND, CONTRACT PLANNING MANAGER

SUBJECT: PROPOSED AMENDMENT (DA 20-0002) TO DEVELOPMENT AGREEMENT NO. DA 15-01 FOR "THE ENCLAVE AT UPLAND SPECIFIC PLAN".

REQUEST

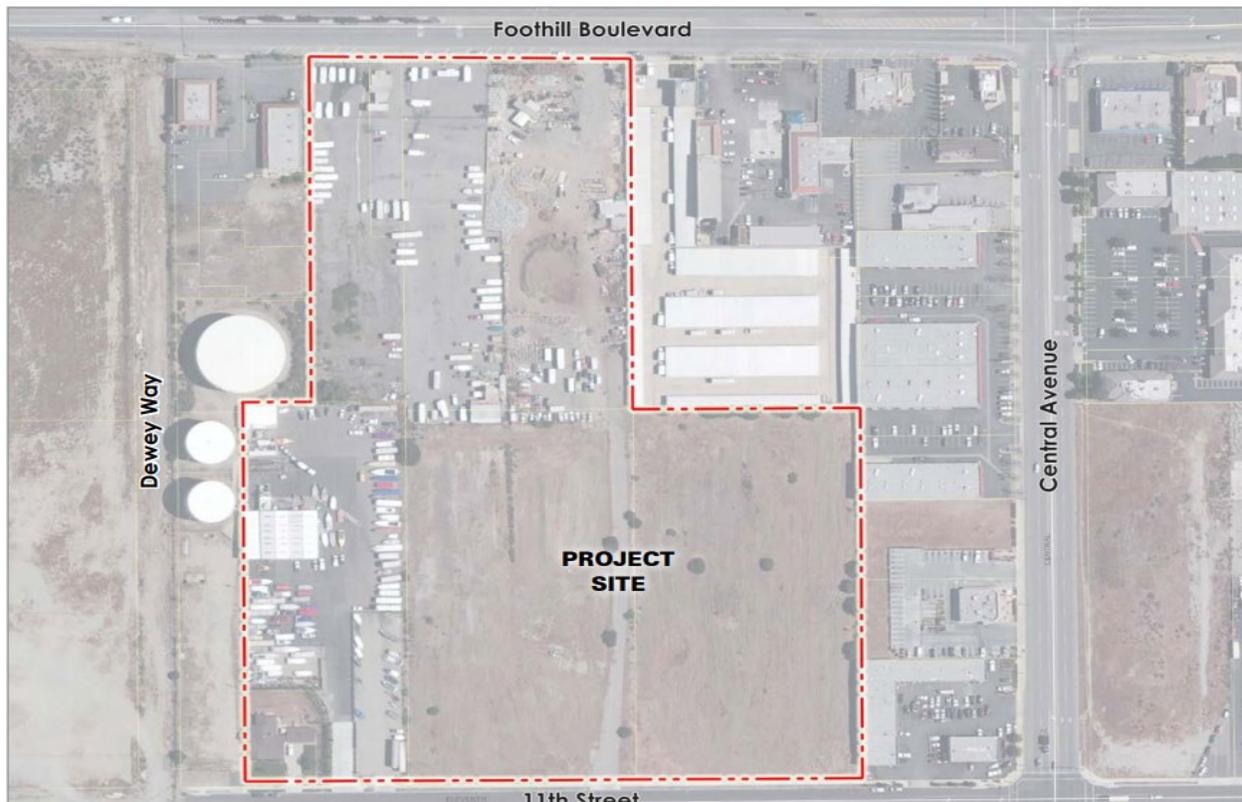
A request has been submitted by Adam Collier, representing Lewis Land Developers, LLC, to receive approval of an extension for the term of Development Agreement No. 2015-01 for "The Enclave at Upland Specific Plan" for an additional one year period to July 27, 2021.

BACKGROUND

On July 27, 2015, the City Council adopted Ordinance No. 1894 thereby adopting Specific Plan No. 15-01 for "The Enclave at Upland Specific Plan". S approved "The Enclave at Upland Specific Plan" could facilitate the development of up to 350 single family attached and/or detached homes and 0.83 acres of private recreational and park space. The Specific Plan provides residential development standards for a variety of attached and detached product types ranging from 12 to 20 dwelling units per acre, along with a variety of architectural styles and landscape guidelines.

The project site is approximately nineteen (19) acres in size and is located between Foothill Boulevard to the north and Eleventh Street to south, between Dewey Way to the west and Central Avenue to the east. The approved Harvest at Upland (Upland Crossing) Specific Plan is located nearby, just west of the subject property. A Monte Vista Water District facility adjoins a portion of the project site along its westerly boundary, with several commercial uses and a warehouse facility bordering the easterly boundary.

A portion of the project site is currently used as a recreational vehicle storage yard. The remaining land area is undeveloped.



In addition to approving the Specific Plan on July 27, 2015, the City Council adopted Ordinance No. 1896 thereby approving Development Agreement No. DA 15-01 for the Specific Plan. The Development Agreement is between the City of Upland and Lewis Land Developers, LLC. The Development Agreement addresses such items as the terms and duration of the agreement; transfers and assignments of the agreement; liability; development provisions; processing of entitlements, permits and approvals; and obligations of all parties for such items as development fees, phasing and installation of public improvements and benefits to be provided by the owner, developer and the City. The current Development Agreement is set to expire on July 27, 2020.

Per Section 3.5.2 of the existing Development Agreement (DA 15-01), the procedure for proposing and adopting an amendment to the Agreement shall be the same as the procedure required for entering into the Agreement in the first instance. The current Development Agreement was processed per Upland Municipal Code Section 17.50.030 (Review Authority) which required that the City Council take action on all Development Agreement applications after considering the recommendation of the Planning Commission and Development Services Director.

DISCUSSION/ANALYSIS

As mentioned above the current development is set to expire on July 27, 2020. More specifically, per Section 2.3 of the recorded Development Agreement, the current Development Agreement will expire at 11:59 p.m. on the fifth (5th) anniversary of the effective date, which is July 27, 2020, unless it is extended by the City Council. However, the term of Development Agreement would automatically be extended for five (5) additional years upon the Developer's recordation a final tract map for the project prior to expiration of the initial five (5) year term (July 27, 2020) and then also be extended for an additional five (5) years if the Developer or a merchant builder has pulled building permits for a minimum of 50% of the residential units in the project prior to expiration of the tenth (10th) year of the term. The total term of the Agreement shall not exceed fifteen (15) years. To date, a final tract map has not been recorded nor has the Developer nor has a merchant builder pulled any building permits. Therefore, an extension is being requested by Lewis Land Developers, LLC.

In addition to Section 2.3 discussed above, Section 4.2.1 of the originally approved Development Agreement, read as follows:

4.2.1 Development Agreement Fee. Provided the Agreement has not been terminated under Sections 2.3 or 2.4, DEVELOPER agrees to pay to CITY, on or before December 16, 2017, the amount of \$350,000 as a Development Agreement Fee. The CITY shall make every attempt to use the Development Agreement Fee within 12 months after payment by the DEVELOPER to purchase a new fire apparatus for the CITY. CITY agrees that payment of the Development Impact Fee shall be a full credit against and completely satisfy DEVELOPER's obligations for payment of the CITY's Fire Impact Fee for a maximum of 350 dwelling units in the in the Project (currently \$432 per dwelling unit).

On December 16, 2016, the City and the Developer agreed to enter into the First Operating memorandum (Exhibit "E").in accordance with Section 3.5.4 of the Agreement to revise Section 4.2.1 as worded above to (i) phase the payment of the Development Agreement Fee and to (ii) remove the requirement that the City make every attempt to use the Development Agreement Fee within 12 months after payment to purchase new fire apparatus for the City Fire Department.

Section 4.2.1 now reads as follows:

4.2.1. Provided the Agreement has not been terminated under Sections 2.3 or 2.4, DEVELOPER agrees to pay CITY, the amount of \$350,000 as a Development Agreement Fee as follows: (i) \$175,000 on December 16, 2016, and (ii) \$175,000 on June 30, 2017. The CITY may use the Development Agreement Fee for any public purpose at its discretion. CITY agrees that payment of the Development Impact Fee ("DIF") may be credited by DEVELOPER as a DIF Credit either (i) against the CITY's Fire Impact Fee to completely satisfy DEVELOPER's obligations for payment of the CITY's Fire Impact Fee for a maximum of 350 dwelling units in the Project (currently \$432 per dwelling unit), or (ii) if the CITY ceases collection of the Fire Impact Fee by reason of the annexation to SBCFD, then against another DIF charged to the Project.

The two required payments of \$175,000 referenced above have been paid to the City. These payments were placed in the City's General Fund and disbursed on the basis of need.

On January 15, 2020, Lewis Land Developers, LLC, submitted a Preliminary Review Application for the proposed development of 192 residential units comprised of 116 2-story detached condominium units and 76 3-story attached condominium units within The Enclave at Upland Specific Plan area. The proposal also includes a centralized recreation area comprised of a pool and spa, small recreation building, and open space play lot.

A Preliminary Review Application is the first step in the formal planning entitlement process. The Preliminary Review Application is submitted prior to submitting the formal planning entitlement applications and includes a meeting with the project's representatives (e.g., sponsor, agent, and architect) and staff. Staff's preliminary review will ensure that it meets the applicable requirements as well as development and design-related criteria. A Preliminary Review Application does not guarantee the

approval of any formal planning entitlement applications, nor can staff assure approval.

The Preliminary Review Application provides a one-on-one opportunity for the staff to outline the specific zoning issues, permits and procedures (e.g., Design Review, Site Plan, and Tentative Tract Map) associated with the project. Staff will also provide and review the appropriate permit application packet, submittal checklist, timelines and fees. Preliminary Review Applications that are submitted early in the project stage can help ensure that the project meets necessary requirements and avoids costly delays.

It is most likely that the formal planning entitlements submittal and approval process will extend past the current deadline specified in Development Agreement No. 15-01 which is July 27, 2020. In discussion with Lewis Land Developers, LLC, as they pursue their planning entitlements, they will continue to allow the RV Spa business interim use of the property during the entitlement process, as they understand the sales tax benefit to the City of their operation, and they will continue to work with the RV Spa business owner and the City on possible relocation of their business within the City of Upland.

Staff finds the following City interests that would be achieved with the approval of the proposed Amendment. The Amendment would:

- Continue to encourage development in the western portion of Upland, consistent with The Enclave at Upland Specific Plan, which will provide additional revenues to the City, and completion of key infrastructure.
- Extend the term of the Development Agreement for an additional year to allow the developer additional time to obtain City approvals and develop the property.
- Allow the continued interim use of the property by the RV Spa business during the entitlement process which is a sales tax benefit to the City from that business operation.
- Allow the City and Lewis Land Developers, LLC, additional time to work with the owner of the RV Spa business on possible relocation of their business within the City of Upland.

On this basis, staff supports the proposed Development Agreement Amendment.

FINDINGS

Pursuant to Upland Municipal Code Section 15.50.080 (Findings), the following findings are required to be made for the Development Agreement Amendment:

- a. The Development Agreement will provide clear and substantial benefits to the City and its residents.

FACT: The applicant has previously paid to the City two payments of \$175,000. These payments were placed in the City's General Fund and disbursed on the basis of need. In addition, as consideration for the City's approval and performance of its obligations set forth in this Agreement, the Developer is required to pay the City a development impact fee in the sum of \$18,111.00 per residential dwelling unit as part of the Project. With potentially 192 residential units proposed this fee equals \$3,477,312.00 (192 x \$18,111.00/unit). The development impact fee is imposed by the City on a new or proposed development project to pay for all or a portion of the costs of providing public services to the new development.

In addition, a park area measuring 0.83 acres is provided in PA-5 and may include a tot-lot, picnic area, barbeque area, exercise stations, and a grassy open space.

- b. The Development Agreement complies with applicable policies and regulations set forth in the Zoning Ordinance, other City ordinances, the General Plan and any other applicable community or specific plan.

FACT: The Enclave at Upland Specific Plan was approved in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan. The Specific Plan represents an expansion of the residential neighborhood approved and under construction just west of the project site (Harvest Specific Plan).

The Enclave at Upland Specific Plan allows up to 350 single family attached and/or detached homes. The standards, design guidelines, and development parameters unique to The Enclave at Upland are provided in the Specific Plan document, and it acts as the "zoning code" for the project.

- c. The Development Agreement complies with the requirements of California Government Code Sections 65864 et seq.

FACT: The Development Agreement assists the Developer with reducing the economic costs of development by providing assurance to the Developer that

they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

- d. The Development Agreement will promote the public health, safety, and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or improvements in the vicinity of the subject project.

FACT: On July 13, 2015, the City Council certified the project's Mitigated Negative Declaration for The Enclave at Upland Specific Plan. The Mitigated Negative Declaration was prepared for the project pursuant to the California Environmental Quality Act Guidelines. Based on the Initial Study/Mitigated Negative Declaration completed, it was determined that the project would not have a significant effect on the environment. The Mitigated Negative Declaration includes a Mitigation Monitoring Program, which will ensure the completion of required mitigation measures for the project.

- e. The Development Agreement will be compatible with the uses allowed in, and the regulations that apply to, the zone in which the subject property is located.

FACT: The proposed uses, development standards and design guidelines contained in Chapters 2 and 3 of The Enclave at Upland Specific Plan are tailored to guide the development of the proposed uses on site, and ensure that new development implements the vision of The Enclave at Upland Specific Plan. Standards and guidelines address permitted uses; the placement; height and orientation of the buildings; parking; open space provisions; circulation and access; and architectural and landscape design.

- f. The Development Agreement will not cause adverse effects to the orderly development of property or the preservation of property values in the City.

FACT: The orderly and measured build-out of the Project will allow for the absorption of the new development into the community and the integration of the Project into the community.

- g. The Development Agreement will further important Citywide goals and policies that have been officially recognized by the City Council.

FACT: The development agreement is consistent with the General Plan, and its goals, objectives, policies and programs. Furthermore, The Enclave at Upland

Specific Plan is consistent with and supportive of the goals and policies of the City of Upland General Plan in that multi-family residential projects should, through the application of state-of-the-art site planning techniques, provide an efficient, desirable residential environment for the inhabitants of the project and enrich the visual quality of the City.

- h. The Development Agreement will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

FACT: In addition to providing Development Impact Fees of over \$3,000,000 and associated plan check/permit fees for potentially 192 residential units, related fees to the City will also include plan check and permit fees for the construction of infrastructure. Also, the project will increase property tax revenue to the City by increasing the assessed value of the property upon completion of the project.

CEQA

The California Environmental Quality Act (CEQA) requires analysis of agency approvals of discretionary "Projects." A "Project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed Project is a project under CEQA.

State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) provides that when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are new significant environmental effects due to a change in the project or circumstances, or there is new information of substantial importance as identified in CEQA Guidelines Section 15162(a)(3). On July 13, 2015, the City Council approved Resolution No. 6287 thereby adopting the Mitigated Negative Declaration and Mitigation Monitoring Program for The Enclave at Upland Specific Plan project (SCH No. 2015061026). Potential environmental impacts of The Enclave at Upland Specific Plan project were analyzed as part of the MND. The proposed Amendment to the Development Agreement provides an extension to July 27, 2021, of the terms of the Development Agreement and there is no development proposal for the property at this time and its underlying zoning designation will remain unchanged. The amendment to the DA will not result in any new impacts; therefore, no further environmental review is required pursuant to CEQA Section 15162.

NOTIFICATION

Pursuant to Title 17, Land Use Code, Section 17.46.020, Notice of Hearing, a public hearing notice has been mailed to all 40 property owners within 300 feet as listed on the San Bernardino County Real Property Tax Assessment rolls and has been published in the Daily Bulletin at least 10 days prior to the hearing. This agenda item has been provided to the applicant and its representative through posting of the agenda packet on the City's website.

RECOMMENDED ACTION

Staff recommends that the Planning Commission:

1. Find that the Project requires no further environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations); and
2. Adopt a Resolution recommending that the City Council approve the Amendment to Development Agreement No. 15-01 for The Enclave at Upland Specific Plan, thereby extending the term to July 27, 2021; and
3. Recommend that the City Council introduce an Ordinance approving the Amendment to The Enclave at Upland Specific Plan Development Agreement.

ATTACHMENTS

Attachment A: Planning Commission Resolution
Attachment B: Draft City Council Ordinance Amending Development Agreement No. 15-01
Attachment C: Amendment to Development Agreement No. 15-01
Attachment D: 2015 Approved/Recorded Development Agreement
Attachment E: First Operating Memorandum

Exhibit A – Draft Resolution



ATTACHMENT "A"

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND RECOMMENDING CITY COUNCIL APPROVAL OF THE AMENDMENT TO DEVELOPMENT AGREEMENT NO. 15-01 THEREBY EXTENDING THE TERM OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF UPLAND AND LEWIS LAND DEVELOPERS, LLC FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN

The City of Upland Planning Commission hereby resolves as follows:

Section 1. Background.

1. On July 27, 2015, the City Council adopted Ordinance No. 1896 approving the Development Agreement with Lewis Land Developers, LLC for The Enclave at Upland Specific Plan Project; and,
2. Adam Collier, representing Lewis Land Developers, LLC, submitted a request to extend the term of the Development Agreement by and between the City of Upland and Lewis Land Developers, LLC, for a one (1) year period; and,
3. The potential environmental impacts of the proposed amendment to the development Agreement have been previously addressed in full compliance with the provisions of the California Environmental Quality Act (CEQA) and its Guidelines, and no further environmental analysis is required prior to the approval of the proposed amendment because:
 - a) The environmental impacts of The Enclave at Upland Specific Plan Project have been fully analyzed by The Enclave at Upland Specific Plan Mitigated Negative Declaration (MND) approved by Resolution No. 6287 by the City of Upland City Council on July 13, 2015.
 - b) The proposed amendment does not proposed any change in the previously approved project or any change which could potentially result in either a direct or indirect physical change in the environment, the proposed amendment will not result in new potentially significant environmental effect.
 - c) None of the conditions described in CEQA Guidelines Sections 15162 or 15164 which would call for the preparation of a Subsequent or Mitigated Negative Declaration Addendum, would occur as a result of the proposed amendment, and
4. The Planning Commission held a public hearing on March 25, 2020, to consider the Applicant's request for an amendment to extend the term of Development

Agreement No. 15-01. The Planning Commission, after staff analysis of the same, independently reviewed and analyzed reports and declarations which became a part of the record of this decision; and

5. The Planning Commission made its decision to recommend approval of the amendment in light of the record as a whole as set forth in these findings; and
6. The Planning Commission, in recommending approval of the amendment, of which these findings are a part, did so through the exercise of their independent judgment and review after finding substantial evidence, in light of the record as a whole, to support the proposed amendment; and
7. The Planning Commission has made its decision to recommend approval of this amendment in the light of all the testimony and evidence presented at or prior to the close of the noticed public hearing, including letters, reports, comments, analyses, etc., which the Planning Commission after review and comment by its staff critically reviewed, corrected, and augmented where necessary, as set forth in the record and procedural findings on this Project.

Section 2. Findings.

Pursuant to Upland Municipal Code Section 15.50.080 (Findings), the following findings are required to be made for the Development Agreement:

- a. The Development Agreement will provide clear and substantial benefits to the City and its residents.

FACT: The applicant has previously paid to the City two payments of \$175,000. These payments were placed in the City's General Fund and disbursed on the basis of need. In addition, as consideration for the City's approval and performance of its obligations set forth in this Agreement, the Developer is required to pay the City a development impact fee in the sum of \$18,111.00 per residential dwelling unit as part of the Project. With potentially 192 residential units proposed this fee equals \$3,477,312.00 (192 x \$18,111.00/unit). The development impact fee is imposed by the City on a new or proposed development project to pay for all or a portion of the costs of providing public services to the new development.

In addition, a park area measuring 0.83 acres is provided in PA-5 and may include a tot-lot, picnic area, barbeque area, exercise stations, and a grassy open space.

- b. The Development Agreement complies with applicable policies and regulations set forth in the Zoning Ordinance, other City ordinances, the General Plan and any other applicable community or specific plan.

FACT: The Enclave at Upland Specific Plan was approved in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan. The Specific Plan represents an expansion of the residential neighborhood approved and under construction just west of the project site (Harvest Specific Plan).

The Enclave at Upland Specific Plan allows up to 350 single family attached and/or detached homes. The standards, design guidelines, and development parameters unique to The Enclave at Upland are provided in the Specific Plan document, and it acts as the "zoning code" for the project.

- c. The Development Agreement complies with the requirements of California Government Code Sections 65864 et seq.

FACT: The Development Agreement assists the Developer with reducing the economic costs of development by providing assurance to the Developer that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

- d. The Development Agreement will promote the public health, safety, and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or improvements in the vicinity of the subject project.

FACT: On July 13, 2015, the City Council certified the project's Mitigated Negative Declaration for The Enclave at Upland Specific Plan. The Mitigated Negative Declaration was prepared for the project pursuant to the California Environmental Quality Act Guidelines. Based on the Initial Study/Mitigated Negative Declaration completed, it was determined that the project would not have a significant effect on the environment. The Mitigated Negative Declaration includes a Mitigation Monitoring Program, which will ensure the completion of required mitigation measures for the project.

- e. The Development Agreement will be compatible with the uses allowed in, and the regulations that apply to, the zone in which the subject property is located.

FACT: The proposed uses, development standards and design guidelines contained in Chapters 2 and 3 of The Enclave at Upland Specific Plan are tailored to guide the development of the proposed uses on site, and ensure that new development implements the vision of The Enclave at Upland Specific Plan. Standards and guidelines address permitted uses; the placement; height

and orientation of the buildings; parking; open space provisions; circulation and access; and architectural and landscape design.

- f. The Development Agreement will not cause adverse effects to the orderly development of property or the preservation of property values in the City.

FACT: The orderly and measured build-out of the Project will allow for the absorption of the new development into the community and the integration of the Project into the community.

- g. The Development Agreement will further important Citywide goals and policies that have been officially recognized by the City Council.

FACT: The development agreement is consistent with the General Plan, and its goals, objectives, policies and programs. Furthermore, The Enclave at Upland Specific Plan is consistent with and supportive of the goals and policies of the City of Upland General Plan in that multi-family residential projects should, through the application of state-of-the-art site planning techniques, provide an efficient, desirable residential environment for the inhabitants of the project and enrich the visual quality of the City.

- h. The Development Agreement will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

FACT: In addition to providing Development Impact Fees of over \$3,000,000 and associated plan check/permit fees for potentially 192 residential units, related fees to the City will also include plan check and permit fees for the construction of infrastructure. Also, the project will increase property tax revenue to the City by increasing the assessed value of the property upon completion of the project.

Section 3. Decision.

Based on the testimony received by the Planning Commission and the background and findings set forth above, the Planning Commission recommends that the City Council of the City of Upland approve the Amendment to Development Agreement No. 15-01 extending the term of the Development Agreement.

Section 4. Inconsistency.

If any section, division, sentence, clause, phrase or portion of this resolution or the document in the record in support of this resolution is determined by a court of competent jurisdiction to be invalid, unenforceable, unconstitutional or otherwise void, that determination shall not affect the validity of the remaining sections, divisions, sentences, clauses, phrases of this resolution.

Section 5. Certification.

The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this Resolution, and shall cause this Resolution and their certification to be entered in the Book of Resolutions of the Planning Commission of the City.

PASSED, APPROVED and ADOPTED this 25th day of March, 2020.

Robin Aspinall, CHAIR

ATTEST:

Robert D. Dalquest, SECRETARY

I HEREBY CERTIFY that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of Upland at a regular adjourned meeting thereof held on the 25th day of March, 2020, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Robert D. Dalquest, SECRETARY

**Exhibit B – Draft City Council Ordinance
Amending Development Agreement No.15-01**



ATTACHMENT "B"

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF UPLAND APPROVING AND ADOPTING AN AMENDMENT TO DEVELOPMENT AGREEMENT NO. DA 15-01 FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN PROJECT, BETWEEN THE CITY OF UPLAND AND LEWIS LAND DEVELOPERS, LLC, EXTENDING THE TERM OF THE DEVELOPMENT AGREEMENT FROM JULY 27, 2020, TO JULY 20, 2021, FOR A 19.04-ACRE SITE LOCATED AT ON THE SOUTH SIDE OF FOOTHILL BOULEVARD, THE NORTH SIDE OF 11TH STREET, WITH CENTRAL AVENUE TO THE EAST, AND DEWEY AVENUE TO THE WEST (ASSESSOR'S PARCEL NUMBERS 1007-051-02, 03, 04 AND 1007-041-05, 06, 07)

WHEREAS, Lewis Land Developers, LLC has requested approval of an amendment to Development Agreement No. 15-01 between the City and Lewis Land Developers, LLC, for The Enclave at Upland Specific Plan Project, which Agreement was originally executed in 2015, by and between the City and Lewis Land Developers, LLC; and,

WHEREAS, the City of Upland (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Chapter 17.50 of the City of Upland Municipal Code; and

WHEREAS, if approved, the proposed amendment to the Development Agreement ("proposed DA Amendment") would extend the term of the Development Agreement by one (1) year to July 27, 2021, and all other aspects of the Development Agreement would remain the same; and,

WHEREAS, the potential environmental impacts of the proposed DA Amendment have been previously addressed in full compliance with the provisions of the California Environmental Quality Act (CEQA) and its Guidelines, and no further environmental analysis is required prior to the approval of the proposed DA Amendment because:

- a) The environmental impacts of The Enclave at Upland Specific Plan Project, have been fully analyzed by the Mitigated Negative Declaration (MND) certified by the City Council on July 13, 2015; and,
- b) The proposed Development Agreement Amendment does not propose any change in the previously approved project or any change which could potentially result in either a direct or indirect physical change in the environment, the proposed DA Amendment will not result in new, potentially significant environmental effects; and,
- c) None of the conditions described in CEQA Guidelines Sections 15162, 15163, or 15164 which would call for the preparation of a Subsequent or

Supplemental MND, or an MID Addendum, would occur as a result of the proposed DA Amendment; and,

WHEREAS, the Planning Commission held a public hearing on March 25, 2020 on the proposed Amendment to the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, the City Council held a duly noticed public hearing on _____, 2020 on the proposed Amendment to the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public.

WHEREAS, the record of proceedings on which the City Council's decision is based is located at City Hall for the City of Upland, located at 460 N. Euclid Avenue, Upland, California and the custodian of record of proceedings is the City Clerk.

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

SECTION 1. Recitals.

The above recitations are true and correct and are adopted as the findings of the City Council.

SECTION 2. Findings.

Per Upland Municipal Code Chapter 17.50.080 the City Council of the City of Upland makes the following additional findings:

- a. The Development Agreement will provide clear and substantial benefits to the City and its residents.

FACT: The applicant has previously paid to the City two payments of \$175,000. These payments were placed in the City's General Fund and disbursed on the basis of need. In addition, as consideration for the City's approval and performance of its obligations set forth in this Agreement, the Developer is required to pay the City a development impact fee in the sum of \$18,111.00 per residential dwelling unit as part of the Project. With potentially 192 residential units proposed this fee equals \$3,477,312.00 (192 x \$18,111.000/unit). The development impact fee is imposed by the City on a new or proposed development project to pay for all or a portion of the costs of providing public services to the new development.

In addition, a park area measuring 0.83 acres is provided in PA-5 and may include a tot-lot, picnic area, barbeque area, exercise stations, and a grassy open space.

- b. The Development Agreement complies with applicable policies and regulations set forth in the Zoning Ordinance, other City ordinances, the General Plan and any other applicable community or specific plan.

FACT: The Enclave at Upland Specific Plan was approved in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan. The Specific Plan represents an expansion of the residential neighborhood approved and under construction just west of the project site (Harvest Specific Plan).

The Enclave at Upland Specific Plan allows up to 350 single family attached and/or detached homes. The standards, design guidelines, and development parameters unique to The Enclave at Upland are provided in the Specific Plan document, and it acts as the "zoning code" for the project.

- c. The Development Agreement complies with the requirements of California Government Code Sections 65864 et seq.

FACT: The Development Agreement assists the Developer with reducing the economic costs of development by providing assurance to the Developer that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code Sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

- d. The Development Agreement will promote the public health, safety, and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or improvements in the vicinity of the subject project.

FACT: On July 13, 2015, the City Council certified the project's Mitigated Negative Declaration for The Enclave at Upland Specific Plan. The Mitigated Negative Declaration was prepared for the project pursuant to the California Environmental Quality Act Guidelines. Based on the Initial Study/Mitigated Negative Declaration completed, it was determined that the project would not have a significant effect on the environment. The Mitigated Negative Declaration includes a Mitigation Monitoring Program, which will ensure the completion of required mitigation measures for the project.

- e. The Development Agreement will be compatible with the uses allowed in, and the regulations that apply to, the zone in which the subject property is located.

FACT: The proposed uses, development standards and design guidelines contained in Chapters 2 and 3 of The Enclave at Upland Specific Plan are tailored to guide the development of the proposed uses on site, and ensure that new development implements the vision of The Enclave at Upland Specific Plan. Standards and guidelines address permitted uses; the placement; height

and orientation of the buildings; parking; open space provisions; circulation and access; and architectural and landscape design.

- f. The Development Agreement will not cause adverse effects to the orderly development of property or the preservation of property values in the City.

FACT: The orderly and measured build-out of the Project will allow for the absorption of the new development into the community and the integration of the Project into the community.

- g. The Development Agreement will further important Citywide goals and policies that have been officially recognized by the City Council.

FACT: The development agreement is consistent with the General Plan, and its goals, objectives, policies and programs. Furthermore, The Enclave at Upland Specific Plan is consistent with and supportive of the goals and policies of the City of Upland General Plan in that multi-family residential projects should, through the application of state-of-the-art site planning techniques, provide an efficient, desirable residential environment for the inhabitants of the project and enrich the visual quality of the City.

- h. The Development Agreement will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

FACT: In addition to providing Development Impact Fees of over \$3,000,000 and associated plan check/permit fees for potentially 192 residential units, related fees to the City will also include plan check and permit fees for the construction of infrastructure. Also, the project will increase property tax revenue to the City by increasing the assessed value of the property upon completion of the project.

SECTION 3. CEQA.

The City Council does hereby find that the Development Agreement Amendment is not subject to CEQA because it is not a "project" as defined in Title 14, California Code of Regulations Section 15378.

SECTION 4. Amendment.

Pursuant to Government Code Section 65868, the City Council does hereby approve and adopt the "Amendment to the Development Agreement for The Enclave at Upland Specific Plan Project" by and between the City of Upland and Lewis Land Developers, LLC, which is attached as Exhibit A, and incorporated herein by reference. The Mayor is hereby authorized to execute said agreement on behalf of the City of Upland.

SECTION 5. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 6. Effective Date.

This Ordinance shall take effect and be in force thirty (30) days after its passage.

SECTION 7. City Clerk's Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance; and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED on this ____ day of _____ 2020.

Mayor of the City of Upland

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ORDINANCE JURAT

STATE OF CALIFORNIA)

COUNTY OF SAN BERNARDINO) ss.

CITY OF UPLAND)

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that Ordinance No. _____ had its first reading on _____, 2020 and had its second reading on _____, 2020, and was duly and regularly adopted by the City Council of the City of Upland at a regular meeting thereof held on the _____ day of _____, _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY CLERK

(SEAL)

**Exhibit C – Amendment to Development
Agreement No. 15-01**



RECORDING REQUESTED BY:

City of Upland
460 North Euclid Avenue
Upland, CA 91786

WHEN RECORDED, MAIL TO:

Keri Johnson, City Clerk
City of Upland
460 North Euclid Avenue
Upland, CA 91786

Exempt from Recording Fees:
Government Code §§27383, 6103
City of Upland

This Space for Recorder's Use Only

**Amendment to Development Agreement for the Enclave at Upland
Specific Plan Project, Between the City of Upland and Lewis Land
Developers, LLC**

**AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE ENCLAVE AT UPLAND
SPECIFIC PLAN, BETWEEN THE CITY OF UPLAND AND LEWIS LAND
DEVELOPERS, LLC**

This Amendment to the Development Agreement for the Enclave at Upland Specific Plan (the "Amendment"), is entered into between the City of Upland, a municipal corporation ("City"), and Lewis Land Developers, LLC ("Owner"). City and Owner are referred to collectively within this Amendment as the "Parties."

RECITALS

- A. Owners owns the real property with the City (the "Property") which is described and shown on Exhibit "A" to this Amendment. The Property represents 19-acre developable area located on the south side of Foothill Boulevard and bounded by Dewey Way, 11th Street, and Central Avenue (Assessor's Parcel Numbers 1007-051-02, 03, 04 AND 1007-041-05, 06, 07) known as the "Enclave at Upland Specific Plan" (the "Project").
- B. In 2015, City and Owner, entered into a Development Agreement for the Project.
- C. The parties have now agreed to an extension of the Term of the Development Agreement, pursuant to Section 2.3 thereof.
- D. This extension was approved by the City Council by ordinance on _____, 2020.

AGREEMENT

The Parties agree as follows:

- 1. Pursuant to Section 2.3 of the Development Agreement, the term of the Development Agreement is extended for one year, to and including July 27, 2021.

Except as modified, all provisions of the development Agreement shall remain in full force and effect.

This Amendment has been signed as of _____, 2020, the effective date of the ordinance approving this Amendment.

[Signatures on following page]

SIGNATURE PAGE TO AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE ENCLAVE AT UPLAND SPECIFIC PLAN PROJECT, BETWEEN THE CITY OF UPLAND AND LEWIS LAND DEVELOPERS, LLC

"City"

City of Upland
a municipal corporation

By _____
Mayor

"Owner"

Lewis Land Developers, LLC

By _____
Name _____
Title _____

Attest:

Keri Johnson, City Clerk

Approve as to Form

City Attorney

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 _____, 2020, before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name
is subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity, and that by his/her/their
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.

Signature _____

(seal)

EXHIBIT A

Legal Description of the Proper

Real property in the City of Upland, County of San Bernardino described as follows:

HAFIF REVOCABLE TRUST PARCELS:

PARCEL 1:

THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE WEST 20 FEET OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL 2:

LOT 23 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOTS 11 AND 22, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOT 11, THE INTEREST IN THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES BY DEED RECORDED JANUARY 17, 1929 IN BOOK 453, PAGE 297, OFFICIAL RECORDS.

CLAREMONT PROFESSIONAL BUILDING PARCELS:

PARCEL NO. 4:

THE WEST 68 FEET OF THE EAST 136 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 5:

THE SOUTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF THE COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 6:

THE WEST 20 FEET OF THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12, OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

APN: 1007-041-05-0-000 (Affects: Parcel 2)
1007-041-06-0-000 (Affects: Lot 22 of Parcel 3)
1007-051-02-0-000 (Affects: Parcels 4, 5 and 6)
1007-051-03-0-000 (Affects: Parcel 1)
1007-051-04-0-000 (Affects: Lot 11 of Parcel 3)

**Exhibit D – 2015 Approved/Recorded
Development Agreement**



BOB DUTTON

Assessor - Recorder - Clerk
222 W. Hospitality Lane, 1st. Floor
San Bernardino, CA 92415-0022
(855) REC-CLRK

SAN San Bernardino Recorder

P Counter

Receipt # 3112188 09/15/15 05:02PM

Description	Fee
Document 020150402218	\$0.00
Agreement	
No Fee	\$0.00

Total Amount Due \$0.00

Total Paid

Thank You
PLEASE RETAIN THIS FOR YOUR RECORDS

R. Carter

Recorded in Official Records, County of San Bernardino

9/15/2015



BOB DUTTON
ASSESSOR - RECORDER - CLERK

5:00 PM
EM
SAN

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

P Counter

Doc#: 2015-0402218

Titles: 1 Pages: 54



Fees	0.00
Taxes	0.00
Other	0.00
PAID	<u>50.00</u>

City of Upland
Office of the City Clerk
P. O. Box 460
Upland, CA 91785-0460

(Exempt from Recording Fees Pursuant
to Government Code Section 27383)

SPACE ABOVE FOR RECORDER'S USE ONLY

THE ENCLAVE AT UPLAND

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the 27th day of July, 2015 ("Agreement Date"), by and between LEWIS LAND DEVELOPERS, LLC, a Delaware limited liability company, (the "DEVELOPER") and the CITY OF UPLAND, a municipal corporation, organized and existing under the laws of the State of California (hereinafter "CITY"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code and Article XI, Section 2 of the California Constitution.

RECITALS

This Agreement is predicated upon the following facts:

A. These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. The parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

B. The Development Agreement Legislation authorizes the CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other matters: ensure high quality development in accordance with comprehensive plans; provide certainty in the approval of development projects so as to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to conditions of approval, in order to strengthen the public planning process and encourage private participation in comprehensive planning and reduce the private and public economic costs of development; assist in the financing of public improvements; protect against initiatives, moratorium (processing or development) and other actions inconsistent with the Project anticipated by this Agreement; assure reimbursement of DEVELOPER in accordance with the terms of this Agreement and state and federal law; and provide for economic assistance to DEVELOPER for the entitlements authorizing development related improvements.

C. DEVELOPER has the legal right to purchase from the OWNER (defined in Section 1.21 below) that certain real property within the City of Upland, the County of San Bernardino, State of California, "Property," as more particularly described in Attachment "1-A", [including a plat graphically depicting the Property in Attachment "1-B"] respectively. DEVELOPER and OWNER are parties to that certain Purchase and Sale Agreement dated August 29, 2013 and Amendment thereto dated October 11, 2013 (collectively the "PSA") for that purchase and sale of the Property by OWNER to DEVELOPER. DEVELOPER desires to develop the Property in accordance with the provisions of this Agreement, the Existing Regulations and those regulations of other agencies exercising jurisdiction upon the project and has the right under the PSA and approval of OWNER to enter into this Agreement with the City.

D. DEVELOPER has applied for, and the CITY has agreed to, this Agreement in order to create a beneficial project and a physical environment that will conform to and complement the goals of the CITY, create a development project sensitive to human needs and values, facilitate efficient traffic circulation and municipal infrastructure, and develop the Property. As part of the process of granting this entitlement, a Mitigated Negative Declaration ("MND") was prepared for the Project in order to identify and mitigate any significant

environmental effects arising from the Development and has otherwise carried out all requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended.

E. The following actions were taken with respect to this Agreement and the Project:

1. On June 24, 2015 following a duly noticed and conducted public hearing, the City Planning Commission recommended that the City Council approve this Agreement, the General Plan Amendment, the Zone Change, Airport Land Use Compatibility Review, and the Specific Plan by adoption of its Resolution No. 4814 and by making the findings of fact thereto;

2. On July 13, 2015 after a duly noticed public hearing and pursuant to CEQA, the City Council certified the Project MND by adoption of its Resolution No. 6287 and by making the findings of fact thereto;

3. On July 13, 2015 after a duly noticed public hearing, the City Council determined that the provisions of this Agreement are consistent with the General Plan of the CITY by adoption of Ordinance No. 1896 and by making the findings of fact thereto;

4. On July 13, 2015 after a duly noticed public hearing, the City Council approved the Specific Plan by adoption of its Ordinance No. 1894 and by making the findings of fact thereto;

5. On July 13, 2015 after a duly noticed public hearing, the City Council introduced Ordinance No. 1895 approving and authorizing the General Plan Amendment and Zone Change and on July 27, 2015 the City Council adopted the Ordinance, a copy of which is on file with the City Clerk of the CITY, and by making the findings of fact thereto;

6. On July 13, 2015 after a duly noticed public hearing, the City Council introduced Ordinance No. 1896 approving and authorizing the execution of this Agreement and on July 27, 2015 the City Council adopted the Ordinance, a copy of which is on file with the City Clerk of the CITY, and by making the findings of fact thereto

F. The CITY has engaged in extensive studies and review of the potential impacts of the Project under the California Environmental Quality Act and all applicable Existing Regulations, as well as the various potential benefits to the CITY by the development of the Project and concluded that the Project is in the best interests of the CITY.

G. In consideration of the substantial public improvements and public benefits to be provided by DEVELOPER and the Project, as described in this Agreement, and in further consideration of the benefits that will inure to the CITY in conjunction with the implementation of the Project, and in order to strengthen the public financing and planning process and reduce the economic costs of development, by this Agreement, the CITY intends to give, and by this Agreement gives, DEVELOPER assurance that DEVELOPER can proceed with the Development of the Project for the Term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with the Development Plan, the Development Approvals and the Existing Regulations. In reliance on the CITY's covenants in this Agreement concerning the Development of the Property, and the rights afforded DEVELOPER hereunder, DEVELOPER has agreed to provide those benefits described in this Agreement and DEVELOPER has and will in the future incur substantial indebtedness, as well as costs in planning, engineering, site preparation and the construction and installation of major infrastructure and facilities that DEVELOPER would not incur but for the covenants of CITY provided in this Agreement.

H. Pursuant to Section 65867.5 of the Development Agreement Legislation, the City Council has found and determined that: (i) this Agreement and the Development Approvals implement the goals and policies of the CITY's General Plan and the Specific Plan, provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within the CITY, (ii) this Agreement and the Project are in the best interests of and not detrimental to the public health, safety and general welfare of the CITY and its residents; (iii) adopting this Agreement is consistent with the CITY's General Plan and constitutes a present exercise of the CITY's police power; and (iv) this Agreement is being entered into pursuant to and in compliance with the requirements of the Development Agreement Legislation.

I. The CITY and DEVELOPER agree that it may be beneficial to enter into operating memoranda, additional agreements or to modify this Agreement with respect to the implementation of the separate components of the Project when more information concerning the details of each component may become available, and that this Agreement should expressly allow for such contemplated operating memoranda, additional agreements or modifications to this Agreement.

J. The CITY and OWNER acknowledge and agree that if DEVELOPER does not complete the purchase of the Property in accordance with the PSA that OWNER shall have the right but not the obligation to assume all of the rights and obligations of DEVELOPER under this Agreement as more particularly set forth in Section 2.5 below.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement, the parties agree as follows:

1. **Definitions.**

Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Agreement, or any supplemental agreement, and any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the word "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

1.1 **Intentionally Omitted.**

1.2 **"Authorizing Ordinance"** means Ordinance No. 1896 of the CITY approving this Agreement.

1.3 **"CITY"** means the City of Upland, a California municipal corporation, duly organized and existing under the Constitution and laws of the State of California, and all of its officials, employees, contractors, agents, consultants, agencies and departments and assignees or successors.

1.4 **“City Council”** means the duly elected and constituted city council of the CITY.

1.5 **“DEVELOPER”** means Lewis Land Developers LLC, a Delaware limited liability company and others who subsequently are assigned the rights and obligations of DEVELOPER pursuant to Section 2.5 hereof.

1.6 **“Develop” or “Development” or “Developing”** means the improvement of the Property for purposes consistent with the Development Plan, including, without limitation: subdividing, grading, the construction of Public Infrastructure Improvements related to both the On-Site and Off-Site Improvements, the construction of structures and buildings and the installation of landscaping and recreational features, all in accordance with the phasing provided for in the Development Plan.

1.7 **“Development Agreement Legislation”** means Sections 65864 through 65869.5 01 the California Government Code as it exists on the Effective Date.

1.8 **“Development Impact Fees” or “DIF”** means, individually and in the aggregate, the CITY’s adopted development impact fees or other development related fees at the Multi-Family Land Use rate however titled or identified as set forth in the CITY’s Municipal Code, ordinance or resolution and in effect as of the Effective Date as listed in Attachment “2”.

1.9 **“Development Plan”** means the plan for Developing the Property contained in this Agreement, the CITY of Upland General Plan as amended on August 28, 2006 and as thereafter amended in accordance with Section 3.6 hereof, the Development Approvals identified in this Agreement, and any Future Development Approvals. Each of the documents enumerated in the foregoing, except for the Future Development Approvals, is expressly incorporated by reference as if fully set forth herein and are necessary to interpret and apply this Agreement. Each of the documents are maintained in the official records of the CITY and shall be utilized whenever required to interpret or apply this Agreement.

1.10 **“Development Approval(s)”** means those Development Approvals of the City Council and other governmental agencies and other actions and agreements related to the Project and the Development Plan described generally in Recital E and listed in Attachment “3”.

1.11 **“Development Transferee”** means a person or entity that expressly assumes obligations under this Agreement pursuant to Section 2.5 hereof.

1.12 **“Effective Date”** means July 27, 2015, the date of the second introduction, reading, and final approval of the Authorizing Ordinance by the City Council.

1.13 **“End User”** means a buyer, assignee, or transferee of one or more individual subdivided unit(s)/lot(s) of the Project obtaining such unit(s) or lot(s) for the purpose of occupying or using such lots or units for its own purposes and not for use in the trade or business of further development or further subdivision. The term “End User” includes, but is not limited to, any homeowner’s association, merchant’s association, or like entity formed with respect to the Property which owns some interest in the Property, homeowners, tenants, commercial building owners and owners of multi-family units.

1.14 **“Existing Regulations”** means, except as otherwise provided herein, those ordinances, rules, regulations and official policies of the CITY, other than the

Development Plan Approval(s), in effect on the Effective Date, which (i) are not inconsistent with the Development Plan Approval(s) and this Agreement; and (ii) govern the permitted uses of the Property, building heights, the size of structures, the density and intensity of use of the Property, the timing, fees, and conditions to Development, exactions, assessments, the procedures for, and types of, permits required for the Development, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Property and the infrastructure required for the Development.

1.15 **"Final Tract Map(s)"** means any final tract map recorded by Owner consistent with the Tentative Maps.

1.16 **"Future Development Approvals"** means those entitlements and approvals that are: (a) made in accordance with Section 3.7 of this Agreement; and (b) requested by the CITY or DEVELOPER in order to authorize the Development to occur upon the Property in a manner consistent with the Development Plan Approval(s). By way of enumeration, and not limitation, the Future Development Approvals include actions such as development permits, development plan review, tentative maps, final maps, use permits, variances, grading permits, occupancy permits and building permits.

1.17 **"General Plan Amendment"** means GPA No. 15-01 approved by the CITY on July 27, 2015.

1.18 **"Merchant Builder"** means a buyer, assignee, or transferee (other than the DEVELOPER, OWNER or any End User) of one or more individual lots or tracts of the Project, acquiring such lots or tracts for the purpose of engaging in the business of developing, improving, or using such lots or tracts for development.

1.19 **"Off-Site Improvements"** mean those Public Infrastructure Improvements not physically located on the Property.

1.20 **"On-Site Improvements"** mean those Public Infrastructure Improvements located on the Property.

1.21 **"OWNER,"** for purposes of this Agreement is HERBERT HAFIF and KAY F. HAFIF, Trustees of the HERBERT HAFIF AND KAY F. HAFIF REVOCABLE TRUST dated October 4, 2010, (as to Parcels 1, 2 and 3 of the Property); and CLAREMONT PROFESSIONAL BLDG., INC., a California corporation, (as to Parcels 4, 5, and 6 of the Property) and others who subsequently are assigned the rights and obligations of OWNER pursuant to Section 2.5 hereof.

1.22 **"Planning Commission"** means the duly appointed and constituted planning commission of the CITY.

1.23 **"Project"** means the development of the Property as set forth in the Development Approval(s).

1.24 **"Project MND"** means that Mitigated Negative Declaration prepared for the Project, as certified by the City Council on July 27, 2015.

1.25 **"Property"** means that certain real property described in Attachments "1-A" and "1-B" hereof.

1.26 **“Public Financing”** means the issuance of bonds and related provision of funds under the Mello-Roos Community Facilities Act for acquisition of public facilities in accordance with the terms and conditions of the Public Facilities Finance Plan.

1.27 **“Public Infrastructure Improvements”** mean all Off-Site Improvements and On-Site Improvements) which are required by the CITY in the Development Approvals to be constructed by DEVELOPER and dedicated to the CITY.

1.28 **“Specific Plan”** means The Enclave at Upland Specific Plan, approved by the CITY on July 27, 2015, and as thereafter amended from time to time in accordance with Section 3.6 of this Agreement. Any reference in this Agreement to a Planning Area shall mean the specified Planning Area as the same is set forth in the adopted Specific Plan unless specifically referenced to pertain to another instrument.

1.29 **“Term”** means the time frames set forth in Section 2.3.

1.30 **“Zone Change”** means Zone Change No. 15-01 approved by the CITY on July 27, 2015.

2. **General Provisions.**

2.1 **Binding Covenants.** Except as otherwise provided for in this Agreement, the provisions of this Agreement to the extent permitted by law, constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the parties, all successors in interest to the parties hereto to the extent provided for in this Agreement.

2.2 **Interest of Owner/Interest of Developer.** OWNER holds fee title to all of Property and DEVELOPER has a legal interest in the Property pursuant to the PSA.

2.3 **Term.** This Agreement shall become effective on the Effective Date. Unless terminated pursuant to Section 2.4, with respect to the Property, this Agreement shall terminate at 11:59 p.m. on the fifth (5th) anniversary of the Effective Date (the “Term”). The termination shall occur subject to specific extensions, force majeure, revisions, and termination provisions of this Agreement. The Term shall automatically extend for five (5) additional years upon DEVELOPER’s recordation of a Final Tract Map for the Project prior to expiration of the initial five (5) year Term and then extend for an additional five (5) years if DEVELOPER or a Merchant Builder has pulled building permits for a minimum of 50% of the residential units in the Project prior to expiration of the tenth (10th) year of the Term. The total Term of the Agreement shall not exceed fifteen (15) years. Notwithstanding the foregoing, this Agreement shall be terminable by DEVELOPER or assignable by DEVELOPER to OWNER under Section 2.5 below at any time before DEVELOPER obtains fee title to the Property under the PSA upon thirty (30) days prior written notice by DEVELOPER to CITY and OWNER. Further, this Agreement shall be terminable by CITY upon thirty (30) days prior written notice by CITY to DEVELOPER and OWNER if DEVELOPER either fails to obtain fee title to the Property from OWNER on or before December 15, 2017 (the “PSA Closing Date”) or if DEVELOPER and OWNER fail to execute and record the Development Agreement Assignment to complete the Permitted Owner Assignment in accordance with Section 2.5 below on or before the PSA Closing Date; provided if OWNER and DEVELOPER further amend the PSA to extend the PSA Closing Date, then that extended date shall replace December 15, 2017 for the foregoing purposes.

2.4 Termination. Termination of this Agreement shall not constitute termination of any land use entitlements approved for the Property, including but not limited to all conditions and mitigation means imposed as part of such entitlements, prior to the date of termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed before such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred before such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. To provide notice to all, and not as a condition of the effectiveness of a termination of this Agreement, the parties agree to execute and record terminations of or releases of this Agreement. This Agreement shall be deemed terminated and of no further effect, except for those covenants and agreements that expressly survive termination, upon the occurrence of any of the following events:

2.4.1 Termination pursuant to any specific provision of this Agreement, including, without limitation, a termination in the event of default;

2.4.2 Termination as to any portion of the Property upon completion of the total build-out of the Development pursuant to the terms of this Agreement and the CITY's issuance of all required occupancy permits and acceptance of all dedications and improvements required to complete Development;

2.4.3 Termination upon the entry after all appeals have been exhausted of a final judgment or issuance of a final order directed to the CITY as a result of any lawsuit filed against the CITY to set aside, withdraw, or abrogate the approval of the City Council of this Agreement;

2.4.4 Termination upon the expiration of the Term as set forth in Section 2.3;

2.4.5 Termination by DEVELOPER or CITY in accordance with Section 2.3 above; or

2.4.6 Termination as PROVIDED IN Section 2.5.3.

2.5 Transfers and Assignments. DEVELOPER is under contract to purchase the Property from OWNER. If DEVELOPER does not complete its purchase of the Property, and provided the Agreement has not been terminated under Section 2.4 above, then effective upon the execution and recordation by OWNER and DEVELOPER of the Development Agreement Assignment attached hereto as Attachment "4", CITY approves of OWNER as the assignee of DEVELOPER in accordance with Section 2.5.1 below and CITY agrees to release DEVELOPER from all duties and obligations under this Agreement in accordance with Section 2.5.2 below and no further action by OWNER or DEVELOPER or CITY is required under this Section 2.5 in connection with such assignment and release whereupon OWNER shall assume and be the sole owner and beneficiary of all of the rights and obligations of DEVELOPER under this Agreement and in and to the Development Approvals (the "Permitted Owner Assignment").

2.5.1 **Assignment.** In addition to the Permitted Owner Assignment, the DEVELOPER shall, after DEVELOPER acquires fee title to the Property from OWNER, have the right to assign this Agreement in whole or in part to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement, on the condition that prior to the completion of construction of the Public Infrastructure Improvements in connection with the Development, any such assignment shall be made in strict compliance with the following conditions:

(i) No assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of a fee interest in the Property (provided that no such partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code Section 66410, *et seq.*))

(ii) At least thirty (30) days prior to any such assignment, DEVELOPER shall provide the CITY with written notice thereof along with written evidence and documentation demonstrating the experience, capability, competence and financial ability of the proposed buyer, transferee, or assignee to carry out and complete Development of the Project in accordance with the terms of this Agreement.

(iii) Prior to the completion of such assignment, the DEVELOPER shall provide the CITY with an executed agreement (the "**Assignment and Delegation Agreement**"), by the purchaser, transferee or assignee providing that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of DEVELOPER under this Agreement as to that portion of the Property purchased. The Assignment and Delegation Agreement shall include any conditions reasonably required by the CITY to ensure that the public Infrastructure Improvements are completed as required.

Any assignment of this Agreement not made in strict compliance with the foregoing conditions shall constitute a Default (defined in Section 8.11 below) under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee of any fee interest in the Property to execute the Assignment and Delegation Agreement required by Subsection 2.5.1(iii), the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such Assignment and Delegation Agreement is executed. A change in fifty percent (50%) or more of the controlling interests of any DEVELOPER shall be deemed a sale of the Property for the purposes of this Subsection 2.5.1. No such assignment shall release DEVELOPER from the obligations hereof. Notwithstanding the foregoing, DEVELOPER shall not be required to submit the evidence and documentation called for in Subsection 2.5.1(ii), if the assignment of this Agreement is to an Affiliate of the DEVELOPER. For purposes of this Section 2.5.1, "**Affiliate**" shall mean an entity which controls, is controlled by, or is under common control with the DEVELOPER. Such assignment of the Agreement to an Affiliate of DEVELOPER shall not release the DEVELOPER from its obligations hereunder.

Notwithstanding the foregoing, the DEVELOPER may execute mortgages, deeds of trust, sales and leaseback, or any other form of encumbrance or conveyance required for any reasonable method of financing from a bank, savings and loan, insurance company, or similar institutional lender, for the purposes of securing loans of funds to be used for financing the direct or indirect costs of the Development (including land development costs, reasonable and customary developer fees, loan fees and costs, and other normal and customary project costs). The execution of any of the above-described financing

documents shall not be considered an assignment of this Agreement for purposes of this Section 2.5.1. No parties shall receive any rights or incur any obligations under this Agreement by reason of the foreclosure of such mortgage, deed of trust, or deed in lieu of foreclosure, without assuming in writing the DEVELOPER's obligations of this Agreement.

Notwithstanding the foregoing, the execution of a lease with a lessee who will occupy building space constructed by the DEVELOPER, or the transfer to a purchaser of a residential unit, shall not be considered a transfer or assignment for the purposes of this Section 2.5.1.

2.5.2 Release of Liability.

(i) **Release of Transferor.** Notwithstanding any assignment of this Agreement, excepting the Permitted Owner Assignment, in the event of a transfer by DEVELOPER or OWNER to a Merchant Builder or other transferee, the transferor shall continue to be obligated under this Agreement as to that portion of the Property sold, transferred or assigned unless such transferor is given a release in writing by City Council. City Council's decision to approve such a release shall be based upon the financial status of assignee, the professional development expertise of assignee and the City Council's reasonable determination that such assignee has the financial strength and professional development expertise to perform the duties and obligations described in this Agreement which are the subject of the assignment and release.

(ii) **Partial Release of Purchaser, Transferee or Assignee of Lot.** A purchaser, transferee or assignee of a Lot, that has been finally subdivided as provided for in the Development Plan and for which a site plan for development of the Lot has been finally approved pursuant to the Development Plan and for which all obligations for Development under this Agreement have been completed, may submit a request in writing, to CITY to release said Lot from the obligations under this Agreement relating to all other portions of the Property. Within thirty (30) days of such request, City Director of Planning and Development shall review, and if the above site plan condition is satisfied shall approve the request for release and modify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.5.2 shall cause or otherwise effect, a release of OWNER from its duties and obligations under this Agreement as to the remainder of the Property (exclusive of the released Lot).

2.5.3 Termination of Agreement with Respect to Individual Residential Lots Upon Sale to Public and Completion of Construction. The restrictions and requirements of Subsection 2.5.1 shall not apply to the sale or lease (for a period longer than one year) of any (i) individual residential lot and/or any (ii) residential condominium unit that is described on a condominium plan approved by the CITY as defined in Civil Code Section 1351(e), individually (and not in "bulk") to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any such individual residential lot or condominium unit and such individual residential lot or residential condominium unit shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions as applicable:

(i) The individual residential lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user;

(ii) If residential condominium, the condominium unit is described on a condominium plan approved by the CITY and individually (and not in bulk) sole or leased (for a period longer than one year) to a member of the public or other ultimate user; and

(iii) A final certificate of occupancy or similar certificate has been issued for a residential dwelling unit on the individual residential lot or for a residential condominium unit.

2.5.4 **Security for Release.** With respect to Section 2.5.2(i)(d), DEVELOPER or the transferee or assignee shall, as and when required by the Development Approval(s), post a bond, letter of credit or corporate guarantee (collectively "Security") reasonably acceptable to CITY as security for the construction of the Public Infrastructure Improvements described in the Development Plan, the Project and the Development Approvals. The amount of the Security will be proportionately reduced as the various improvements are completed and accepted pursuant to routine CITY protocols.

3. **Development Provisions.**

The CITY, as primary consideration for entering into this Agreement, deserves to have certainty as to the timing, phasing and implementation of the Public Infrastructure Improvements. In order for DEVELOPER to obtain the rights described in Section 3.1, DEVELOPER must, subject to Sections 9.3 and 9.4, maintain compliance with the times for performance described in the Development Plan and Development Approvals. DEVELOPER's failure to do so shall be a default under Section 8.1.

3.1 **Vesting.**

3.1.1 **Project.** Subject to the terms of this Agreement, DEVELOPER has the vested right to implement the Development pursuant to the Development Approvals and the Existing Regulations. The Project shall remain subject to all Future Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided expressly in this Agreement, the intensities identified in this Agreement, building heights, building sizes, lot sizes, infrastructure standards and specifications, densities and types of development shall be those provided for in the Specific Plan, and the CITY shall have the right to control the Development in accordance with the Existing Regulations and the Development Approval(s). Except as otherwise expressly specified in this Agreement, the Development Approval(s) shall control the design and development, and review and approval of all Future Development Approvals and all On-Site Improvements, Off-Site Improvements and appurtenances in connection therewith. Except to the extent it has been amended, canceled, modified or suspended in accordance with the terms of this Agreement, this Agreement shall be enforceable by DEVELOPER or its assignees notwithstanding any change in any Existing Regulation.

3.1.2 **Limits on Development.** The California Supreme Court held in Pardee Construction Company v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the parties to address certain limits on a CITY's ability to condition, restrict or regulate a development allowed a later adopted initiative to restrict the development. This Agreement cures that deficiency by expressly addressing the timing for the Development, the vested rights afforded by this Agreement and the scope of the CITY's Reserved Authority. Except as expressly set forth in the Development Approval(s), regardless of any future enactment, by initiative, or otherwise, DEVELOPER shall have the discretion to develop the Development in

such order, and at such rate, in one phase or in multiple phases, at such times as DEVELOPER deems appropriate within the exercise of its subjective business judgment. Specifically, the CITY agrees that DEVELOPER shall be entitled to apply for and receive the Future Development Approvals and to develop and use the Property at any time, provided that such application is made and such development occurs in accordance with this Agreement, the other Development Plan Approval(s) and the Existing Regulations. The CITY covenants that no Existing Regulation purports to limit the scope, rate or timing of Development or alter the sequencing of Development in a manner inconsistent with the Development Approval(s). No future amendment of any CITY law, or future adoption of any CITY law or other action, that purports to limit the scope, rate or timing of Development on the Property or alter the sequencing of the Development, in a manner inconsistent with the Development Approval(s), whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by CITY on the number of dwellings units or amount of commercial development that may be built in any particular year on any portion of the Property other than as expressly permitted by this Agreement.

3.1.3 **Entitlements, Permits and Approvals – Cooperation.**

3.1.3.1 **Entitlement Processing.** All of DEVELOPER's applications for the Future Development Approvals and for amendments to this Agreement, to the Development Approval(s), and to the Future Development Approvals shall be processed by the CITY in accordance with the CITY's regular procedures, and CITY agrees that it will not unreasonably condition, delay, or withhold its approval of the Future Development Approvals or amendments to this Agreement, to the Development Approval(s), or to the Future Development Approvals.

3.1.3.2 **Further Mitigation.** In connection with the issuance of any Future Development Approvals which are subject to review under CEQA, unless required under the California Public Resource Code and the Guidelines promulgated thereunder, the CITY shall not impose any environmental land use project alternatives or mitigation measures on DEVELOPER or the Property beyond those referenced in the Development Approval(s) unless there are changes to the Project warranting additional mitigation measures as required by CEQA.

3.1.3.3 **Other Permits.** The CITY further agrees to reasonably cooperate with DEVELOPER, at no cost to the CITY, in securing any County, State and Federal permits or authorizations which may be required in connection with Development of the Property. Except as expressly provided for in this Agreement, this cooperation shall not require any economic contribution or similar consideration by the CITY.

3.1.3.4 **Litigation.** If any legal action is instituted by a third party or other governmental entity or official challenging the Development Approval(s) or Future Development Approvals, the parties hereby agree to cooperate in jointly defending such action. Notwithstanding the foregoing, DEVELOPER shall be responsible for payment of all of CITY's costs, including, but not limited to, attorneys' fees, costs, expert witnesses and the like. DEVELOPER shall reimburse CITY its costs within thirty (30) calendar days of receipt of any invoice by DEVELOPER from CITY. CITY may invoice DEVELOPER on a periodic basis or may elect to submit a final aggregate invoice to DEVELOPER.

3.1.3.5 **Acquisition of Off-Site Property.** CITY and DEVELOPER acknowledge some of the Off-Site Improvements required under this Agreement

may be located on property which is neither owned nor controlled by DEVELOPER. The CITY shall not postpone or refuse approval of a Future Development Approval because the DEVELOPER or any Development Transferee has failed to acquire off-site property required for the construction or installation of Off-Site Improvements. To the extent the CITY, DEVELOPER or a Development Transferee does not have sufficient title or interest to permit the Off-Site Improvements to be made at the time the Future Development Approval is filed with the CITY, the applicable DEVELOPER or Development Transferee shall make a good faith effort to acquire the required property. If the DEVELOPER or Development Transferee is unable to acquire the required property after exercising reasonable and diligent good faith efforts to acquire such property, the CITY agrees to cooperate with DEVELOPER to acquire same, and will in good faith consider taking all actions legally available to CITY to acquire the property. DEVELOPER shall reimburse CITY for all reasonable costs and expenses incurred by CITY in connection with such acquisition, including without limitation, all attorneys' fees, expert witness fees, filing fees and all other court costs; engineering, surveying, site inspection costs; environmental study and review costs; appraisal costs; property remediation costs; relocation assistance benefits; title insurance; payment of just compensation, including loss of goodwill, relocation expenses, damages, interest and/or attorneys' fees determined in court or in settlement negotiations; and any and all reasonable costs and expenses of the CITY, its attorneys or agents, in any way relating to the acquisition or attempt to acquire the property.

3.1.3.6 Subdivision Maps. All subdivision maps that subdivide real property subject to this Agreement shall be deemed to have a term that is concurrent with this Agreement but in no instance of shorter duration than is provided for by law.

3.2 Reserved Authority.

3.2.1 Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property.

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

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

(c) Regulations governing construction standards and specifications including, without limitation, CITY'S Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code that are applied uniformly and on a city-wide basis to all development projects of a similar type as the Project that are not inconsistent with similar regulations and standards in the Development Plan.

(d) Regulations that are not in conflict with the Development Plan but that are reasonably necessary to protect the public health and safety of the residents of the Project or the immediate community from an Exigent Event (as defined in Section 3.2.3). To the extent possible, any such regulations shall be applied and construed so as to provide DEVELOPER with all of the rights and assurances provided under this Agreement. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(e) Regulations that are in conflict with the Development Plan provided DEVELOPER has given written consent to the application of such regulations to development of the Property.

3.2.2 State and Federal Laws and Regulations. Subject to compliance with the requirements of this Section 3.2.2, in the event any State or Federal law or regulation that is enacted or adopted after the Effective Date of this Agreement, or any other action of any governmental entity that is not under CITY'S control, prevents or precludes compliance with any provision of this Agreement, then that provision of this Agreement shall be modified or suspended only to the extent and for the time necessary to achieve compliance with that law, regulation or other governmental action and the remaining provisions of this Agreement shall continue in full force and effect and the parties shall negotiate in good faith for such amendments to this Agreement as may be necessary to achieve its intent, notwithstanding the existence of such law or regulation or other governmental action. Upon the repeal of any such law, regulation or other governmental action or on the occurrence of any other circumstance that removes the effect of the same on this Agreement, provided this Agreement is otherwise still in effect, the provisions of this Agreement shall be automatically restored to their full original effect and any amendment to this Agreement that the parties have entered into as a result of any such law, regulation or other governmental action, shall terminate.

3.2.3 Regulation for Health and Safety. Nothing in this Agreement shall be construed to be in derogation of CITY's police power to protect the public health and safety from a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate and interim action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services involving the Property or the immediate community ("Exigent Event"). Upon discovery of an Exigent Event, CITY may suspend this Agreement for a period reasonably necessary to analyze, evaluate and develop a response to the Exigent Event provided City agrees to preserve the rights of DEVELOPER under this Agreement to the maximum feasible extent while responding to the Exigent Event.

3.2.4 Judicial Review. Based on the foregoing, if DEVELOPER judicially (including by way of a reference proceeding) challenges the application of a future rule, regulation or policy as being in violation of this Agreement and as not being applied in accordance with the Reserved Authority, DEVELOPER shall bear the burden of alleging that such rule, regulation or policy is inconsistent with the Existing Regulations and the Development Approval(s) and the CITY shall thereafter bear the burden of proof in establishing by a preponderance of the evidence that such regulation was adopted pursuant to and in accordance with the Reserved Authority and was not applied by the CITY in violation of this Agreement.

3.2.5 Assurance to DEVELOPER. CITY agrees that it shall not, further restrict or limit the development of the Property except in in strict accordance with the Reserve Authority, which exercise of the Reserve Authority as defined herein shall not be considered to be a violation of this Agreement by CITY. CITY agrees that CITY will issue grading, building and occupancy permits if the Development contemplated in the requested permit substantially conforms to the Developing Approval(s), including all relevant conditions of approval, and the Existing Regulations.

3.3 Reserved.

3.4 Consistent and Inconsistent Enactments.

3.4.1 **No Conflicting Enactments.** The CITY shall not enact a rule, regulation, ordinance, policy, permit or other measure (collectively "law"), nor take any action applicable to the Project or the Property, which governs the rate, timing, scope, intensity, use, density, manner, or sequencing of the Development, or any part thereof and which is inconsistent or in conflict with the Development Plan or the Development Approval(s). By way of enumeration, and not limitation, any law, action or inaction, whether by specific reference to the Project, this Agreement or otherwise, shall be considered to conflict if it:

3.4.1.1 Restricts the vested rights described in the Agreement or in any way limits or reduces the rate, timing, scope, intensity, use, density, manner, or sequencing of the Development or otherwise requires any reduction or increase in the number, size, height or square footage of lot(s), structures, buildings or other improvements, modifies the standards and specifications applicable to the infrastructure required for the Development or requires additional dedications, exactions, fees or mitigation other than that provided for in the Agreement;

3.4.1.2 Is adopted under Section 3.2 hereof, but is not uniformly applied by the CITY to all substantially similar development within the CITY; or

3.4.1.3 Imposes a new permit requirement or procedure not already part of the Existing Regulations.

3.4.2 **Consistent Enactments.** By way of enumeration and not limitation, the following types of enactments shall be considered consistent with this Agreement and Existing Regulations and not in conflict:

3.4.2.1 Changes in the phasing of the Development pursuant to an application from DEVELOPER and as approved by the CITY; and

3.4.2.2 Any enactment authorized by this Agreement.

3.4.3 **Consistency Between This Agreement, the Development Approval(s) and Existing Regulations.** To the extent a conflict exists or develops between the Existing Regulations and the Development Approval(s), the Development Approval(s) shall be controlling. To the extent a conflict exists or develops between the combination of this Agreement and the Existing Regulations and any other Development Approval(s), this Agreement shall be controlling.

3.5 **Amendment of Development Agreement.**

3.5.1 **Initiation of Amendment.** This Agreement may be amended or cancelled in whole or in part only by written mutual consent of all parties or their respective successors or assigns with respect to their respective portions of the Property in the manner provided for in Government Code Section 65868. This provision shall not limit any remedy of cancellation or termination for default of CITY or DEVELOPER as provided by this Agreement.

3.5.2 **Procedure.** Except as set forth in Section 3.5.5 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

3.5.3 **Consent.** Any amendment to this Agreement shall require the written consent of both the CITY and the DEVELOPER whose portion of the Property would be

materially affected by the amendment. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing, signed by duly authorized representatives of the CITY and the applicable DEVELOPER, and adopted pursuant to legal requirements imposed on CITY. An amendment of this Agreement does not require the consent of an End User, Merchant Builder or Development Transferee. To the extent the consent of the DEVELOPER that did not initiate the amendment is necessary, that DEVELOPER shall not unreasonably withhold its consent. Notwithstanding the above, that DEVELOPER shall consent to the amendment on or before the thirtieth (30th) day after receipt of notice of the initiation of the amendment if, as determined in that DEVELOPER's reasonable business judgment, that proposed amendment will not have a material adverse impact on the Development of that DEVELOPER's portion of the Property.

3.5.4 Operating Memoranda. The parties acknowledge that refinements and further development of the Project may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Development Plan and with respect to those items covered in general terms under this Agreement. If and when the CITY and an Owner or Owners mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, and such are not materially inconsistent with the Development Approval(s), they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications without amendment to this Agreement through one or more operating memoranda mutually approved by the City Manager, or designee, on behalf of the CITY and by any corporate officer or other person designated for such purpose in a writing signed by a corporate officer on behalf of that respective DEVELOPER, which, after execution, shall be attached hereto as addenda and become a part hereof. Unless otherwise required by law or by the Development Approval(s), no such changes, adjustments, or clarifications shall require prior notice or hearing, public or otherwise. Nothing herein shall authorize the delegation of authority to the City Manager, or designee, contrary to California or Federal Law.

3.5.5 Changes in Development Approval(s). Unless otherwise required by law, neither an amendment to the Development Approval(s) or the approval of a Future Development Approval shall require an amendment of this Agreement under Section 3.5.1 above, unless the amendment to the Development Approval(s) or Future Development Approval:

3.5.5.1 Materially alters the permitted uses of the Property as a whole in a manner inconsistent with the procedures established in the Specific Plan;

3.5.5.2 Increases the density or intensity of use of the Property as a whole in a manner materially inconsistent with the procedures established in the Specific Plan; or

3.5.5.3 Increases the maximum height and size of permitted buildings. Notwithstanding anything to the contrary herein, an amendment of this Agreement is not required if DEVELOPER pursues entitlements, permits or approvals pursuant to a waiver of vested rights as provided for in Section 4.1.

3.5.5.4 Modifies, in an amount CITY, by its sole discretion deems substantial any exaction, payment or contribution by CITY and/or DEVELOPER; or

3.5.6 Qualifies as a project pursuant to the California Environmental Quality Act (CEQA)

3.6 **Future Amendments to Development Approval(s)**. The following rules apply to future amendments to the Development Approval(s), except that Section 3.5 shall control with respect to an amendment of this Agreement and Section 3.7 shall control with respect to Future Development Approvals:

3.6.1 **DEVELOPER's Written Consent**. It is contemplated by the parties that mutually agreed upon amendments to the Development Approval(s) may be necessary. Any amendments to the Development Approval(s) to which DEVELOPER does not agree in writing shall not apply to the Property or the Project while this Agreement is in effect.

3.6.2 **Concurrent Development Agreement Amendment**. Any other Development Plan amendment requiring amendment of this Agreement, as provided for in Section 3.5.5 hereof, shall be processed concurrently with an amendment to this Agreement in the manner required by law.

3.6.3 **Effect of Amendment**. Except as expressly set forth within this Agreement, an amendment of the Development Approval(s) will not alter, affect, impair or otherwise impact the rights, duties and obligations of the parties under this Agreement. To the extent an amendment to the Development Approval(s) is approved in accordance with Section 3.6.1, the amendment shall constitute for all purposes a Development Approval and shall be treated as if it were in existence on the Effective Date.

3.7 **Future Development Approvals**.

3.7.1 **Exercise of CITY Discretion**. In connection with any Future Development Approval or any other actions which the CITY is expressly permitted to make under this Agreement relating to the Project, the CITY shall exercise its discretion or take action in a manner which complies and is consistent with the Development Approval(s) and the Existing Regulations.

3.7.2 **Concurrent Development Agreement Amendment**. Any Future Development Approval requiring amendment of this Agreement, as provided for in Section 3.5.5 hereof, shall be processed concurrently with an amendment to this Agreement.

3.7.3 **Effect of Future Development Approvals**. Except as expressly set forth within this Section 3.7, a Future Development Approval will not alter, affect, impair or otherwise impact the rights, duties and obligations of the parties under this Agreement. To the extent a Future Development Approval is approved in accordance with Sections 3.7.1 and 3.7.2, the Future Development Approval shall constitute for all purposes a Development Approval and shall be treated as if it were in existence on the Effective Date.

4 **Obligations of the Parties**.

4.1 **Benefits to CITY**. The direct and indirect benefits the CITY (including, without limitation the existing and future residents of the CITY) will receive from the approval of the Development Approval(s) generally include, but are not limited to, the items identified below. Nothing in the Development Approval(s) or otherwise obligate DEVELOPERS to construct the Development or any part thereof. DEVELOPER further reserves the right to waive, in whole or

in part, the vested rights afforded by the Development Approval(s), and pursue entitlements, permits or approvals other than those provided for in the Development Approval(s).

4.1.1 **Project Benefits.** In addition to the above benefits, the Project will provide those benefits identified in the Development Plan and Development Approval(s).

4.2 **Development Fees.**

4.2.1 **Development Agreement Fee.** Provided the Agreement has not been terminated under Sections 2.3 or 2.4, DEVELOPER agrees to pay to CITY, on or before December 16, 2017, the amount of \$350,000 as a Development Agreement Fee. The CITY shall make every attempt to use the Development Agreement Fee within 12 months after payment by DEVELOPER to purchase a new fire apparatus for the CITY. CITY agrees that payment of the Development Impact Fee shall be a full credit against and completely satisfy DEVELOPER's obligations for payment of the CITY's Fire Impact Fee for a maximum of 350 dwelling units in the Project (currently \$432 per dwelling unit).

4.2.2 **Fee Rates.** The parties hereby agree that as regards the Project as reflected by the Development Plan, the DEVELOPER and any successor, except as otherwise provided in this Agreement, shall, except as otherwise expressly provided herein for the DIF (defined below), be subject to all CITY fees, costs and assessments enacted, adopted, or imposed before or after the Effective Date; provided that DEVELOPER may elect to accept alternate opportunities as set forth herein.

4.2.3 **Processing and Application Fees.** Subject to the limitations in Section 3.1.3.1, DEVELOPER shall pay the application and processing fees customarily imposed on the type of entitlement sought at the rate, and in the amount, imposed by CITY pursuant to the fee schedule, resolution or ordinance applicable to all projects in the CITY and in effect at the time the application is deemed complete and accepted by CITY for action.

4.2.4 **Development Impact Fees for the Property.** The Development Impact Fees ("DIF") charged by the CITY on the Effective Date for Multi-Family Land Use as set forth in Attachment "2" to this Agreement shall be the DIF charged by City upon the DEVELOPER as regards the Development of the Project for the Term of the Agreement. The density range of the Project in the Specific Plan is commensurate with the density of the City's RM – Multiple Family Residential Zones, and therefore the Multi-Family Land Use DIF rate shall apply. Following the initial five (5) year Term, any new DIF adopted by the City not listed on Attachment "2" that is applied uniformly on a city-wide basis to all development projects of a similar type as the Project (except any Fire Impact Fee) may be imposed upon any of the Project. Further, any DIF imposed on any of the Project as set forth in Attachment "2" is subject to upward adjustment after the initial five (5) year Term of this Agreement provided such increase is applied uniformly on a city-wide basis to all development projects of a similar type as the Project. Upon the expiration of the Term of this Agreement under Section 2.3, or any earlier termination of this Agreement under Section 2.4, the then existing DIF (both new DIF and DIF increases) will apply. DIF payments shall be made to the CITY at the time of the issuance of building permits. DEVELOPER or any Development Transferee or Merchant Builder may, during the Term of this Agreement, elect to pay, or apply DIF Credits (as defined in Section 4.2.5) to pay, any or all of the DIF for the Project in the amounts set forth in Attachment "2" prior to the expiration of the Term of this Agreement as a pre-payment of the DIF required for building permits issued for the Project after the termination of this Agreement.

4.2.4.1 **Park Fee for the Property.** Upon the issuance of a building permit for a dwelling unit or commercial structure within the Development, the DEVELOPER shall pay the CITY's Park Fee at the rate specified for that building permit in effect on the Effective Date as set forth in Attachment "2".

4.2.5 **DIF Improvement Credits.** CITY shall credit against DEVELOPER's required DIF (a "DIF Credit"), the actual costs DEVELOPER incurs to install any Public Infrastructure Improvements identified in any of the following as eligible for DIF Credit: (i) CITY's Capital Improvement Plan adopted pursuant to Government Code Section 66002 or any other similar statute, (ii) the Development Plan, or (iii) this Agreement or any amendment thereto. To the extent DEVELOPER's actual costs are less than the amount of the DIF Credit for that DIF fee component, DEVELOPER shall pay such difference to CITY within ten (10) days after CITY's written demand for payment. In the event DEVELOPER's actual costs exceed the DEVELOPER's fees, DEVELOPER shall pay all costs without reimbursement or payment to or from CITY except as set forth in this Agreement. The sums so credited shall not be subject to reimbursement to DEVELOPER except as set forth in this Agreement, and shall be the sole cost of DEVELOPER. Any DIF Credits not used by DEVELOPER, any Development Transferee, or any Merchant Builder within the Project during the Term may continue to be used within the Project after the Term as credit against the then existing DIF or transferred to other Projects in the City subject to the terms of Section 4.2.6 below.

4.2.5.1 **Minimum Requirements for Public Infrastructure Improvements.** Every Public Infrastructure Improvement constructed by DEVELOPER shall be constructed to industry-standards. All materials shall be of a size, length, type and nature that is consistent with the CITY's anticipated master plan(s) that will regulate the specific improvement applicable to this geographic area that is to be accepted by or maintained by the CITY. For example, all trunk sewer lines shall conform to the sewer master plan; all street sections shall conform to the CITY's master plan of streets and highways, all water lines shall conform to the water utilities master plan. Any infrastructure item or capital improvement not listed is intended to be subject to the appropriate master plan and has been excluded merely for convenience and not in an effort to waive, release, defer or relieve the standard, or the obligation to construct such improvement, in any manner.

In the event of uncertainty or conflict between standards, the CITY shall have the sole and binding authority to specify the size, type, nature, length, or other characteristic of the infrastructure improvement, and which decision is not subject to appeal. DEVELOPER shall be solely responsible for complying with all local, County, State and Federal laws, including, but not limited to, environmental, labor, wage and NPDES requirements, at its own sole cost.

4.2.5.2 **Excess Credit/Reimbursement.** CITY, in Section 16.16.060 of its Municipal Code, has established criteria for the reimbursement of a developer for oversizing public improvements. City agrees that DEVELOPER is entitled to reimbursement for DIF collected by the CITY from all of the other property owners benefited by any Public Infrastructure Improvements identified in any of those documents listed in Section 4.2.5 as eligible for reimbursement or identified in Government Code Sections 66485 to 66489, inclusive, as eligible for reimbursement, which reimbursement shall be pursuant to a reimbursement agreement executed by DEVELOPER and CITY upon terms reasonably approved by DEVELOPER and CITY (the "Reimbursement Agreement"). The Reimbursement Agreement shall be for a term not less than 10 years from the date of approval and shall fairly apportion the cost of the subject Public Infrastructure Improvements between all of the benefitted property

owners. Such DIF so collected shall be paid to DEVELOPER in accordance with the terms of the Reimbursement Agreement.

4.2.6 **DIF Credit Transfers.** At the CITY's sole discretion, CITY may allow the DIF Credits to be transferred to other projects in the City, provided CITY's consent to transfers of DIF Credits to other residential projects in the City developed by DEVELOPER or an affiliate of DEVELOPER shall not be unreasonably withheld. The transferability of all DIF Credits shall terminate at the time this Agreement terminates. Any DIF Credits remaining after termination of this Agreement may only be used within the project.

4.3 **Related Real Property Conveyances: Conditions to Development Agreement.**

4.3.1 **Intent of the Parties.** The CITY and DEVELOPER agree that the entitlements, vesting and other rights that will allow DEVELOPER to develop the Project in accordance with the Development Approval(s), along with the timely completion and performance of the real estate transactions and the related agreements described hereafter are a material component of the consideration each party has relied upon in its respective decision to enter into this Agreement. DEVELOPER and the CITY, individually and collectively, represent that neither party would have entered into this Agreement but for these commitments. Termination of this Agreement terminates the obligation of the applicable party to perform any offsite acquisitions.

4.3.2 **Liens, Encumbrances and Environmental Conditions.** All real property offered for dedication to the CITY pursuant to this Agreement shall be free and clear of any and all matters of record require the direct payment of money (excluding all non-delinquent taxes and assessments), including but not limited to, deeds of trust and mechanic liens. The real property shall also be offered free of other encumbrances of record that would prevent the CITY from using such dedicated facility for its intended use as identified herein or as reasonably inferred as relating to the intended use. Further the real property shall be warranted, to the best of DEVELOPER's actual knowledge, to be free of any known environmental conditions that would prevent the real property from being used as intended by the CITY. DEVELOPER shall provide the CITY copies of all reports, investigations and analysis that discuss the environmental condition of the real property. In the event the real property which is to be offered as required by the Development Plan cannot be offered in the condition required by this Section 4.3.2, the DEVELOPER and CITY shall mutually cooperate to either cause the redesign of the applicable plan or the acquisition of the necessary real property.

4.4 **Public Financing.** CITY and DEVELOPER shall cooperate in the formation of any special assessment district, community facilities district or alternate financing mechanism to pay for the construction and/or maintenance and operation of public improvements required as part of the Development Plan and/or payment of any Development Impact Fees. Without limiting the generality of the foregoing, for the purposes of this paragraph, included within the definition of public improvements are street improvements, sewer improvements, drainage improvements, water improvements, other utility improvements, park improvements, trail improvements, pedestrian or bicycle improvements and open space. Further, without limiting the generality of the foregoing, for the purposes of this paragraph, included within the definition of fees is any Development Impact Fee imposed by any school district. CITY also agrees that, to the extent any such district or other financing entity is formed and sells bonds in order to finance such reimbursements, DEVELOPER may be reimbursed to the extent that DEVELOPER spends funds or dedicates land for the construction and/or maintenance and operation of public improvements. The special tax rate or assessment shall

not exceed CITY'S adopted policies regarding public financing. Nothing herein shall be deemed a commitment by CITY to adopt a resolution of formation to form any special assessment district, community facilities district or alternate financing mechanism, it being understood and agreed that such adoption and approval are legislative acts within the unencumbered discretion of CITY. In addition, nothing herein shall be deemed a commitment by DEVELOPER to vote for or otherwise approve the formation of any special assessment district, community facilities district or alternate financing mechanism, it being understood and agreed that DEVELOPER reserves all of its legal rights regarding formation of the same. As used herein, "cooperate" means working together in good faith to diligently process and consider the formation of any special assessment district, community facilities district or alternative financing mechanism. DEVELOPER agrees to pay all costs reasonably incurred by the CITY in the formation of any such public financing mechanism and shall fund a segregated account concurrent with DEVELOPER's petition for such public financing in an amount reasonably estimated by the CITY to pay all such formation costs.

4.5 Financing Plan. Without limiting the terms of Section 4.4 above, and in consideration for DEVELOPER's commitments under this Agreement to provide the Public Infrastructure Improvements, the CITY agrees to use best efforts to cause Public Financing of the type described in Section 4.4 in accordance with the terms and conditions contained in a Public Facilities Financing Plan ("**Financing Plan**") to be developed by the CITY and DEVELOPER for any of the Public Infrastructure Improvements eligible under Government Code Section 53313.5 for which DEVELOPER is not receiving reimbursement under Section 4.2.5.2, such that at the closing and issuance of bonds pursuant thereto, there will be deposited in an improvement account and made available to DEVELOPER for reimbursement of DEVELOPER's costs incurred in acquisition, construction and delivery of the Public Facilities Infrastructure Improvements and/or services referenced in the Financing Plan. The Public Facilities Financing Plan will detail the permissible use of the CFD proceeds which shall be, at all times, consistent with law and the industry standards regarding the use of such monies. Upon the receipt of DEVELOPER's petition to form a Community Facilities District ("**CFD**") in accordance with the Financing Plan, the CITY agrees to use reasonable, good faith efforts to promptly proceed with all the actions required to authorize such financing subject to all applicable laws, including Government Code Sections 53311 to 53368.3, inclusive, and all public hearing and validation requirements but the CITY makes no assurances by its execution of this Agreement that such CFD will be formed or any CFD financing will be authorized by the City Council. The term "**CFD Eligible**" as used in this Agreement means that the improvement is a facility included in Government Code Section 53313.5 as eligible to be financed by a CFD.

4.6 Advancing of Public Infrastructure Improvements.

4.6.1 Agreement to Advance. DEVELOPER, in consideration for CITY's performance pursuant to the terms of this Agreement, has agreed in the Development Approvals to install its fair share of public improvements. CITY considers such improvements to be the primary consideration supporting its decision to enter into this Agreement and, but for these improvements would not have entered into this Development Agreement.

4.6.2 Agency Cooperation: Regional Traffic Issue/Engineering. CITY agrees to reasonably cooperate with DEVELOPER in obtaining all permits from any State or Federal agencies as deemed necessary or desirable for the Project.

4.6.3 Public Improvements. The Project envisions substantial public improvements that will benefit the Project, the CITY and the region. The provision of the

improvements is understood to be a complicated undertaking requiring the cooperation of DEVELOPER, CITY and the community. To accomplish this Project the parties will collaborate on many facilities, while certain improvements will be the sole responsibility of a party. Each party anticipates that individual entitlements, approvals and regulations will further describe and dictate the actual construction, funding and maintenance of the public improvements and public facilities.

4.6.3.1 Public Infrastructure Improvement (Credit/Reimbursement). DEVELOPER shall, at its own sole cost and without contribution by CITY, construct all of the private and public improvements required by the Development Plan and the Development Approvals.

4.6.3.2 Public Infrastructure Improvements (Plans). All Public Infrastructure Improvements shall be constructed in accordance with CITY-approved plans and are subject to CITY's regular and routine plan review and public project acceptance criteria.

4.6.4 Timing of Public Infrastructure Improvements. DEVELOPER shall commence and pursue diligently to completion all Public Infrastructure Improvements described in this Agreement and the Development Approvals in time frames or phasing for the referenced facilities provided in the Development Approvals. As security for DEVELOPER's completion of the Public Infrastructure Improvements, DEVELOPER shall provide a Bond, Surety or a Corporate Security reasonably acceptable to the CITY prior to commencement of work pursuant to a CITY Subdivision Agreement.

4.7 Undergrounding of Utilities. DEVELOPER agrees to underground the existing electrical distribution system along Foothill Boulevard as part of the construction of the Project, in accordance with City Municipal Code Section 12.28, subject to DEVELOPER's rights, if any, under Section 12.28.040.B.

5 Indemnification. As a further material part of this Development Agreement, DEVELOPER agrees to indemnify, defend and hold harmless CITY, its officials, officers, employees, consultants, attorneys, and agents ("Indemnified Parties") from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever nature, including all costs of defense and attorneys' fees, and specifically including any alleged failure of the DEVELOPER or DEVELOPER'S contractors ("Indemnifying Party") to comply with the prevailing wage laws of the State of California. If CITY or any of the other Indemnified Parties is named as a party in any dispute arising from the failure of DEVELOPER or DEVELOPER'S contractors in connection with the responsibilities of DEVELOPER in carrying out the terms of this Agreement, or in particular the alleged failure to pay prevailing wages, DEVELOPER agrees that CITY and those other Indemnified Parties may appoint their own independent counsel, and DEVELOPER agrees to pay all attorneys' fees and defense costs of CITY and the other indemnified parties as billed, in addition to all other damages, fines, penalties, and losses incurred by CITY and those other indemnified parties as a result of the action. Each Indemnifying Party shall retain settlement authority with respect to any matter concerning that Indemnifying Party provided that prior to settling any such lawsuit or claim with respect that Indemnifying Party, the Indemnifying Party shall provide the CITY and the other Indemnifying Parties with a minimum ten (10) business days written notice of its intent to settle such lawsuit or claim. If the CITY or the other Indemnifying Parties, in their reasonable discretion, do not desire to settle such lawsuit or claim,

it may notify the applicable Indemnifying Party of the same, in which event the applicable Indemnifying Party may still elect to settle the lawsuit or claim as to itself, but the non-settling parties may elect to continue such lawsuit, at their cost and expense

DEVELOPER agrees to, at its own sole cost; adhere to all obligations that statute, regulation, ordinance and/or policy impose on this Agreement and the performances due hereunder.

6 **Relationship of Parties.** DEVELOPER is not the agent or employee of the CITY. The CITY and DEVELOPER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with the Project shall be construed as making the CITY and DEVELOPER joint ventures or partners.

7 **Periodic Review of Compliance with Agreement.**

7.1 **Periodic Review.** The Community Development Director shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by DEVELOPER with the terms of the Agreement.

7.2 **Good Faith Compliance.** During each periodic review, DEVELOPER shall submit an annual monitoring report ("Annual Monitoring Report"), in a form acceptable to the Community Development Director, within 30 days after written notice from the Planning Manager demonstrating DEVELOPER's good faith compliance with all the material terms of this Agreement. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. Upon completion of a periodic review, the Community Development Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by DEVELOPER with the terms of this Agreement and his or her recommended finding on that issue. If the City Council finds that DEVELOPER has not complied in good faith with the terms and conditions of this Agreement, the City Council may exercise its remedies under Sections 8.1 and/or 8.3.

7.3 **Failure to Conduct Annual Review.** The failure of the parties to conduct the annual review shall not constitute, or be asserted by DEVELOPER or CITY as a breach of this Agreement.

7.4 **Initiation of Review by City Council.** In addition to the annual review, the City Council may at any time initiate a review of this Agreement by giving written notice to DEVELOPER. The Notice must describe the specific issues which caused the CITY to question DEVELOPER'S good faith compliance and the evidence the CITY believes is necessary for the review. Within thirty (30) days following receipt of such notice, DEVELOPER shall submit evidence to the CITY Council of DEVELOPER's good faith compliance with this Agreement and such review and determination shall proceed in the same manner as provided for the annual review.

7.5 **Administration of Agreement.** Any final decision by the CITY staff concerning the interpretation and administration of this Agreement and Development of the Property in accordance herewith may be appealed by DEVELOPER first to the Planning Commission and thereafter to the City Council, provided that any such appeal shall be filed with

the City Clerk within thirty (30) days after DEVELOPER receives written notice that the staff decision is final all as pursuant to routine planning appeal procedures. The City Council shall render, at a noticed public hearing, its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed.

7.6 **Availability of Documents.** If requested and reimbursed for all costs, by DEVELOPER, the CITY agrees to provide to DEVELOPER copies of any documents, reports or other items reviewed, accumulated or prepared by or for the CITY in connection with any periodic compliance review by the CITY, provided DEVELOPER reimburses the CITY for all reasonable and direct costs and fees incurred by the CITY in copying the same. The CITY shall respond to DEVELOPER's request in accordance with the California Public Records Act.

8 **Events of Default: Remedies and Termination.** Unless amended as provided in Section 3.5, or modified or suspended pursuant to Section 3.2.2 or terminated pursuant to this Section 8, this Agreement is enforceable by CITY, DEVELOPER or express assignee under Section 2.5.3 hereto.

8.1 **Defaults by DEVELOPER.** If, after following the procedures established in Section 7 hereof, the CITY determines on the basis of a preponderance of the evidence that DEVELOPER or a Development Transferee has not complied in good faith with the material terms and conditions of this Agreement, the CITY shall, by written notice to DEVELOPER and the applicable Development Transferee, specify the manner in which the allegedly defaulting party has failed to so comply and state the steps the allegedly defaulting party must take to bring itself into compliance. If, within thirty (30) days after the effective date of notice from the CITY specifying the manner in which the allegedly defaulting party has failed to so comply, the allegedly defaulting party does not commence all steps reasonably necessary to bring itself into compliance and thereafter diligently pursue such steps to completion, then the allegedly defaulting party shall be deemed to be in default under the terms of this Agreement and the CITY may terminate this Agreement with respect solely to the allegedly defaulting party's property pursuant to Government Code Section 65865.1 or may seek specific performance as set forth in Section 8.3. The City shall send a copy of any notice of noncompliance under this Section 8.1 to DEVELOPER, OWNER and all Development Transferees, including those not in default but its failure to notify any such non-defaulting parties is not a default by CITY nor constitutes a waiver of any rights of CITY hereunder as to the defaulting party.

8.2 **Defaults by CITY.** If DEVELOPER determines on the basis of a preponderance of the evidence that the CITY has not complied in good faith with the terms and conditions of this Agreement, DEVELOPER shall, by written notice to the CITY, specify the manner in which the CITY has failed to so comply and state the steps the CITY must take to bring itself into compliance. If, within sixty (60) days after the effective date of notice from DEVELOPER specifying the manner in which the CITY has failed to so comply, the CITY does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then the CITY shall be deemed to be in default under the terms of this Agreement and DEVELOPER may terminate this Agreement and, in addition, may pursue any other remedy available at law or equity, including specific performance as set forth in Section 8.3.

8.3 **Specific Performance Remedy.** Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, DEVELOPER may be foreclosed from other choices it may have had to utilize the Property and provide for

other benefits. CITY and DEVELOPER has already invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it may not be possible to determine the sum of money which would adequately compensate DEVELOPER for such efforts. For the above reasons, the CITY and DEVELOPER agree that damages may not be an adequate remedy if the CITY or DEVELOPER fails to carry out its obligations under this Agreement and that CITY or DEVELOPER shall have the right to seek and obtain specific performance as a remedy for any breach of this Agreement; provided the CITY's right to specific performance shall be limited to those circumstances where CITY has issued an approval or permit in reliance upon a specified condition being satisfied by DEVELOPER or a Development Transferee in the future, and such DEVELOPER or a Development Transferee fails to satisfy such condition. In that event of default, the CITY may be entitled to specific performance for the sole purpose of causing that nonperforming party, and only that nonperforming party, or any other party with an express obligation under the Agreement, to so perform that condition. Otherwise, the CITY shall have no right to seek specific performance to cause DEVELOPER or a Development Transferee to otherwise proceed with the Development of the Project, including the construction of any of the Public Infrastructure Improvements, in any manner. Notwithstanding the above, to the extent the completion and acceptance of a Public Infrastructure Improvement is required by the CITY in any Development Approval(s) prior to the issuance of a particular Future Development Approval, and DEVELOPER requests that the CITY approve the Future Development Approval, the CITY may seek specific performance of the construction of that infrastructure improvement as a condition of issuance of that Future Development Approval. The CITY shall further not have the right to exercise specific performance of any obligation for which DEVELOPER has provided CITY with adequate Security until CITY has exhausted that Security.

8.4 Institution of Legal Action. As a condition precedent to institution of any legal action for any dispute or alleged breach of or concerning this Agreement, the parties agree to pursue informal resolution of the dispute or alleged breach, in good faith, with such informal resolution process protected in accordance with California Evidence Code section 1152. If the parties are not able to resolve the dispute or alleged breach via informal resolution, then, as a condition precedent to institution of any legal action, the parties agree to complete mediation before an agreed upon mediator with requisite skill, experience, and expertise in the subject matter of the dispute or alleged breach. Each party shall present to the other party no more than five (5) mediator candidates, subject to mutual modification by the parties in writing. Each party shall bear one half of all mediation costs. If the parties cannot reach mutual agreement on a mediator, then the parties agree to selection of a mediator with requisite skill, experience, and expertise in the subject matter of the dispute or alleged breach as determined by IVAMS (www.ivams.com), restricted to prior/retired jurists. If mediation does not resolve the dispute or alleged breach, then the parties may pursue all legal and equitable remedies that may be available by filing suit in a court of competent jurisdiction in the Superior Court of California, County of San Bernardino, or the United States District Court for the Central District of California as may be elected by the filing party.

8.4.1 Effect of Noncompliance. Notwithstanding the foregoing, to the extent the Development Plan Approval(s) expressly provide(s) that Development of the Project or a portion thereof is directly dependent upon the performance of material obligations assumed by a Development Transferee and/or DEVELOPER, which material obligations have not been performed, the CITY may, in its reasonable discretion, withhold any approvals, including, without limitation, certificates of occupancy, with respect to those directly dependent portions of

the Project from DEVELOPER and/or the Development Transferee until such obligations have been substantially performed. CITY agrees that CITY will not withhold approvals if the DEVELOPER or the Development Transferee provides security for the provision of Public Infrastructure Improvements.

8.4.1.1 Non Compliance by Development Transferee. From and after the assumption of obligations under this Agreement by a Development Transferee pursuant to Section 2.5, noncompliance by any such Development Transferee with a material term and condition of this Agreement assumed by such Development Transferee shall entitle CITY to pursue any and all of its rights under this Agreement against such Development Transferee. Such noncompliance by Development Transferee shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for CITY to initiate enforcement action against or withhold any approvals from, DEVELOPER or other persons then owning or holding an interest in the property or any portion of the Property, regardless of the ownership.

8.4.1.2 DEVELOPER Noncompliance. Noncompliance by DEVELOPER with respect to any material term and condition of this Agreement assumed by DEVELOPER or transferee shall entitle CITY to pursue any and all of its rights under this Agreement against such entity. Such noncompliance by DEVELOPER shall not be deemed a default, grounds for specific performance or grounds for termination hereof with respect to, or constitute cause for CITY to initiate enforcement action against or withhold any approvals from a Development Transferee, other persons then owning or holding interest in any portion of the Property, regardless of ownership.

8.5 Estoppel Certificates. A party may at any time deliver written notice to the other party requesting an estoppel certificate (the "**Estoppel Certificate**"). A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager or any person designated by the City Manager may sign Estoppel Certificates on behalf of the CITY. Any officer or member of a private party may sign on behalf of that party. An Estoppel Certificate is intended to be relied on by assignees and mortgagees. If that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto. The Estoppel Certificate shall address issues such as whether:

8.5.1 The Agreement is in full force and effect and is a binding obligation of the Parties.

8.5.2 The Agreement has been amended or modified either orally or in writing and, if so amended, identifying the amendments.

8.5.3 A default in the performance of the requesting party's obligations under the Agreement exists and, if a default does exist, the nature and amount of any default.

9 **Waivers and Delays.**

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

9.2 **Third Parties.** Non-performance shall not be excused because of a failure of a third person, except as provided in Sections 9.3 or 9.4.

9.3 **Force Majeure.** A party shall not be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor unrest, governmental or quasi-governmental regulation (including public utilities), judicial decisions, litigation regarding the Development Approval(s) or Future Development Approval(s), or any other similar event(s) beyond the control of the parties ("Force Majeure Event"). To the extent applicable to the Project and Property pursuant to Section 3.4 hereof, government regulations (including, without limitation, local, state and federal environmental and natural resource regulations), voter initiative or referenda or moratoria (including, without limitation, any "development moratorium" as that term is applied in Government Code Section 66452.6) constitute Force Majeure Events.

9.4 **Extensions.** The Term of this Agreement and the time for performance by a party of any of its obligations hereunder or pursuant to the other Development Approval(s) shall be extended by the actual period of time that any of the events described in Section 9.3 exist and/or prevent performance of such obligations.

9.5 **Notice of Delay.** DEVELOPER or CITY shall give notice to the other party of any delay which DEVELOPER or CITY anticipates or believes to have occurred as a result of the occurrence of any of the events described in Sections 9.3 or 9.4. In no event, however, shall notice of a delay of any length be given later than thirty days after the end of the delay or ten (10) days before the end of the Term (unless the cause of the delay arises during that time), whichever comes first.

10 **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person, sent by certified mail, postage prepaid, return receipt requested sent by Federal Express or other similar nationwide overnight delivery service.

Notices required to be given to the CITY shall be addressed as follows:

City of Upland
460 N. Euclid Avenue
Upland, California 91785
Attention: City Manager

With a copy to:

Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92855
Attn: Yolanda M. Summerhill, Esq.

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

Lewis Land Developers, LLC
c/o Lewis Operating Corp.
1156 North Mountain Avenue
Upland, CA 91786-3633
P. O. Box 670
Upland, CA 91785-0670
Attn: John M. Goodman

With a copy to:

Lewis Operating Corp.
1156 North Mountain Avenue
Upland, CA 91786-3633
P. O. Box 670
Upland, CA 91785-0670
Attn: W. Bradford Francke, Esq.

Any notice given as required by Section 10 shall be deemed given only if in writing and upon delivery as provided for in this Section 10. A party may change its address for notices by giving notice in writing to the other party as required by this Section 10 and thereafter notices shall be addressed and transmitted to the new address.

11 **Attorneys' Fees.** If legal action is brought by any party against another for breach of this Agreement, including actions derivative from the performance of this Agreement, or to compel performance under this Agreement, the prevailing party shall be entitled to an award of its costs, including reasonable attorneys' fees, and shall also be entitled to recover its contribution for the costs of the referee referred to in Section 8.4 above as an item of damage and/or recoverable costs.

12 **Recording.** This Agreement and any amendment or cancellation hereto shall be recorded, at no cost to the CITY, in the Official Records of San Bernardino County by the City Clerk within the period required by Section 65868.5 of the Government Code.

13 **Effect of Agreement on Title.**

13.1 **Effect on Title.** DEVELOPER and the CITY agree that this Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated or released.

13.2 **Encumbrances and Lenders' Rights.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to CITY, be entitled to receive from CITY written notification of any default by DEVELOPER of the performance of DEVELOPER's obligations under the Agreement which has not been cured within the time frame established in Section 8.1 hereof.

13.2.1 Notwithstanding DEVELOPER's default, this Agreement shall not be terminated by CITY as to any mortgagee or beneficiary to whom notice is to be given and to which either or the following is true:

(i) the mortgagee or beneficiary cures any default by DEVELOPER involving the payment of money within sixty (60) days after receipt from CITY of the written notice of default;

(ii) as to defaults requiring title or possession of the Property or any portion thereof to effectuate a cure: (a) the mortgagee/beneficiary agrees in writing, within sixty (60) days after receipt from CITY of the written notice of default, to perform the proportionate share of DEVELOPER's obligations under this Agreement allocable to that part of the Property in which the mortgagee/beneficiary has an interest conditioned upon such mortgagee's/ beneficiary's acquisition of the Property or portion thereof by foreclosure (including a trustee sale) or by a deed in lieu of foreclosure; (b) the mortgagee/beneficiary commences foreclosure proceedings to reacquire title to the Property or applicable portion thereof within said sixty (60) days and thereafter diligently pursues such foreclosure to completion, and (c) the mortgagee/ beneficiary promptly and diligently commences to cure such Default after obtaining title or possession.

13.2.2 Notwithstanding Section 13.2.1 of this Agreement, if any mortgagee/beneficiary is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings including by any process of injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving DEVELOPER, the times specified in Section 13.2.1 of this Agreement for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

13.2.3 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any existing or future mortgage or deed of trust on the Property made in good faith and for value.

13.2.4 Except as provided to the contrary in this Agreement, no mortgagee or beneficiary shall have an obligation or duty under this Agreement to perform the obligations of DEVELOPER or other affirmative covenants of DEVELOPER hereunder, or to guarantee such performance, and no mortgagee or beneficiary shall be liable for any defaults or monetary obligations of DEVELOPER arising prior to acquisition of title to the Property by such mortgagee or beneficiary or their respective successors or assigns; except that to the extent any covenant to be performed by DEVELOPER is expressly identified in the Development Approval(s) as a condition to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder. If a mortgagee or beneficiary comes into possession of the Property or any part thereof or elects to develop the Property in accordance with the Development Approval(s), the mortgagee or beneficiary shall be required to assume and perform the obligations or other affirmative covenants of DEVELOPER under this Agreement.

14 **Severability of Terms.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby if the tribunal finds that the invalidity was not a material part of consideration for the DEVELOPER or the CITY. If the tribunal finds that the invalidity was a material part of the consideration, this Agreement will terminate unless CITY and DEVELOPER agree to amend this Agreement as provided for herein.

15 **Subsequent Amendment to Authorizing Statute.** This Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation in effect as of the Effective Date. Accordingly, subject to Section 3.2.2 above, to the extent that subsequent amendments to the Government Code would affect the provisions of this Agreement, such amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law or unless this Agreement is modified pursuant to the provisions set forth in this Agreement.

16 **Rules of Construction and Miscellaneous Terms.**

16.1 **Interpretation and Governing Law.** The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. The parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of the CITY, and in particular, the CITY's police powers. In this regard, the parties understand and agree that this Agreement shall not be deemed to constitute the impermissible surrender or abnegation of the CITY's governmental powers over the Property or any decision arising from the Agreement, directly or indirectly.

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

16.3 **Gender.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

16.4 **No Joint and Several Liability.** No breach hereof by DEVELOPER or any Development Transferee shall constitute a breach by the non breaching party. Any remedy, obligation, or liability, including but not limited to the obligations to defend and indemnify the CITY, arising by reason of such breach shall be applicable solely to the party that committed the breach.

16.5 **Covenant of Good Faith and Fair Dealing.** Except as provided in this Agreement or otherwise authorized by law, no party shall do anything which shall have the effect of materially harming or injuring the right of the other parties to receive the benefits provided for in this Agreement; each party shall refrain from doing anything which would render its performance under this Agreement impossible; and each party shall do everything which this

Agreement contemplates that such party shall do in order to accomplish the objectives and purposes of this Agreement.

16.6 **No Waiver of Vesting.** Nothing in this Agreement shall be construed as limiting or impairing any vested rights to proceed with the Development or use of the Property arising independently from entitlements issued by the CITY or others prior to, concurrently with, or subsequent to the approval of this Agreement, Federal and State Constitutions, statutes, or decisional law.

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

16.8 **Recitals.** All Recitals set forth herein are incorporated in this Agreement as though fully set forth herein.

16.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and the Agreement supersedes all previous negotiations, discussion and agreements between the parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

17 **Extension of Maps.** In accordance with Government Code Section 66452.6(a), any tentative map which relates to all or a portion of the Property shall be extended for the greater of (i) the Term of the Agreement or (ii) expiration of the tentative map pursuant to Section 66452.6.

18 **Not for Benefit of Third Parties.** This Agreement and all provisions hereof are for the exclusive benefit of the CITY and DEVELOPER and its assignees pursuant to Section 2.5 and shall not be construed to benefit or be enforceable by any third party.

19 **Attachments.** The following attachments are hereby incorporated by reference as if fully set out in the body of this Agreement.

<u>Attachments</u>	<u>Description</u>
1-A	Legal Description of the Property
1-B	Map of the Property
2	DIF Fees
3	Development Approvals
4	Form of Development Agreement Assignment
5	Legal Description of Future Property

20 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

21 **Inclusion of Additional Property.** In the event DEVELOPER acquires all or a portion of that certain additional real property described on Attachment "5" hereto which is located within the Specific Plan (the "Future Property"), CITY agrees that this Agreement shall be deemed amended to include the Future Property as part of the Property and the Project upon the recordation by DEVELOPER of a "Notice of Additional Property" that identifies the Future Property as part of the Property.

REMAINDER OF PAGE LEFT BLANK; SIGNATURES FOLLOW ON NEXT PAGE

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year dated below.

"CITY"

CITY OF UPLAND, a municipal corporation

By: 
Name: RAY M. MUSSER
Title: Mayor

ATTEST:


DEPUTY City Clerk

Dated: 7/28/15, 2015

APPROVED AS TO FORM:


City Attorney

Dated: 7/27, 2015

"DEVELOPER"

LEWIS LAND DEVELOPERS, LLC
a Delaware limited liability company

By: LEWIS OPERATING CORP.,
a California corporation
Its Manager

By: 
Name: John M. Goodman
Its: Senior VP/CEO/CFO

READ AND AGREED:

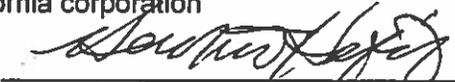
HERBERT HAFIF and KAY F. HAFIF,
Trustees of the HERBERT HAFIF AND KAY F.
HAFIF REVOCABLE TRUST dated October 4,
2010

By: 
Herbert Hafif, Trustee

By: 
Kay F. Hafif, Trustee

Dated: 9-11-15, 2015

CLAREMONT PROFESSIONAL BLDG., INC.,
a California corporation

By: 
Name: HERBERT HAFIF
Title: President

Dated: 9/11/15, 2015

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.

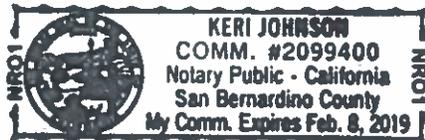
State of California
County of San Bernardino)

On September 2, 2015 before me, Keri Johnson, Notary Public
(insert name and title of the officer)

personally appeared Ray 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.



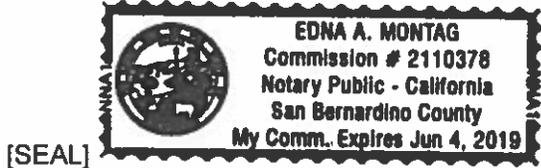
Signature Keri Johnson (Seal)

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 July 27, 2015, before me, EDNA A. MONTAG a Notary Public, personally appeared JOHN M. GOODMAN, 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.

Edna A. Montag

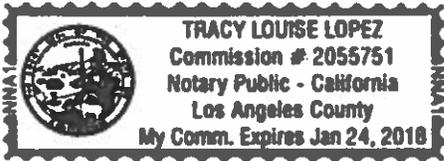
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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)
On Sept. 11, 2015 before me, Tracy Louise Lopez, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Herbert Hafif and Kay F. Hafif
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 Tracy Lopez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

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 _____, 20____, 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.

[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)
) ss:
COUNTY OF _____)

On _____, 20____, 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.

[SEAL]

**ATTACHMENT 1-A
LEGAL DESCRIPTION OF PROPERTY**

HAFIF REVOCABLE TRUST PARCELS:

PARCEL 1:

THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE WEST 20 FEET OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL 2:

LOT 23 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOTS 11 AND 22, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOT 11, THE INTEREST IN THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES BY DEED RECORDED JANUARY 17, 1929 IN BOOK 453, PAGE 297, OFFICIAL RECORDS.

CLAREMONT PROFESSIONAL BUILDING PARCELS:

PARCEL NO. 4:

THE WEST 68 FEET OF THE EAST 136 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 5:

THE SOUTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF THE COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 6:

THE WEST 20 FEET OF THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12, OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

APN: 1007-041-05-0-000 (Affects: Parcel 2)
1007-041-06-0-000 (Affects: Lot 22 of Parcel 3)
1007-051-02-0-000 (Affects: Parcels 4, 5 and 6)
1007-051-03-0-000 (Affects: Parcel 1)
1007-051-04-0-000 (Affects: Lot 11 of Parcel 3)

ATTACHMENT 1-B MAP OF THE PROPERTY

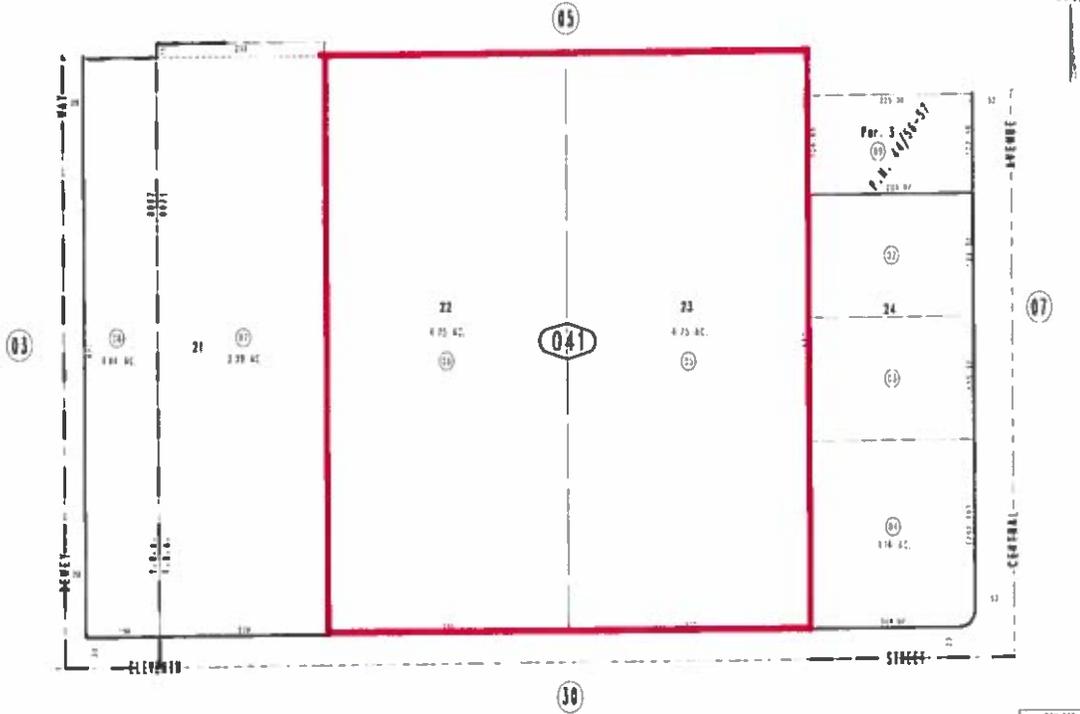
THIS MAP IS FOR THE PURPOSE
OF ASSESSMENT TAXATION ONLY.



Ptn. College Heights Tract, M.B. 17/77-78

City of Upland
Tax Rate Area
8071,8067

1007 - 04



September 2004

Ptn. Parcel Map No. 4728, F.V. 44/55 57

Ptn. N.W.1/4, Sec.11
T.1S.,R.8W.

Assessor's Map
Book 1007 Page 04
San Bernardino County

REVISED
04/17/2004 RJ
11/27/2004 RJ
03/22/2007 DW

THIS MAP IS FOR THE PURPOSE
OF ASSESSED TAXATION ONLY.

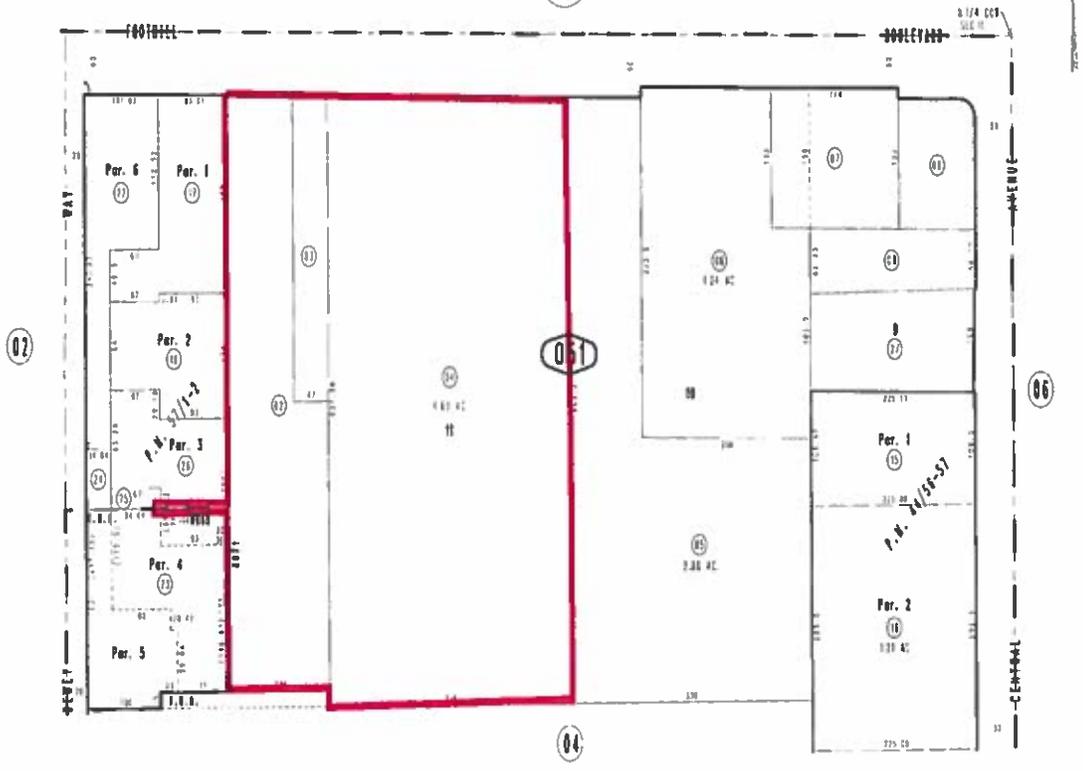
Ptn. College Heights Tract, M.B. 17/77-78

City of Upland
Tax Rate Area
8065,8071

1007-05



1007
57



September 2004

Parcel Map No. 6813, P.M. 57/1-2
Ptn. Parcel Map No. 4/30, P.V. 41/56-57

Ptn. N.W.1/4, Sec.11
T.1S.,R.8W.

Assessor's Map
Book 1007 Page 05
San Bernardino County

02/25/08
07/31/2012 NA

**ATTACHMENT 2
DEVELOPMENT IMPACT FEES**

**TO BE UPDATED BY CITY WITH CURRENT FEES (EXCEPT FIRE IMPACT FEES) AS OF
EFFECTIVE DATE**

Effective January 1, 2009 per Resolution 5793:

Development Impact Fees									
Land Use	General	Fire	Police	Parks (Quimby)	Traffic	Water	Sewer	Storm Drain	Approved Total Fees
Multi-family (per Dwelling Unit)	\$853	\$432 ¹	\$774	\$9,182	\$1,169	\$2,900	\$918	\$2,315	\$18,543

¹ Per Section 4.2.1, payment of Development Impact Fee fully satisfies Fire Impact Fees for 350 dwelling units in the Project.

**ATTACHMENT 3
DEVELOPMENT APPROVALS**

1. The Enclave at Upland Specific Plan (Specific Plan No.15-01) Approved, City Council, July 27, 2015;
2. General Plan Amendment (GPA No. 15-01) Approved, City Council, July 27, 2015
3. Zone Change No. 15-01- Approved, City Council July 27, 2015
4. Mitigated Negative Declaration – Adopted by City Council, July 13, 2015

**ATTACHMENT 4
FORM OF DEVELOPMENT AGREEMENT ASSIGNMENT**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Lewis Land Developers, LLC
1156 North Mountain Avenue,
Upland, CA 91785
Attn: Legal Dept. (WBF)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEVELOPMENT AGREEMENT ASSIGNMENT

This Development Agreement Assignment ("**Agreement**") is effective upon recording and dated for reference purposes as of _____ 2015, by and between HERBERT HAFIF and KAY F. HAFIF, Trustees of the HERBERT HAFIF AND KAY F. HAFIF REVOCABLE TRUST dated October 4, 2010, (as to Parcels 1, 2 and 3 of the Property); and CLAREMONT PROFESSIONAL BLDG., INC., a California corporation, (as to Parcels 4, 5, and 6 of the Property) (collectively "**Assignor**"), and LEWIS LAND DEVELOPERS, LLC, a Delaware limited liability company ("**Assignee**").

RECITALS

- A. Assignor and the City of Upland, a public body existing and organized as a municipal corporation of the State of California, are parties to that certain Development Agreement No. _____ recorded on _____, 2015 as Document No. _____ in the Official Records of San Bernardino County (the "**Development Agreement**"). The Development Agreement concerns that certain real property identified on **Exhibit A** attached hereto (the "**DA Property**").
- B. Assignee has or will purchase from Assignor the DA Property in accordance with the terms of that certain Purchase and Sale Agreement dated _____ 2015, (the "**Purchase Agreement**").

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor and Assignee agree, effective on the Close of Escrow under the Purchase Agreement (the "**Closing**"), as follows:

- 1. **Assignment of Rights.** Assignor, subject to the terms of Section 7.1 of the Development Agreement, including without limitation the written consent of the City releasing Assignor from all of its obligations under the Development Agreement, hereby sells, transfers, assigns, conveys and delivers to Assignee all of Assignor's rights, title, interests, and obligations, to, in and under the Development Agreement. Assignor makes no

representation or warranties, express or implied, concerning the Development Agreement, except as expressly provided herein.

2. **Assumption of Responsibilities.** Assignee hereby agrees to assume all of Assignor's rights, title, and interests to, in and under the Development Agreement as well as all responsibilities, liabilities and obligations under the Development Agreement. Assignee acknowledges that it has received and approved an Estoppel Certificate from the City in accordance with Section 9.15 of the of the Development Agreement.
3. **Confirmatory Acts, Instruments.** Each party hereby covenants to the other party that it will, at any time and from time to time, upon written request therefor, execute and deliver to such other party, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which such party, its nominees, successors and/or assigns may reasonably request in order to fully transfer to such other party all rights and obligations of Assignor intended to be transferred and assigned thereby.
4. **Representations and Warranties.** Assignor represents and warrants to Assignee, as of the Closing, that the Development Agreement is in full force and effect and that neither Assignor nor the City is in default under the Development Agreement nor has either Assignor or the City failed to perform any material terms or conditions of the Development Agreement for which notice has or may been given under the Development Agreement.
5. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of all the parties.
6. **Amendments.** No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.
7. **Severability.** Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
8. **Indemnity.** Assignee agrees to indemnify, defend and hold harmless Assignor, its affiliated entities and persons, and their respective members, managers, partners, officers, directors, shareholders, employees and agents from any claims, demands, losses, liability, damages, causes of action, costs or expenses (including reasonable attorneys' fees) made against or suffered by Assignor with regard to any failure by Assignee to perform any material term or condition of the Development Agreement from and after the Closing, and Assignor shall indemnify, defend and hold harmless Assignee, its affiliated entities and persons, and their respective members, managers, partners, officers, directors, shareholders, employees and agents from any claims, demands, losses, liability, damages, causes of action, costs or expenses (including reasonable attorneys' fees) made against or suffered by Assignee with regard to any failure by Assignor to perform any material term or condition of the Development Agreement before the Closing.
9. **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including the actual fees of its reasonable attorneys incurred for prosecution, defense, consultation, or advice in such action or proceeding.

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 _____, 20____, 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.

(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)
) ss.
COUNTY OF _____)

On _____, 20____, 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.

(Seal) _____

Exhibit A

Legal Description of DA Property

Real property in the City of Upland, County of San Bernardino described as follows:

HAFIF REVOCABLE TRUST PARCELS:

PARCEL 1:

THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE WEST 20 FEET OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL 2:

LOT 23 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOTS 11 AND 22, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOT 11, THE INTEREST IN THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES BY DEED RECORDED JANUARY 17, 1929 IN BOOK 453, PAGE 297, OFFICIAL RECORDS.

CLAREMONT PROFESSIONAL BUILDING PARCELS:

PARCEL NO. 4:

THE WEST 68 FEET OF THE EAST 136 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 5:

THE SOUTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF THE COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 6:

THE WEST 20 FEET OF THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12, OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

**APN: 1007-041-05-0-000 (Affects: Parcel 2)
1007-041-06-0-000 (Affects: Lot 22 of Parcel 3)
1007-051-02-0-000 (Affects: Parcels 4, 5 and 6)
1007-051-03-0-000 (Affects: Parcel 1)
1007-051-04-0-000 (Affects: Lot 11 of Parcel 3)**

ATTACHMENT 5

LEGAL DESCRIPTION OF FUTURE PROPERTY

All that certain real property situation in the County of SAN BERNARDINO, State of California, described as follows:

PARCEL 1:

LOT 21, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE WEST 100 FEET THEREOF.

PARCEL 2:

THE SOUTH 15 FEET OF THE EAST 230 FEET OF LOT 12, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN No.: 1007-041-07-0-000

Exhibit E – First Operating Memorandum





BOB DUTTON
ASSESSOR - RECORDER - CLERK

2:26 PM
EM
SAN

RECORDING REQUESTED BY

ADAM COLLIER

AND WHEN RECORDED MAIL DOCUMENT TO:

NAME CITY OF UPLAND
OFFICE OF THE CITY CLERK
STREET ADDRESS PO BOX 460
CITY, STATE & ZIP CODE UPLAND, CA 91785-0460

P Counter

Doc#: 2016-0552337

Titles: 1 Pages: 12



Fees 0.00
Taxes 0.00
Other 0.00
PAID \$0.00

SPACE ABOVE FOR RECORDER'S USE ONLY

AGREEMENT

Title of Document

THIS AREA FOR
RECORDER'S
USE ONLY

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

City of Upland
Office of the City Clerk
P.O. Box 460
Upland, CA 91785-0460

(Exempt from Recording Fees Pursuant
To Government Code Section 27383)

SPACE ABOVE FOR RECORDER'S USE ONLY

THE ENCLAVE AT UPLAND

**FIRST OPERATING MEMORANDUM
ADJUSTING SECTION 4.2.1 OF THE
DEVELOPMENT AGREEMENT DATED JULY 27, 2015,
BY AND BETWEEN THE CITY OF UPLAND ("CITY")
AND LEWIS LAND DEVELOPERS, LLC ("DEVELOPER"),
RECORDED AS DOCUMENT NO. 2015-0402218 IN THE SAN BERNARDINO
COUNTY RECORDER'S OFFICE**

FIRST OPERATING MEMORANDUM
ADJUSTING SECTION 4.2.1 OF THE
DEVELOPMENT AGREEMENT DATED JULY 27, 2015,
BY AND BETWEEN THE CITY OF UPLAND ("CITY")
AND LEWIS LAND DEVELOPERS, LLC("DEVELOPER"),
RECORDED AS DOCUMENT NO. 2015-0402218
IN THE SAN BERNARDINO COUNTY
RECORDER'S OFFICE

The parties to this Operating Memorandum, the City of Upland ("City"), and Lewis Land Developers, LLC, a Delaware limited liability company ("Developer") hereby acknowledge the following facts:

1. The City and Developer previously entered into a development agreement ("Agreement") concerning the real property described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"). That Agreement was entered into on July 27, 2015 and was recorded as document number 2015-0402218 on September 15, 2015 with the San Bernardino County Recorder's Office.

2. The City and Developer hereby agree to enter into this First Operating Memorandum in accordance with Section 3.5.4 of the Agreement to revise Section 4.2.1 to (i) phase the payment of the Development Agreement Fee and to (ii) remove the requirement that City make every attempt to use the Development Agreement Fee within 12 months after payment to purchase new fire apparatus for the City Fire Department. Section 4.2.1 shall now read as follows:

4.2.1. Provided the Agreement has not been terminated under Sections 2.3 or 2.4, DEVELOPER agrees to pay to CITY, the amount of \$350,000 as a Development Agreement Fee as follows: (i) \$175,000 on December 16, 2016, and (ii) \$175,000 on June 30, 2017. The CITY may use the Development Agreement Fee for any public purpose at its discretion. CITY agrees that payment of the Development Impact Fee ("DIF") may be credited by DEVELOPER as a DIF Credit either (i) against the CITY's Fire Impact Fee to completely satisfy DEVELOPER's obligations for payment of the CITY's Fire Impact Fee for a maximum of 350 dwelling units in the Project (currently \$432 per dwelling unit), or (ii) if the City ceases collection of the Fire Impact Fee by reason of the annexation to SBCFD, then against another DIF charged to the Project.

3. Developer agrees to defend, indemnify and hold harmless the City, its officers, agents, consultants and employees, from any and all actions, proceedings, liability or claims that may be brought against the City arising out of or relating to this First Operating Memorandum on any basis whatsoever. In addition, Developer agrees to reimburse the City for all costs incurred to enforce the provisions of this First Operating Memorandum, including any attorney and

court costs.

4. The parties mutually agree, as manifested by the signatures on this First Operating Memorandum that each is bound to perform the promises, duties and actions as specified in the Agreement and this First Operating Memorandum, without waiver, deferral or modification and that the Agreement and the First Operating Memorandum both remain in full force and effect and bind the parties, with the sole exception of the revised performance specified in this First Operating Memorandum. Each party shall promptly perform as agreed under and pursuant to the Agreement and this First Operating Memorandum, except as this First Operating Memorandum may modifies the Agreement.

5. This First Operating Memorandum shall be executed and attached to the Agreement as specified in Section 3.5.4 of the Agreement. The City shall cause the First Operating Memorandum to be recorded and thereafter attached to the Agreement.

6. The Effective Date of this First Operating Memorandum shall, for all purposes, be December 16, 2016.

CITY:

CITY OF UPLAND, a municipal corporation

By: 

Name: MARTIN THOUVERELLE

Title: City Manager

Dated: 12-19, 2016

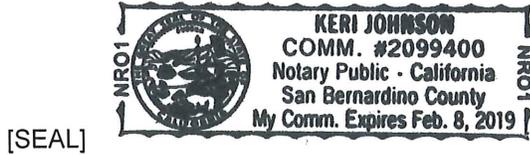
[SIGNATURES CONTINUE ON NEXT PAGE]

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) ss:

On Dec. 15, 2016, before me, Keri Johnson a Notary Public, personally appeared Martin Thouverell, 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.
Keri Johnson

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 _____) ss:

On _____, 20____, 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.

[SEAL]

DEVELOPER:

LEWIS LAND DEVELOPERS, LLC,
a Delaware limited liability company

By: LEWIS MANAGEMENT CORP.,
a Delaware corporation - Its Manager

By: *John M. Goodman*
John M. Goodman
Exec VP/CEO/CFO

Dated: December 13, 2016

READ AND AGREED:

HERBERT HAFIF and KAY F. HAFIF, Trustees of the HERBERT HAFIF
AND KAY F. HAFIF REVOCABLE TRUST dated October 4, 2010

By: _____
Herbert Hafif, Trustee

By: _____
Kay F. Hafif, Trustee

Dated: _____, 2016

CLAREMONT PROFESSIONAL BLDG., INC.,
a California corporation

By: _____
Name: _____
Title: _____

Dated: _____, 2016

DEVELOPER:

LEWIS LAND DEVELOPERS, LLC,
a Delaware limited liability company

By: LEWIS MANAGEMENT CORP.,
a Delaware corporation - Its Manager

By: _____
John M. Goodman
Exec VP/CEO/CFO

Dated: _____, 2016

READ AND AGREED:

HERBERT HAFIF and KAY F. HAFIF, Trustees of the HERBERT HAFIF
AND KAY F. HAFIF REVOCABLE TRUST dated October 4, 2010

By: 
Herbert Hafif, Trustee

By: 
Kay F. Hafif, Trustee

Dated: December 14, 2016

CLAREMONT PROFESSIONAL BLDG., INC.,
a California corporation

By: 
Name: Greg Hafif
Title: Vice President

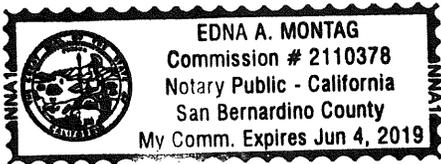
Dated: December 14, 2016

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) ss:

On December 13, 2016, before me, EDNA A. MONTAG a Notary Public, personally appeared JOHN M. GOODMAN, 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.

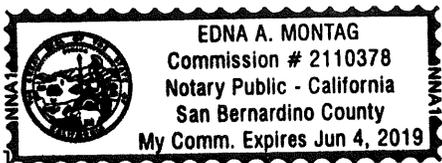
[SEAL]  WITNESS my hand and official seal.
Edna A. Montag

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) ss:

On December 16, 2016, before me, EDNA A. MONTAG a Notary Public, personally appeared GREG HAFEE, 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.

[SEAL]  WITNESS my hand and official seal.
Edna A. Montag

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 December 14, 2016, before me, Mindy Uresti Buesa 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.

[Handwritten 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 _____) ss:

On _____, 20____, 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.

[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) ss:

On December 14, 2016, before me, Mindy Uresti Buesa a Notary Public, personally appeared Herbert Habt e Kay Habt, 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.



[SEAL]

WITNESS my hand and official seal.

[Handwritten 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 _____) ss:

On _____, 20____, 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.

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

HAFIF REVOCABLE TRUST PARCELS:

PARCEL 1:

THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE WEST 20 FEET OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL 2:

LOT 23 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOTS 11 AND 22, COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGES 77 AND 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM SAID LOT 11, THE INTEREST IN THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES BY DEED RECORDED JANUARY 17, 1929 IN BOOK 453, PAGE 297, OFFICIAL RECORDS.

CLAREMONT PROFESSIONAL BUILDING PARCELS:

PARCEL NO. 4:

THE WEST 68 FEET OF THE EAST 136 FEET OF LOT 12 OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

ALSO EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 5:

THE SOUTH ONE-HALF OF THE EAST 68 FEET OF LOT 12 OF THE COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE SOUTH 15 FEET THEREOF.

PARCEL NO. 6:

THE WEST 20 FEET OF THE NORTH ONE-HALF OF THE EAST 68 FEET OF LOT 12, OF COLLEGE HEIGHTS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGES 77 AND 78, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THE NORTH 17 FEET THEREOF.

APN: 1007-041-05-0-000 (Affects: Parcel 2)
1007-041-06-0-000 (Affects: Lot 22 of Parcel 3)
1007-051-02-0-000 (Affects: Parcels 4, 5 and 6)
1007-051-03-0-000 (Affects: Parcel 1)
1007-051-04-0-000 (Affects: Lot 11 of Parcel 3)



PLANNING COMMISSION REPORT

ITEM NO. 2

DATE: March 25, 2020

TO: PLANNING COMMISSION

FROM: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR

PREPARED BY: JOSHUA WINTER, ASSOCIATE PLANNER

SUBJECT: **CONDITIONAL USE PERMIT NO. CUP-19-0001, DEVELOPMENT PLAN REVIEW NO. DPR-19-0002, AND ENVIRONMENTAL ASSESSMENT REVIEW NO. EAR-19-0001 FOR THE ESTABLISHMENT OF A NEW 5,001 SQUARE FOOT DRIVE-THROUGH RESTAURANT (CHICK-FIL-A) WITHIN THE EXISTING MOUNTAIN GREEN SHOPPING CENTER LOCATED IN THE REGIONAL COMMERCIAL (RC) DISTRICT AT 335 S. MOUNTAIN AVENUE (APN: 1008-131-05 AND 1008-131-04).**

REQUEST

The applicant, Kelsey Wu, requests that the Planning Commission approve the land use entitlements for a drive-through restaurant (Chick-fil-A) with outdoor seating and related site improvements (See Exhibit A – Draft Resolution).

Conditional Use Permit (CUP-19-0001) to permit and condition a restaurant with drive-through facilities;

Development Plan Review (DPR-19-0002) to establish the site layout and design of the project;

Environmental Assessment Review (EAR-19-0002) to identify and determine the requirements, or make a finding for exemption under the California Environmental Quality Act;

SYNOPSIS

<i>Applicant:</i>	Kelsey Wu																						
<i>Representative:</i>	Same as Applicant																						
<i>Property Owner:</i>	Cal-Perl Upland LP and LAF4LT Holdings																						
<i>Property Location:</i>	335 S. Mountain Avenue (APN: 1008-131-05 and 1008-131-04)																						
<i>Existing General Plan Land Use Designation:</i>	Regional Commercial (RC)																						
<i>Existing Zoning Classification:</i>	Regional Commercial (RC)																						
<i>Site Size:</i>	Project site is 54,567 square feet Mountain Green Center is approximately 19.2 Acres																						
<i>Building/Suite Size:</i>	5,001 square feet																						
<i>Access:</i>	N. Mountain Avenue and W. 7 th Street and W. 8 th Street																						
<i>Surrounding Land Uses:</i>	<table border="1"> <thead> <tr> <th>Direction</th> <th>Land Use</th> <th>General Plan</th> <th>Zone</th> </tr> </thead> <tbody> <tr> <td>North</td> <td>Mountain Green Center and</td> <td>RC</td> <td>RC</td> </tr> <tr> <td>East</td> <td>Mountain Square Center</td> <td>RC</td> <td>RC</td> </tr> <tr> <td>South</td> <td>Mountain Green Center and Mobil Gas Station</td> <td>RC</td> <td>RC</td> </tr> <tr> <td>West</td> <td>Mountain Green Center and Wendy's Restaurant</td> <td>RC and HC</td> <td>RC and HC</td> </tr> </tbody> </table> <p>See Exhibit B – Vicinity Map</p>			Direction	Land Use	General Plan	Zone	North	Mountain Green Center and	RC	RC	East	Mountain Square Center	RC	RC	South	Mountain Green Center and Mobil Gas Station	RC	RC	West	Mountain Green Center and Wendy's Restaurant	RC and HC	RC and HC
Direction	Land Use	General Plan	Zone																				
North	Mountain Green Center and	RC	RC																				
East	Mountain Square Center	RC	RC																				
South	Mountain Green Center and Mobil Gas Station	RC	RC																				
West	Mountain Green Center and Wendy's Restaurant	RC and HC	RC and HC																				

AUTHORIZATION/GUIDELINES

Upland Municipal Code Section 17.44.040(C) states the Planning Commission shall approve, conditionally approve, or deny all conditional use permit applications.

PUBLIC NOTICE

This project included multiple modes of notifying the public, in accordance with Upland Municipal Code (UMC) Section 17.46.020.

1. On March 12, 2020, a Notice of Public Hearing was mailed to all property owners within 300 feet of the project site. This resulted in a total of 10 property owners being noticed.

2. The Public Hearing Notice was posted in 2 physical locations (Upland City Hall and Upland Library) on March 12, 2020.
3. The Public Hearing Notice was published in the Inland Valley Daily Bulletin on March 13, 2020.

BACKGROUND

The project site is an improved out-parcel within the existing Mountain Green Center and previously contained the El Torito Restaurant. The building was built in 1979-80, and was occupied until 2018 when the business vacated the building. Recent projects within the Mountain Green Center include “Corky’s” Restaurant, “Dunkin Donuts” and an “Aldi” grocery store. The subject building will be demolished in order to construct the proposed Chick fil-A with drive-through facilities. The proposed project is the latest effort to revitalize the Mountain Green Center.

ANALYSIS

General Plan

The project site has a Regional Commercial (RC) General Plan land use designation and is within the Regional Commercial (RC) zone. According to the General Plan, the RC designation and zone is intended for the development of regional shopping centers and accompanying uses that are visible from a regional standpoint, such as near freeways and major arterials. The proposed restaurant with drive-through facilities is a complementary use within the existing Mountain Green Center, and is highly visible from a major arterial (Mountain Avenue) and is consistent with the intent and purpose of the General Plan and Zoning Designation. The project shows consideration for the following General Plan Goals and Policies shown in Table 1.

Table 1

General Plan Goal/Policy	Consistency
Policy LU-3.1 Economic Development. Retain and attract land uses that generate revenue to the City, provide employment for residents while balancing other community needs such as housing, parks and open space, and public facilities.	The proposed use will provide a tax generating business and provide employment for residents.
Policy LU-3.2 Economic Revitalization. Promote the development of vacant and underutilized parcels with higher intensity commercial and industrial land uses.	The proposed project will result in the demolition of a vacant building, and the construction of a new higher intensity drive-through restaurant.
Policy LU-3.5 Commercial Revitalization. Encourage the revitalization of aging commercial centers to improve the tax base and provide improved commercial services for the community.	The proposed project is the latest project intended for the revitalization of the Mountain Green Center.

(See Exhibit C – Vicinity Map of General Plan and Zoning Designations).

Operational Characteristics

The proposed Chick-fil-A Restaurant will occupy a new 5,001 sq. ft. building within the existing Mountain Green Center. The business will include a new outdoor patio containing 5, 4-seat tables and 2, 2-seat handicap accessible tables. The restaurant and drive-through are anticipated to have operating hours between 6:00 am and 10:00 pm, Monday through Saturday (closed Sunday’s).

Development Plan/Standards

The project complies with all required development standards within the RC District as shown in Table 2 below.

Table 2

Development Standard	Code Requirement	Provided
Front Yard Setback (East)	15 feet	30 feet
Rear Yard Setback (West)	10 feet	27 feet
Side Yard Setback (North)	5 feet	7 feet
Side Yard Setback (South)	5 feet	28 feet
Building Height	40 feet	20 feet
Floor Area Ratio (FAR)	1.0 (Site Wide Maximum)	.38 (Appx. Site Wide)
Minimum Landscape Area	10%	29% (of lease area)

Site Plan

The new building will be located on the east side of the Mountain Green Shopping Center, adjacent to Mountain Avenue, approximately 800 feet south of 8th Street and 400 feet north of 7th Street. The site improvements will be limited to the applicants lease area, which includes the parcel containing the building, and a portion of the CVS parcel, which will contain the drive-through and parking lot. The drive-through entry is located north of the proposed restaurant, and loops clockwise around the building to the order window on the north side of the restaurant. The entrance to the new building, and the new outdoor seating area are both located at the west side of the building, with a secondary entry/exit at the east side of the building, and an emergency egress to the public right-of way (See Exhibit C – Site Plan).

Parking & Circulation

The property can be accessed by six existing driveways, two driveways along Mountain Avenue, two driveways along 7th Street and two driveways along 8th Street. The internal circulation on site is existing, and operates efficiently, and provides adequate access for the provision of emergency vehicles or any other public service vehicles. The only area of modification to the on-site circulation is located north of the building, which is being adjusted to accommodate for a dual drive-through facility. The area to be modified includes drive-isles and parking stalls in standard size and width, which will provide for adequate vehicle circulation.

After construction of the proposed use, the shopping center will provide a total of 959 shared parking spaces. The shopping center, with all uses on site, including the proposed Chick-fil-A Restaurant, require a total of 927 parking spaces. This results in a surplus of 32 parking spaces, and thereby adequate for the proposed use and the other uses within the Center.

Drive-through

The proposed drive-through lane provides a total of 15 stacking spaces. Typically, a minimum of 8 stacking spaces is provided for a drive-through, so the stacking provided is anticipated to be adequate for the proposed use. In addition, Conditions of Approval are also included requiring the operator to take measures (e.g. Face to face ordering in the drive-through, staff drive-through control) to ensure adequate operation of the drive-through is maintained and that queuing is kept to a minimum so it does not result in any negative impacts to traffic circulation surrounding the project. It should be noted that Chick-fil-A regularly practices drive-through management techniques at other locations, to ensure the drive-through operates safely and appropriately.

Landscaping

The project includes new landscaping around the proposed building, as well as landscaping improvements along the new drive through, and improvements along the right of way frontage (See Exhibit D - Landscape Plans.) The preliminary planting plan provided utilizes a variety of trees, shrubs and ground covers consistent with the revitalized center, which complement the new building. The drive-through is also screened from the street via a 25 foot landscape planter filled with multiple trees and several species of shrubs that will form a hearty hedge row along the Mountain Avenue frontage and the entrance into the center south of the building. The landscape design and materials incorporated will provide an attractive environment, and complement the more recent drought-tolerant landscaping improvements provided by "Dunkin' Donuts" and "Corky's" restaurant. Conditions of Approval are included for landscape maintenance to ensure landscaping is maintained over time, and a Condition of Approval requiring a final landscape plan for review and approval by the Planning Division have been put into the Resolution for Planning Commission consideration.

Outdoor Patio Dining and Seating

Upland Municipal Code Section 17.32.030 (A) requires that outdoor dining areas require the approval of an Administrative Use Permit, unless the primary use requires a Conditional Use Permit for which the outdoor dining area shall also require a Conditional Use Permit. To approve an outdoor dining area, the approving body, in this case, the Planning Commission, must find that the following findings can be made in addition to the findings:

- a. The proposed outdoor dining area will not unreasonably interfere with pedestrian traffic or access.

Staff Response: The proposed outdoor dining will be adjacent to the entrance, at west side of the building. The layout of the outdoor seating area provides adequate space for pedestrians to access the building and parking lot.

- b. The proposed outdoor dining area will not have an undue adverse effect upon nearby property, the character of the neighborhood, traffic conditions, parking, or other matters affecting the public health, safety, welfare, or convenience.

Staff Response: The proposed outdoor dining provides for additional seating options desirable for the operation of the restaurant. The outdoor seating area will be fenced off by a decorative tubular steel fencing and will include decorative landscaping around the perimeter. Trash receptacles will be placed in the outdoor dining area to prevent littering. The outdoor seating does not block any pedestrian or vehicle accessibility to the site or building and is anticipated to operate safely.

Architectural Design

The proposed building will be built in a modern style. The design proposes to include architectural elements such as decorative brick veneer finishes, metal canopy awnings and score lines. All elevations emphasize three-dimensional detailing such as cornices, and reveals to cast shadows and create visual interest. The building massing is broken up with varied roof height and buildings walls with varied setbacks and pop-outs. The materials proposed on the facades will be of high-quality and of durable material to provide an attractive environment and reduce maintenance costs (See Exhibit E – Elevations). Conditions of approval are included requiring some additional architectural detail be included on the east elevation, as the east elevation faces Mountain Avenue.

ENVIRONMENTAL ASSESSMENT

Planning Division staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines. The project is considered to be exempt under Section 15332 (In-Fill Development Projects) as the project meets the following requirements:

1. The project is consistent with the applicable General Plan designations and all applicable General Plan policies as well as with the applicable zoning designation and regulations.
2. The proposed development occurs within the City limits on a project site of no more than five acres substantially surrounded by urban uses.
3. The project site has no value as a habitat for endangered, rare or threatened species as the project site is fully developed.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

- a. Traffic: A Traffic Analysis was prepared for the project which determined that the number of trips generated by the project would not create a significant impact. Trip rates were calculated based on the Restaurant w/Drive-Through Window (934) from the Institute of Transportation Engineers Trip Generation Manual. It was determined that the project would generate 1,126 total daily trips and 92 a.m. peak hour trips and 38 p.m. peak hour trips. Staff required the applicant to provide a Level of Service (LOS) Analysis for surrounding intersections including Mountain Avenue and the existing project driveways, Mountain Avenue and 8th Street and Mountain Avenue and 7th Street. The LOS Analysis found that, with the new project, the Level of service would be at a LOS C or better during both a.m. and p.m. peak hours, exceeding the General Plan Goal of maintaining an LOS D (General Plan Policy CIR-1.1). Therefore the project will not result in a significant impact related to traffic. (See Exhibit F – Traffic Summary)
 - b. Noise: the project is required comply with the construction and operational noise and vibration requirements identified in the Noise Ordinance. Best Management Practices (BMP's) have been included as Conditions of Approval to limit construction noise, resulting in a less than significant impact.
 - c. Air Quality: The project will have a less than significant impact to Air Quality because the project complies with the General Plan. Uplands General Plan and accompanying Climate Action plan provide strategies to address Air Quality and accounts for projects that are consistent with the General Plan, therefore all projects consistent with the General Plan are considered to have a less than significant impact on Air Quality. Additionally, to prevent any impact to Air Quality during construction of the project, standard BMP's have been incorporated into the Conditions of Approval for the project.
 - d. Water Quality: A Water Quality Management Plan was prepared for the project. It was determined through the review of the project's preliminary water quality plan that the project would not result in a significant impact related to the water quality of the site or surrounding properties.
5. The site can be adequately served by all required utilities and public services.

REQUIRED FINDINGS

In order to approve the project, the Planning Commission is required to make certain findings. Section 2 of the resolution contains recommended findings for the Conditional Use Permit and the Development Plan Review for the Planning Commission's consideration.

TECHNICAL REVIEW COMMITTEE

The Technical Review Committee reviewed the project, and recommended approval, subject to conditions of approval that have been incorporated into the resolution. The conditions of approval will ensure that the development meets all development standards within the Upland Municipal Code and will ensure that the proposed use is compatible with the surrounding land uses.

RECOMMENDED ACTION

The Planning Division recommends the Planning commission adopt a Resolution entitled:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND APPROVING CONDITIONAL USE PERMIT NO. CUP-19-0001, DEVELOPMENT PLAN REVIEW NO. DPR-19-0002, AND ENVIRONMENTAL ASSESSMENT REVIEW NO. EAR-19-0002 FOR THE ESTABLISHMENT OF A NEW 5,001 SQUARE FOOT DRIVE-THROUGH RESTAURANT WITH OUTDOOR SEATING (CHICK-FIL-A) WITHIN AN EXISTING SHOPPING CENTER LOCATED AT 275 E. FOOTHILL BLVD (APN: 1045-551-04).

MOTION

- Find the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines.
- Approve Conditional Use Permit No. CUP-19-0001, Development Plan Review No. DPR-19-0002, and Environmental Assessment Review No. EAR-19-0002 for the establishment of a new 5,001 square foot drive-through restaurant with outdoor seating.

EXHIBITS

- Exhibit A: Draft Resolution
- Exhibit B: Vicinity Map
- Exhibit C: General Plan and Zoning Designation
- Exhibit D: Site Plan
- Exhibit E: Landscape Plans
- Exhibit F: Elevations
- Exhibit G: Traffic Analysis

Exhibit A – Draft Resolution



RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND APPROVING CONDITIONAL USE PERMIT NO. CUP-19-0001, DEVELOPMENT PLAN REVIEW NO. DPR-19-0002, AND ENVIRONMENTAL ASSESSMENT REVIEW NO. EAR-19-0002 FOR THE ESTABLISHMENT OF A NEW 5001 SQUARE FOOT DRIVE-THROUGH RESTAURANT WITH OUTDOOR SEATING (CHICK-FIL-A) WITHIN AN EXISTING SHOPPING CENTER LOCATED 335 S. MOUNTAIN AVENUE (APN: 1008-131-05 AND 1008-131-04).

Intent of the Parties and Findings:

WHEREAS, Kelsey Wu (Applicant) has filed applications requesting approval of the Project;

WHEREAS, Upland Municipal Code Section 17.43.050 E. Requires that if one or more permit application is submitted concurrently for a single proposed project, each application shall be acted upon concurrently by the highest review authority. In this case, the highest review authority is the Planning Commission, therefore the Planning Commission shall make the final decision;

WHEREAS, Upland Municipal Code Section 17.44 provides that the Planning Commission may attach conditions to the approval of the project as needed to ensure compliance with the Zoning Ordinance, other City Ordinances, the General Plan, and any other applicable community or specific plan, previously approved subdivisions and parcel maps and easements;

WHEREAS, the project is considered a project as defined by the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq.;

WHEREAS, The Development Services Director has determined that the project qualifies for a Categorical Exemption from the provisions of CEQA per Section 15332, Class 32, In-Fill Development Projects, of the CEQA Guidelines;

WHEREAS, The City of Upland Planning Division on March 12, 2020, posted two (2) true and correct copies of the legal notice at the Upland City Hall Bulletin Board and at the Upland Public Library in accordance with the Upland Municipal Code Section 17.46.020;

WHEREAS, The City of Upland Planning Division on March 12, 2020, mailed the public hearing notice to each property owner within a 300-foot radius of the project site indicating the date and time of the public hearing in compliance with state law concerning the Project;

WHEREAS, The City of Upland Planning Division on March 13, 2020, published a legal notice in the Inland Valley Daily Bulletin, a local paper of general circulation, indicating the date and time of the public hearing in compliance with state law concerning the Project; and

WHEREAS, The City of Upland Planning Commission conducted a duly noticed public hearing on March 25, 2020, at which time it received public testimony concerning the Project, and considered the CEQA Exemption for the proposed project and the project itself.

NOW, THEREFORE, the Planning Commission hereby finds, determines and resolves and recommends as follows:

Section 1. Actions taken by the Planning Commission:

- A. Approve Conditional Use Permit No. CUP-19-0001, Development Plan Review No. DPR-19-0002 for the establishment of a new 5,001 square foot drive-through restaurant with outdoor seating.

Section 2. FINDINGS. The Planning Commission hereby makes the following findings and determinations in connection with the recommendation for approval of the Project:

- A. The above Recitals are true and correct.
- B. The project is consistent with the following General Plan Policies:
 1. Policy LU-3.1 Economic Development. Retain and attract land uses that generate revenue to the City, provide employment for residents while balancing other community needs such as housing, parks and open space, and public facilities”

Fact: The proposed use will provide a tax generating business and provide employment for residents.
 2. Policy LU-3.2 Economic Revitalization. Promote the development of vacant and underutilized parcels with higher intensity commercial and industrial land uses.

Fact: The proposed project will result in the demolition of a blighted building, and the construction of a new higher intensity drive-through restaurant.
 3. Policy LU-3.5 Commercial Revitalization. Encourage the revitalization of aging commercial centers to improve the tax base and provide improved commercial services for the community.

Fact: The proposed project is the latest project intended for the revitalization of the Mountain Green Center.
- C. Per Section 17.44.040(F) the Planning Commission may approve an application for a Conditional Use Permit only if the proposed project complies with applicable standards in the Zoning Ordinance, other City ordinances, the

General Plan, and any other applicable community or specific plans, and as supported by all of the following findings:

1. Finding: The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses near the subject property.

Evidence: The surrounding area is already developed with uses permitted in zone, and the proposed use will not negatively affect the overall character of the area. The proposed use will bring employees and customers into the area, and compliment the commercial center by offering additional services, in close proximity to an existing residential neighborhood. A traffic analysis was included with the project, which found the Project will not have a significant impact on traffic. Additionally a parking analysis was prepared for the site, which found the site will have adequate parking for the project and existing land uses.

2. Finding: The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g. fire and medical) access and public services and utilities.

Evidence: The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency (e.g. fire and medical) access and public services and utilities because the existing site and building provides sufficient space to accommodate the proposed use, and the center's parking lot provides an adequate number of parking spaces to accommodate the proposed use. Further, circulation on site will largely remain as existing, and is sufficient for public and emergency vehicle (e.g. fire and medical) access. The drive-through provides ample stacking space for the operation of the drive-through, and conditions of approval are included to ensure successful operation.

3. Finding: The proposed use will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of the proposed use.

Evidence: No evidence exists to suggest that the proposed use will be detrimental to or endanger the public health, safety, or general welfare. Substantial investment in the area is proposed and the use will draw employees and some customers who will support other businesses in the area. The use has been reviewed, and appropriate conditioned by Police and Fire Services, ensuring the public health, safety, and welfare of the community.

D. Upland Municipal Code Section 17.44.030(H) provides that the approval body, before it may approve a Development Plan, shall make a determination to allow the activity based upon the following findings:

1. Finding: The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.

Evidence: The design and layout of the proposed project will not interfere with the use and enjoyment of existing development and structures. The layout provides adequate parking and circulation, as well as stacking area in the drive-through lane. Additionally, conditions of approval, regulating the operation of the use, including the drive-through and Police Department Safety Conditions, are including to ensure that the operation of the site is not detrimental to the existing and future neighboring properties and structures.

2. Finding: The proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.

Evidence: The new building is designed to reflect a clean, contemporary aesthetic through the use of varying heights, varied building wall setbacks and multiple exterior materials. A modern color scheme will compliment cantilever metal entry canopies and brick veneer. The architectural design includes additional design elements around all sides of the building for a full 360 degree architecture design. Conditions of Approval are included, such a graffiti removal and general maintenance requirements, to ensure the structure will remain aesthetically appealing and appropriately maintained.

3. Finding: The proposed landscaping design, including color, location, size, texture, type, and coverage of plant materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.

Evidence: The proposed landscaping design meets the requirements of the Zoning Code. Landscaping shown on the preliminary landscape plan exhibits, including color, location, size, texture, type, and coverage of plant materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.

4. Finding: The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.

Evidence: The design of the project complies with all applicable development standards, which includes an aesthetic design that is compatible with the surrounding environment, adequate emergency vehicle access, security lighting, and adequate landscaping. Therefore the project will not be detrimental to public health and welfare.

Upland Municipal Code Section 17.32.030 (A) provides that the approval body, before it may approve outdoor dining, shall make a determination to allow the activity based upon the following findings:

1. Finding: The proposed outdoor dining area will not unreasonably interfere with pedestrian traffic or access.

Evidence: The proposed outdoor dining will be adjacent to the front door, at west side of the building. The layout of the outdoor seating area provides adequate space for pedestrians to access the building and parking lot.

2. The proposed outdoor dining area will not have an undue adverse effect upon nearby property, the character of the neighborhood, traffic conditions, parking, or other matters affecting the public health, safety, welfare, or convenience.

Evidence: The proposed outdoor dining provides for additional seating options desirable for the operation of the restaurant. The outdoor seating area will be fenced off by a decorative tubular steel fencing and will include decorative landscaping around the perimeter. Trash receptacles will be placed in the outdoor dining area to prevent littering. The outdoor seating does not block any pedestrian or vehicle accessibility to the site or building and is anticipated to operate safely.

Section 3. DETERMINATION. In light of the evidence presented at the hearing on this application, and based on the findings set forth above, the Planning Commission hereby finds that the requirements necessary for the recommendation of approval of the Project, subject to all applicable provisions of the Upland Municipal Code, and the following conditions of approval:

10.0 General Conditions

- 10.1. All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.
- 10.2. Prior to issuance of permits, the development plans shall be subject to plan check with the Planning Division, Building Division, Engineering Division, Public Works Department and Fire Department.

- 10.3. No building permits shall be issued until rough grading has been certified by the Engineer of Record, and a building permit has been issued by the Building Division.
- 10.4. All landscaped areas shall be maintained in a healthy and thriving condition, free from weeds, trash, and debris at all times. Dead, damaged, and/or missing landscaping shall be replaced/replanted, subject to the satisfaction of the Planning Division.
- 10.5. To the fullest extent permitted by law, the Applicant shall indemnify, defend and hold the City, its elected officials, officers, contractors serving as City officers, agents, and employees ("Indemnitees") free and harmless from: (i) any and all claims, liabilities and losses whatsoever occurring or resulting to any and all persons, firms, entities, or corporations furnishing or supplying work, services, materials, or supplies in connection with, or related to, the performance of work or the exercise of rights authorized by approval of Conditional Use Permit No. CUP-19-0001 and Development Plan Review No. DPR-19-0002 (project); and (ii) any and all claims, lawsuits, liabilities, and/or actions arising out of, or related to the approval of this Project and/or the granting or exercise of the rights authorized by said approval; and (iii) from any and all claims, liabilities and losses occurring or resulting to any person, firm, entity, corporation for property damage, personal injury, or death, arising out of or related to the approval of, or exercise of rights granted by, this Project. Applicant's obligation to indemnify, defend, and hold the Indemnitees free and harmless as required hereinabove shall include, but is not limited to, paying all fees and costs incurred by legal counsel of the Indemnitees' choice in representing the Indemnitees in connection with any such claims, losses, lawsuits, or actions, and any award of damages, judgments, verdicts, court costs or attorneys' fees in any such lawsuit or action.
- 10.6. The applicant and recorded property owner of the property shall submit to the Development Services Department written evidence of agreement with all conditions of this approval before the approval becomes effective.
- 10.7. Expansion of project beyond the scope and nature of the project, which would increase the projected scale of the project, shall not be permitted except upon application for and approval of modification to this Approval.
- 10.8. The developer shall not engage in any construction activities other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety or as otherwise approved by the Development Services Director (UMC 9.40.100 M).

- 10.9. Termination of approval if either: (1) development has not been diligently commenced and actively pursued to completion thereafter within a two (2) year period from the date of approval (i.e. March 25, 2022); or, (2) if the use approved hereunder is discontinued for a period of one hundred and eighty days or longer; or, (3) non-compliance with any provision of the Upland Municipal (UMC) not specifically waived in compliance with City procedures.

20.0 Planning Division Conditions

- 20.1 Prior to the issuance of building permits, the applicant is required to submit a final landscape and irrigation plan for review and approval by the Planning Division. Landscape plans will include all open space areas, common landscaped area and right-of-way landscaping.
- 20.2 Prior to the issuance of permits, the applicant is required to submit a photometric plan, as part of the plans submitted to Building and Safety for plan check, for review and approval by the Planning Division.
- 20.3 Operation of the drive-through shall be managed, to the satisfaction of the Development Services Director, to ensure, to the greatest extent feasible, traffic does not spill onto the Public right-of-way.
- 20.4 Prior to the issuance of building permits the applicant shall include, on the plans submitted for building permits, additional architectural enhancements on the east elevation of the building, facing onto Mountain Avenue to the satisfaction of the Development Services Director.
- 20.5 Prior to the issuance of building permits the applicant shall include, on the plans submitted for building permits, trellises over all the windows on the south side of the building to the satisfaction of the Development Services Director.
- 20.6 Structures and paved areas shall be structurally sound and maintain a clean and orderly appearance.
- 20.7 Menu speakers shall be equipped with sensors that ensure the menu speakers volume do not exceed the ambient noise levels permitted within the zone.
- 20.8 The applicant shall comply with a maintenance requirements in Upland Municipal Code Section 17.16. Structures or paved areas displaying any, but not limited to, evidence of the following shall be considered substandard and in violation of this Condition:
 - a. Broken or missing foundation.

- b. Warping, bowing, or sagging of headers, sills, beams, eaves, doorways, doorjamb, or other similar structural members.
- c. Inadequate site drainage and/or standing water adjacent to building foundations.
- d. Broken or inoperable sanitary and plumbing facilities and/or fixtures.
- e. Faulty, sagging, or leaking roof or rain gutter.
- f. Missing roof tiles or other visible roofing material(s).
- g. Broken or missing windows.
- h. Holes in siding.
- i. Peeling or cracking paint.
- j. Damaged or deteriorating structures shall be repaired immediately.

20.9 During construction, the applicant shall comply with the following Best Management Practices for noise management during construction.

- a. Re-route truck traffic away from residential streets, if possible. Select streets with fewest homes, if no alternatives are available.
- b. Locate equipment on the construction lot as far away from noise sensitive receivers as possible.
- c. Combine noisy operations to occur in the same time period. The total noise will not increase significantly and the duration of the noise impact will be less.
- d. Use specially quieted equipment when possible, such as quieted and enclosed air compressors, residential or critical grade mufflers on all engines.
- e. Stationary equipment will be located as far away from sensitive receptors as possible. Loud, disrupting construction activities in noise sensitive areas will be conducted during hours that are least disturbing to adjacent and nearby residents.
- f. If noise above the stated regulation will be generated for long periods of time, construct barriers to block the line of sight to noise sensitive receivers.

20.10 During construction, the applicant shall comply with the following Best Management Practices for air quality management during construction. Prior to issuance of any Grading Permit, the Development Services

Director and the Engineering/Land Development Division shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with SCAQMD Rule 403, excessive fugitive dust emissions shall be controlled by regular watering or other dust prevention measures, as specified in the SCAQMD's Rule and Regulations. In addition, SCAQMD Rule 402 requires implementation of dust suppression techniques to prevent fugitive dust from creating a nuisance offsite. Implementation of the following measures would reduce short-term fugitive dust impacts on nearby sensitive receptors:

- a. All active portions of the construction site shall be watered twice daily to prevent excessive amounts of dust;
- b. Non-toxic soil stabilizers shall be applied to all inactive construction areas (previously graded areas inactive for 20 days or more, assuming no rain), according to manufacturers' specifications;
- c. All excavating and grading operations shall be suspended when wind gusts (as instantaneous gust) exceed 25 miles per hour;
- d. On-site vehicle speed shall be limited to 15 miles per hour; on-site roads shall be paved as soon as feasible, watered twice daily, or chemically stabilized;
- e. Visible dust shall not cross the property line;
- f. All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust prior to departing the job site;
- g. Track-out devices shall be used at all construction site access points;
- h. All delivery truck tires shall be watered down and/or scraped down prior to departing the job site;
- i. A construction relations officer shall be appointed to act as a community liaison concerning on-site construction activity including resolution of issues related to fugitive dust generation;
- j. Streets shall be swept at the end of the day if visible soil material is carried onto adjacent paved public roads and use of SCAQMD Rule 1186 and 1186.1 certified street sweepers or roadway; and
- k. Replace ground cover in disturbed areas as quickly as possible.

30.0 Public Works Conditions

I GENERAL ENGINEERING

- 30.1 Owner/Developer is required to arrange for a PRE-CONSTRUCTION MEETING with the Public Works Department 72 hours in advance before any permitted work can commence.
- 30.2 Public improvement plans and grading plans shall be submitted for plan check to the Public Works Department as a complete package. A complete package includes street; sewer, water, grading, drainage, and any appropriate reports and back up documents. Incomplete submittals shall be rejected.
- 30.3 All plans (including Landscaping Plans) depicting any work to be plan checked by Public Works shall be prepared on 24"x36" on City Standard title block. This includes street, sewer, water grading, storm drain, grading, erosion control, private street design, and landscape plans. "Cut and paste," "sticky-backs," "zip a-tone," "Kroy lettering," or other tape will not be permitted on mylars.
- 30.4 As-built plans (including street, sewer, water, and storm drain and grading plans) shall be submitted. Electronic drawing files on compact disc (CD's) shall be submitted to the City for file in the format acceptable by the City.
- 30.5 All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.
- 30.6 No certificate of occupancy, or any other final clearance needed prior to occupancy, shall be given until all other conditions are met.
- 30.7 A trash bin for organic waste is required and must be provided by this project.
- 30.8 A grease trap for waste water and food solids is required and must be provided by this project.
- 30.9 Prior to the issuance of a Certificate of Occupancy the required traffic/circulation improvements shall be completed to the satisfaction of the Public Works Department.
- 30.10 Asphalt paving and other existing public improvements damaged during construction shall be replaced to the City's satisfaction.
- 30.11 All public improvements (interior streets, drainage facilities, landscaped areas, etc.) shown on the plans and/or tentative map shall be constructed to City Standards. Interior street improvements shall include, but are not limited to, curb and gutter, AC pavement, drive approaches, sidewalks, streetlights, and street trees.

- 30.12 In accordance with California Building Code, Title 24 and the requirements of the Americans with Disabilities Act (ADA), handicap facilities shall be constructed and existing facilities shall be reconstructed within the project limits, as necessary, in locations specified by the Director of Public Works/City Engineer and the Development Services Director. No work may commence without a valid permit. For work within the City right-of-way or encroachment area, a separate encroachment is required.

II UTILITY (WATER – SEWER – ENVIRONMENTAL)

Utility General

- 30.13 All utility companies (for non-City owned utilities) shall be contacted to establish appropriate easements to provide services to each parcel.
- 30.14 All lots shall be served by utilities, allowing each parcel/lot to function separately and independent from one another.
- 30.15 The Owner/Developer is responsible for research on private utility lines (Gas, Edison, Telephone, Cable, Irrigation, etc.) to ensure there are no conflicts with the site.
- 30.16 All existing on-site utility lines, if any, that conflict with this project shall be relocated, removed, or sealed to the satisfaction of the Public Works Director.
- 30.17 Composite Utility Plans shall be submitted before the issuance of a Grading Permit. Any easements will be dedicated to the appropriate Utility Company as required to accommodate the location and maintenance of each facility.

Undergrounding

- 30.18 All parcel/lots shall be served by underground utilities. All utility plans (Edison, Telephone, and Cable TV, among others) shall be submitted to the Public Works Department for review and approval prior to the issuance of any permits for utility work within public right-of-way or public easements.

Environmental

- 30.19 This project is subject to the General Construction Permit for Storm Water Discharges. The Owner/Developer is required to file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB) for construction activities. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and be available at the job site at all times. A copy of the Waste Discharger's Identification Number (WDID) from

the SWRCB shall be provided to the City before the issuance of grading or building permits.

- 30.20 This project is required to submit a Water Quality Management Plan (WQMP) (reference City Of Upland "Construction Stormwater Guidelines" and the County of San Bernardino "Guidelines for New Development and Redevelopment") for review and approval by the City Of Upland, Public Works Department Environmental Division. The WQMP shall include a description and map of the project along with an outline of structural and non-structural Best Management Practices (BMPs), which apply to the project pursuant to the "New Development and Redevelopment Guidelines." The subject WQMP shall be approved prior to the issuance of grading permit.
- 30.21 WQMP is required to be bounded. Exhibits must be complete and legible. Standard paper size for exhibits is 24" x 36".
- 30.22 WQMP must include calculation to meet Design Capture Volume required.

Sewer

- 30.23 All proposed on-site sewer mains and water mains shall be a public system maintained by the City. A 26 foot wide easement is required to be dedicated to the City. Drainage facilities shall be maintained by the owner/ property owners association which shall be established in the Center's Covenant, Conditions & Restrictions (CC&R).
- 30.24 City staff will inspect all newly installed sewer mains with the TV camera before acceptance of the line for public improvements.
- 30.25 The Owner/Developer shall provide the necessary Sewer Service Backflow Prevention Device as required by the City.

Water

- 30.26 A separate water meter shall be provided for each building (including any necessary easements to provide such services) prior to the occupancy.
- 30.27 The provision of fire protection water systems, hydrants, and appropriate easements shall be in conformance with the Upland Fire and Public Works Department Standards.
- 30.28 All landscape meter(s) and approved Backflow Device(s) shall be installed and inspected, in accordance with the Public Works Department Standards.

- 30.29 All water facilities shall be installed outside any driveways and drive approaches, and shall be in accordance with the Public Works Department Standards.

III GRADING - STORM DRAIN - EROSION CONTROL

- 30.30 Storm drain system(s) shall be constructed in accordance with the City's Master Plan applicable to the project site and to the satisfaction of the Public Works Director.
- 30.31 A hydrology/hydraulics analysis is required to the satisfaction of the Public Works Director. Any offsite drainage, which may impact this development, or additional drainage created by this development, shall be addressed in accordance with the mitigation measures required in the hydrology report before issuance of any permits.
- 30.32 All drainage shall be directed on-site at the points so indicated upon the subject map/plan (any deviation will require resubmittal to the Technical Review Committee for approval).
- 30.33 Location, direction, and devices for conveying site drainage directed to a street shall be subject to review and approval by the Public Works Director.
- 30.34 Temporary drainage controls may be required during construction phases as directed by the Public Works Director.
- 30.35 All catch basins and Storm Drain Inlet Facilities shall be stenciled with the appropriate "No Dumping" message.
- 30.36 Grading plan shall be prepared and shall conform to the requirements of California Building Code (CBC), latest edition. Said grading plan shall propose all recommendations contained in the project's geotechnical report.
- 30.37 An erosion control plan shall be required as directed by the Public Works Director.
- 30.38 No permanent building construction shall commence until the final grading and improvement plans have been approved, rough grading certified and a building permit issued by the Building Division.
- 30.39 Owner/Developer shall submit design and calculations and obtain permit and inspection for all development perimeter and retaining walls from the Building Division. Construction of any masonry/retaining wall shown on the plans or reference thereto shall require separate permit from Building Division.

- 30.40 Owner/Developer is required to prepare Water Conservation Plan for its grading and construction operations in compliance to water conservation mandate by the State of California. Use of reclaimed water is highly encouraged.
- 30.41 Dust Control operations shall be performed by the Contractor at the time, location and in the amount required and as often as necessary to prevent the excavation or fill work, demolition operation, or other activities from producing dust in amounts harmful to people or causing a nuisance to persons living nearby or occupying buildings in the vicinity of the work. The Contractor is responsible for compliance with Fugitive Dust Regulations issued by the Air Quality Management District (AQMD).
- 30.42 Control of dust shall be by sprinkling of water, use of approved dust preventatives, modifications of operations or any other means acceptable to the Engineer, City of Upland, the Regional Water Quality Control Board (RWQCB), the AQMD, and any Health or Environmental Control Agency having jurisdiction over the facility. The Engineer shall have the authority to suspend all construction operations if, in their opinion, the Contractor fails to adequately provide for dust control.
- 30.43 In compliance to water conservation mandate of the State of California, before or at submission of grading plans, Owner/Developer shall submit/develop Water Conservation Plan. Among others, said plan encourages the use of reclaimed water and use of any/all water conservation measures during construction.
- 30.44 A project specific Water quality Management Plan (WQMP) shall be submitted with the grading plan, drainage plan, and geotechnical report.

IV LANDSCAPING

- 30.45 Any landscaping proposed within a City utility easement is subject to approval by the Public Works Director and Community Development Director.
- 30.46 All landscape and irrigation systems, located in the public parkways, shall be connected to a water supply system that is metered to the property owner.
- 30.47 All developments require a tree-planting scheme.
- a. If planting in an area without sidewalk, plant the trees four feet to six feet from the existing or planned curb or street
 - b. Plant trees a minimum of five feet from other utilities, a minimum of ten feet from driveways, water meters, water lines, sewer lines, traffic and directional signs, and fire hydrants, a minimum of fifteen

feet from street lights, and a minimum of thirty feet from street corners.

- 30.48 The project frontage shall be fully landscaped, including an automatic irrigation system in accordance with a plan subject to review and approval by the Community Development Director and the Public Works Director. Drought tolerant and water efficient irrigation system shall be required. Parkway landscaping shall be maintained by the Owner/Developer.
- 30.49 Before the final approval of streetscape plans (landscaping, irrigation systems, walls and/or fences, etc.), the hardscape portion of the plan(s) shall be designed by a registered engineer, and submitted to the Community Development Director for review and approval.
- 30.50 After City approval of the landscaping plan, the Owner/Developer shall provide 180-day maintenance during the plant establishment period.

40.0 Police Department

- 40.1 The approved conditions shall be retained on the premises at all times and produced immediately upon request of the Upland Police Department, and City Planning.
- 40.2 A 6-month review/inspection shall be conducted to ensure permittee's compliance with all operating conditions.
- 40.3 Prior to the issuance of building permits the project must be enclosed with a 6-ft. high chain link fence to prevent access to construction areas by the public and to minimize theft of building materials and equipment.
- 40.4 Graffiti abatement by the business owner/licensee shall be immediate and ongoing on the licensed premises, but in no event shall graffiti be allowed unabated on the premises for more than 48 hours. Abatement shall take the form of removal or shall be covered/painted over with a color reasonably matching the color of the existing building, structure, or other surface being abated. Additionally, the business owner/licensee shall notify the City within 24 hours of any graffiti elsewhere on the property not under the business owner/licensee's control so that it may be abated by the property owner.
- 40.5 The Developer, builder, contractors, sub-contractors, and any other persons associated with this project shall adhere to the Upland Municipal Code (UMC) dealing with unnecessary noises under section 9.40.100. Furthermore, prior to the beginning of construction, a sign shall be posted at the entrance of the property educating everyone entering as to the authorized

construction times and failure to comply with such requirements will result in an immediate citation for violating the aforementioned UMC section.

- 40.6 Units with front and rear drive access shall affix or paint address numbering/lettering in a conspicuous location, free from plant obstruction, and readily visible to emergency services personnel on both front and rear accesses.
- 40.7 Each building that has a flat roof shall be required to have the address numbering painted on the roof, as close to the center of the roof as possible, and at least 15 feet (or as far as possible if less than 15 feet) from roof mounted equipment or exhaust stacks, to assist helicopter patrols in quick location of the building. Numbering must be at least 12 inches wide, 48 inches tall, and be painted in contrast to the background on which it is affixed.
- 40.8 Hinges for outwardly swinging doors or hatchway covers shall be equipped with non-removable hinge pins or a mechanical interlock system to prevent removal of the door from the exterior by removal of the hinge pins.
- 40.9 All hatchways shall be secured from the interior of the building with a sliding bolt or bar mechanism.
- 40.10 If the hatchway cover is of a wooden material, it shall be reinforced with at least 16-gauge U.S. sheet steel, or its equivalent, on the interior face of the cover and shall be attached with screws no more than six inches apart around the entire perimeter of the interior face cover.
- 40.11 Building design and window placement shall facilitate high visibility to the public and police patrol vehicles as well as enabling employees to make periodic visual inspections of the premises.
- 40.12 All exterior lighting lower than 12 feet from the ground level shall be enclosed in vandal-resistant covers.
- 40.13 Lighting shall be required in all area of public access.
- 40.14 Public parking areas and access thereto shall be provided with a maintained minimum of 2 foot candle power of light on the parking surface, from dusk to dawn, or as modified by the Chief of Police, based on documented proof that meeting the 2 foot candle power standard is impractical. Lighting shall be provided

through the use of photo cells; use of low pressure sodium fixtures and bulbs is prohibited.

- 40.15 At a minimum, internally illuminated address signs/numbers are required for each building, to the satisfaction of the Deputy Fire Marshal and the Chief of Police.
- 40.16 Signs prohibiting loitering shall be installed to the satisfaction of the Chief of Police. They shall be mounted between six and ten feet above ground. The following must be printed on the sign in letters at least two inches tall: "PC647(h), UMC10.72.010." and "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES." The signs shall be posted on the front, rear, and sides of the building, and shall be clearly visible to patrons of the licensee.
- 40.17 Signs shall comply with all City of Upland sign requirements (UMC 17.15 et seq.). No more than 50% of the total window area and clear doors shall bear advertising or signs of any sort. Window signs shall be placed and maintained in a manner so that there is a clear and unobstructed view of the interior of the premises from the public sidewalk or entrance to the premises (this applies to all windows of this location).
- 40.18 A digital video surveillance system is required at the premise. It is recommended to have a surveillance video/visual media that shall be maintained for a minimum of sixty (60) days and upon request, shall be accessible to law enforcement personnel for viewing, copying and collection purposes during regular business hours. The system shall be able to make license plates discernable. The video system shall cover all ingress and egress points of the businesses parking lots, the building itself, drive-thru area, and the rear perimeter of the building.
- 40.19 Provide UPD with contact information of person responsible for maintaining video equipment/system and who has access to retrieve and copy surveillance video. The surveillance video/visual media shall be remotely accessible to the Upland Police Department.
- 40.20 All landscaping must adhere to the 2' 6' rule (all ground cover landscaping must be maintained no higher than 2' from ground level and all lower tree canopy must be maintained no lower than 6' in height from the ground level).
- 40.21 Any vehicles not parked legally may be cited and/or towed if it is in violation of the California Vehicle Code and/or Upland Municipal Code.

50.0 Building and Safety

- 50.1 All construction documents submitted for plan check shall be designed to be in compliance with City of Upland Construction Codes.
- 50.2 Soils report is required at the time of plan check submittal.
- 50.5 A demolition permit of existing building will only be issued after new building plan submittal.
- 50.6 The applicant shall provide all required abatement reports required prior to building demolition.

60.0 San Bernardino County Fire

- 60.1 Building plans shall be submitted to the Fire Department for review and approval.
- 60.2 Prior to combustibles being placed on the project site an approved all-weather fire apparatus access surface and operable fire hydrants with acceptable fire flow shall be installed. The topcoat of asphalt does not have to be installed until final inspection and occupancy.
- 60.3 The required fire fees shall be paid to the San Bernardino County Fire Department/Community Safety Division.
- 60.4 Prior to any land disturbance, the water systems shall be designed to meet the required fire flow for this development and shall be approved by the Fire Department. The required fire flow shall be determined by using California Fire Code. The Fire Flow for this project shall be: 1500 GPM for a 2 hour duration at 20 psi residual operating pressure.
- 60.5 A water system approved and inspected by the Fire Department is required. The system shall be operational, prior to any combustibles being stored on the site. Fire hydrants shall be spaced no more than three hundred (300) feet apart (as measured along vehicular travel-ways) and no more than three hundred (300) feet from any portion of a structure.
- 60.6 Commercial and industrial developments of 100,000 sq. ft or less shall have the street address installed on the building with numbers that are a minimum six (6) inches in height and with a three quarter (3/4) inch stroke. The street address shall be visible from the street. During the hours of darkness, the numbers shall be electrically illuminated (internal or external). Where the building is two hundred (200) feet or more from the roadway, additional non-illuminated contrasting six (6) inch numbers shall be displayed at the property access entrances.

- 60.7 Hand portable fire extinguishers are required. The location, type, and cabinet design shall be approved by the Fire Department.
- 60.8 An automatic fire sprinkler system complying with NFPA Pamphlet #13 and the Fire Department standards is required. The applicant shall hire a licensed (C-16) fire sprinkler contractor. The fire sprinkler contractor shall submit plans to the with hydraulic calculation and manufacturers specification sheets to the Fire Department for approval and approval. The required fees shall be paid at the time of plan submittal.
- 60.9 An automatic hood and duct fire extinguishing system is required. A licensed contractor (C-16) shall submit detailed plans with manufactures specification sheets to the Fire Department for review and approval. The required fees shall be paid at the time of plan submittal.
- 60.10 Blue reflective pavement markers indicating fire hydrant locations shall be installed as specified by the Fire Department. In areas where snow removal occurs or non-paved roads exist, the blue reflective hydrant marker shall be posted on an approved post along the side of the road, no more than three (3) feet from the hydrant and at least six (6) feet high above the adjacent road.
- 60.11 An approved Fire Department key box is required.
- 60.12 Permission to occupy or use the building (certificate of Occupancy or shell release) will not be granted until the Fire Department inspects, approves and signs off on the Building and Safety job card for "fire final"
- 60.13 In addition to the Fire requirements stated herein, other onsite and offsite improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office. Two exits are required from the restaurant based on the occupant load.
- 60.14 The above referenced project is under the jurisdiction of the San Bernardino County Fire Department herein "Fire Department". Prior to any construction occurring on any parcel, the applicant shall contact the Fire Department for verification of current fire protection requirements. All new construction shall comply with the current California Fire Code requirements and all applicable status, codes, ordinances and standards of the Fire Department.

70.0 Trash Services

- 70.1 The use is required to participate in a food waste recycling program under AB1826. Therefore, the enclosure shall be sized to accommodate at least three commercial bins.

- 70.2 Prior to issuance of grading permits, the developer or their contractor shall contact Burrtec to coordinate the preparation and implementation of a Construction Waste Management Plan.

80.0 Review/Compliance

80.1 The Planning Commission may review the use 90 days, 180 days, and on an annual basis following the date of final inspection, or as needed at the discretion of the Development Services Director, to determine whether the applicant and operators are operating the use in a manner that is compatible with the community. The Planning Commission may establish additional conditions of approval that are necessary to eliminate any issues that arise from the operation of the use that adversely impact the public health, welfare, and safety, or may direct staff to initiate revocation proceedings. The conditional use permit may be revoked if the permittee, his agents or assigns, or employee(s) of the establishment, or any other person connected or associated with the permittee or his business establishment, or any person who is exercising managerial authority of the business establishment has:

- a. Violated any rule, regulation, or condition of approval adopted by the Planning Commission relating to the conditional use permit or contained in the Upland Municipal Code, or state or federal regulations. Violation of any provision of the Upland Municipal Code (UMC) or the conditions of approval set forth in this resolution, shall be deemed to constitute an infraction of the Upland Municipal Code, and shall be subject to the applicable fines and penalties, including the possibility of revocation of this permit.
- b. Conducted the operation permitted hereunder in a manner contrary to the peace, health, safety, and general welfare of the public, or in a manner which either generates or contributes to noise and/or health/sanitation nuisances, or which results in undesirable activities that negatively affects adjacent properties or creates an increased demand for public services.

Section 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). The project is Categorically Exempt from environmental proceedings pursuant to Article 19, Section 15332, In-Fill Development Projects, Class 32 (a-e), of the California Environmental Quality Act, since the proposed project is consistent with applicable general plan designations and policies as well as applicable zoning designation and regulations; occurs within city limits on a property that is no more than five acres substantially surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all required utilities and public services.

Section 5. APPEAL. Pursuant to Upland Municipal Code Section 17.47.040, the decision of the Planning Commission may be appealed to the City Council provided

that written notice of the appeal is filed with the City Clerk within ten (10) days following the date the decision was rendered, unless a longer appeal period is specified as part of the project approval. Failure to file a timely appeal shall constitute a waiver of the right of appeal, and the decision of the Planning Commission shall be final.

Section 6. INCONSISTENCY. If any section, division, sentence, clause, phrase or portion of this resolution or the document in the record in support of this resolution is determined by a court of competent jurisdiction to be invalid, unenforceable, unconstitutional or otherwise void, that determination shall not affect the validity of the remaining sections, divisions, sentences, clauses, phrases of this resolution.

Section 7. CERTIFICATION. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this Resolution, and shall cause this Resolution and their certification to be entered in the Book of Resolutions of the Planning Commission of the City.

PASSED, APPROVED and ADOPTED this 25th day of March, 2020.

Robin Aspinall, CHAIR

ATTEST:

Robert D. Dalquest, SECRETARY

I HEREBY CERTIFY that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of Upland at a regular adjourned meeting thereof held on the 25th day of March, 2020, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Robert D. Dalquest, SECRETARY

Exhibit B – Vicinity Map



Exhibit B – Vicinity Map



**Exhibit C – General Plan and
Zoning Designation**



EXHIBIT C – GENERAL PLAN AND ZONING

General Plan

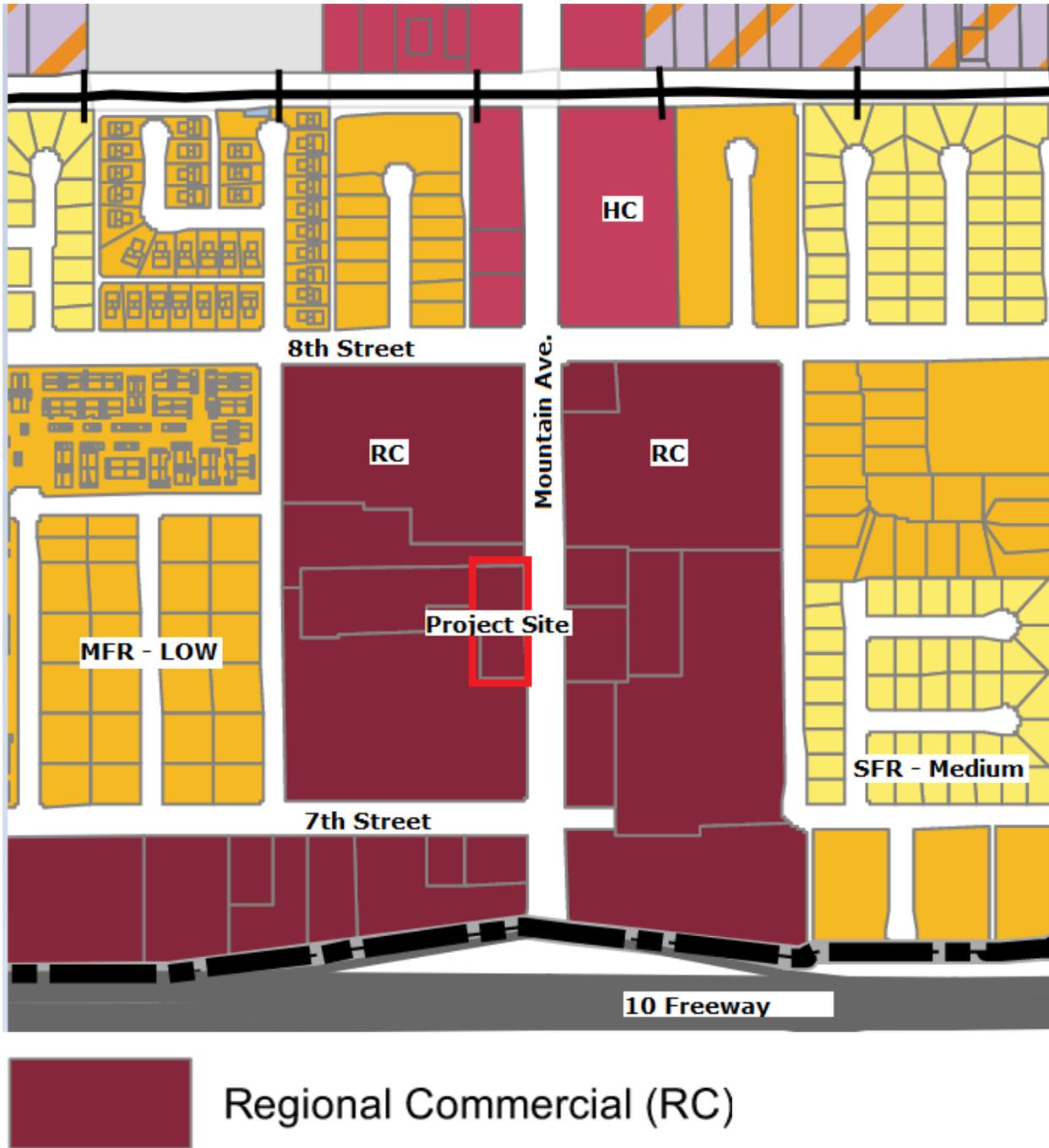


EXHIBIT C – GENERAL PLAN AND ZONING

Zoning

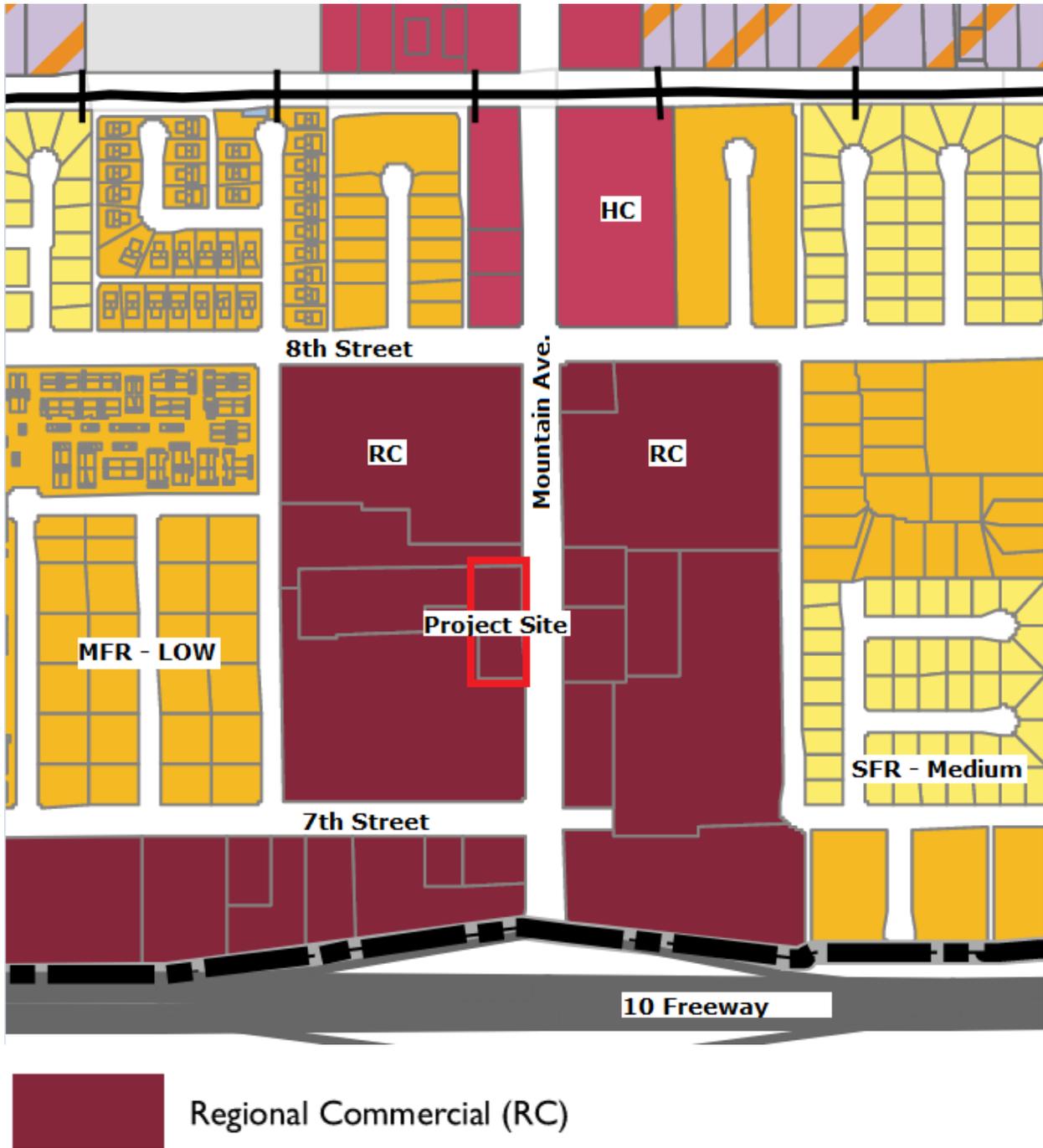


Exhibit D - Site Plan



Exhibit E – Landscape Plan



Exhibit F – Elevations





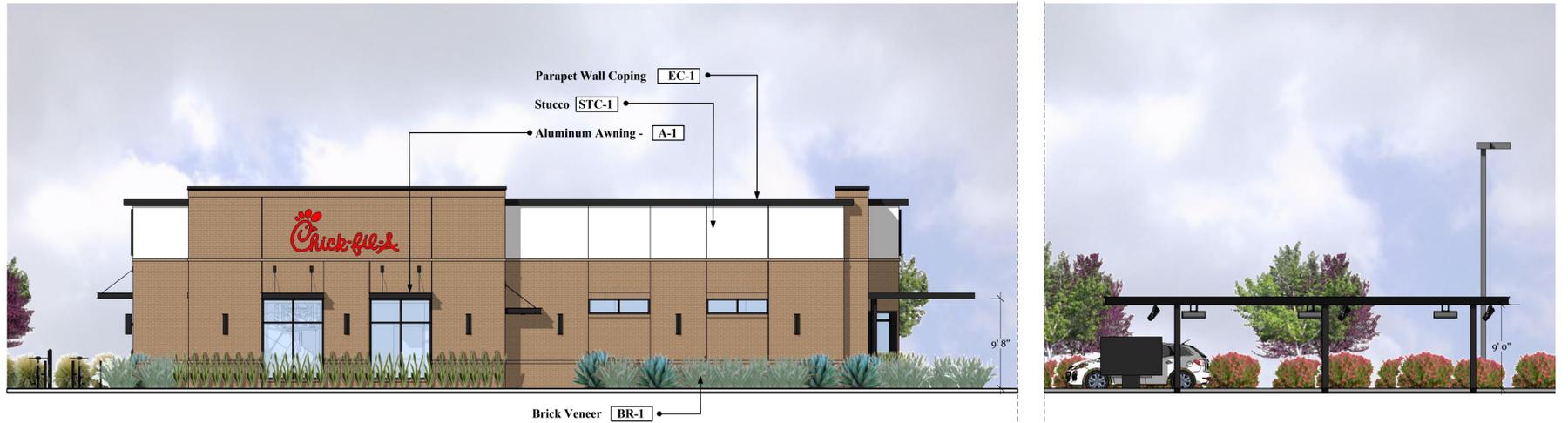
SOUTH ELEVATION



WEST ELEVATION



NORTH ELEVATION



EAST ELEVATION



PRELIMINARY ELEVATIONS
I-10 & Mountain Ave. - Upland, CA

File Name: 17142 Upland, CA - Color Elevations

12-13-18
 01-16-19
 02-12-19
 10-02-19

Note:
 All roof top mechanical equipment shall be located in equipment well and screened from view by parapet walls.

COLOR AND MATERIAL LEGEND

- STC-1 Stucco - STO - Powerwall "White"
- BR-1 Brick Veneer - Boral Brick - Color: Citadel
- EC-1 Parapet Wall Coping - Durolast/Exceptional Metals - Dark Bronze (Matte)
- A-1 Aluminum Awning - Color: Dark Bronze





NORTHWEST VIEW



PRELIMINARY ELEVATIONS
I-10 & Mountain Ave. - Upland, CA

File Name: 17142 Upland, CA - Color Elevations

12-13-18
01-16-19
02-12-19
10-02-19

crho
ARCHITECTS
1833 E. 17th Street, Suite 301
Santa Ana, CA. 92705
phone 714.832.1834



SOUTHWEST VIEW



PRELIMINARY ELEVATIONS I-10 & Mountain Ave. - Upland, CA

File Name: 17142 Upland, CA - Color Elevations

12-13-18
01-16-19
02-12-19
10-02-19

crho
ARCHITECTS
1833 E. 17th Street, Suite 301
Santa Ana, CA. 92705
phone 714.832.1834



SOUTHEAST VIEW



**PRELIMINARY ELEVATIONS
I-10 & Mountain Ave. - Upland, CA**

File Name: 17142 Upland, CA - Color Elevations

12-13-18
01-16-19
02-12-19
10-02-19

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Santa Ana, CA. 92705
phone 714.832.1834



NORTHEAST VIEW



PRELIMINARY ELEVATIONS
I-10 & Mountain Ave. - Upland, CA

File Name: 17142 Upland, CA - Color Elevations

12-13-18
01-16-19
02-12-19
10-02-19

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NORTH VIEW



**PRELIMINARY ELEVATIONS
I-10 & Mountain Ave. - Upland, CA**

File Name: 17142 Upland, CA - Color Elevations

12-13-18
01-16-19
02-12-19
10-02-19



BIRDS EYE VIEW



PRELIMINARY ELEVATIONS
I-10 & Mountain Ave. - Upland, CA

File Name: 17142 Upland, CA - Color Elevations

12-13-18
01-16-19
02-12-19
10-02-19

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Exhibit G – Traffic Analysis



TRAFFIC IMPACT ANALYSIS REPORT

CHICK-FIL-A

Upland, California

December 23, 2019

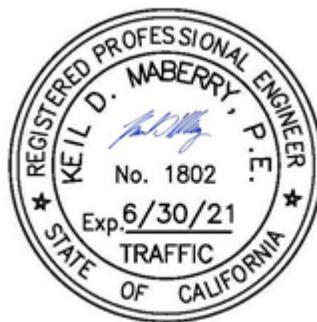
Prepared for:

CHICK-FIL-A, INC.

15635 Alton Parkway, Suite 350

Irvine, CA 92618

LLG Ref. 2-19-4083-1



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EXECUTIVE SUMMARY

Project Description

- The proposed Chick-fil-A Project is generally located on the west side of Mountain Avenue and north of 7th Street and the I-10 Freeway in the City of Upland, California. The Project proposes to raze the existing 9,401 square-foot (SF) vacant El Torito restaurant and construct a 4,863 SF Chick-fil-A restaurant with drive-through window and drive-through queue storage of 15 vehicles. The Project is expected to be constructed in one phase and fully operational by the Year 2021.
- Access to the Project is currently provided and will continue to be provided via the one (1) full-access signalized driveway located along Mountain Avenue (i.e. key study intersection #2), the one (1) right-turn in/right-turn out only unsignalized driveway located along Mountain Avenue (i.e. key study intersection #4) and the one (1) full-access unsignalized driveway located along 7th Street (i.e. key study intersection #5)

Study Area

- Five (5) key study intersections were designated for evaluation based on *San Bernardino County Congestion Management Program (CMP)* criteria and discussions with City of Upland staff. The five (5) key study intersections selected for evaluation provide local and regional access to the study area and consist of the following:
 1. Mountain Avenue at 8th Street (Upland)
 2. Mountain Avenue at Mountain Green Shopping Center Driveway (Upland)
 3. Mountain Avenue at 7th Street (Upland)
 4. Mountain Avenue at Existing Project Driveway No. 1 (Upland)
 5. Existing Project Driveway No. 2 at 7th Street (Upland)

Project Trip Generation

- The proposed Project is forecast to generate approximately 1,717 daily trips, with 99 trips (50 inbound, 49 outbound) produced in the AM peak hour and 79 trips (41 inbound, 38 outbound) produced in the PM peak hour on a “typical” weekday. The existing vacant El Torito restaurant generates approximately 591 daily trips, with 7 trips (4 inbound, 3 outbound) produced in the AM peak hour and 41 trips (28 inbound, 13 outbound) produced in the PM peak hour on a “typical” weekday.
- When the proposed Project is compared to the existing vacant El Torito restaurant trip generation, the Project is forecast to result in a net addition of 1,126 daily trips, with a net

addition of 92 trips (46 inbound, 46 outbound) produced in the AM peak hour and a net addition of 38 trips (13 inbound, 25 outbound) produced in the PM peak hour on a “typical” weekday. The potential impact of these net additional trips have been assessed in the traffic study. It should be noted that the existing vacant El Torito restaurant trips (i.e. 591 daily trips, 7 AM peak hour trips, 41 PM peak hour trips) have been included as part of the background traffic forecast

Cumulative Projects Description

- The twenty-six (26) cumulative projects are expected to generate 17,646 daily trips (one half arriving, one half departing) on a “typical” weekday, with 1,203 trips (418 inbound and 785 outbound) forecast during the weekday AM peak hour and 1,503 trips (859 inbound and 644 outbound) forecast during the weekday PM peak hour.

Traffic Impact Analysis

Existing Traffic Conditions

- For Existing traffic conditions, all of the existing key study intersections currently operate at an acceptable level of service (i.e. LOS C or better) during the AM and PM peak hours.

Existing Plus Project Traffic Conditions

- For Existing With Project traffic conditions, the proposed Project ***will not*** significantly impact any of the five (5) key study intersections when compared to the LOS standards and significant impact criteria specified in this report. The five (5) key study intersections currently operate and are forecast to continue to operate at an acceptable LOS C or better during the AM and PM peak hours with the addition of Project generated traffic to existing traffic.

Year 2021 Cumulative Traffic Conditions

- For Year 2021 Cumulative traffic conditions, all five (5) of the key study intersections are forecast to operate at an acceptable level of service (i.e. LOS C or better) during the AM and PM peak hours when compared to the LOS standards defined in this report.

Year 2021 Cumulative Plus Project Traffic Conditions

- For Year 2021 Cumulative Plus Project traffic conditions, the proposed Project ***will not*** significantly impact any of the five (5) key study intersections when compared to the LOS standards and significant impact criteria specified in this report. The five (5) key study intersections are forecast to continue to operate at an acceptable LOS C or better during the AM and PM peak hours with the addition of project generated traffic in the Year 2021.

Recommended Improvements

Existing With Project Traffic Conditions

- The results of the “Existing Plus Project” intersection capacity analysis indicates that the proposed Project will not significantly impact any of the five (5) key study intersections. Given that there are no significant project impacts, no improvements are required under Existing Plus Project traffic conditions.

Year 2021 Plus Project Traffic Conditions

- The results of the “Year 2021 Cumulative Plus Project” intersection capacity analysis indicates that the proposed Project will not significantly impact any of the five (5) key study intersections. Given that there are no significant project impacts, no improvements are required under Year 2021 Cumulative Plus Project traffic conditions.

Site Access and Internal Circulation Evaluation

- The three (3) Project driveways are forecast to operate at acceptable service levels during the AM and PM peak hours under Existing Plus Project traffic conditions and Year 2021 Cumulative Plus Project traffic conditions. As such, project access will be adequate. Motorists entering and exiting the Project site will be able to do so comfortably, safely, and without undue congestion.
- The on-site circulation layout of the proposed Project on an overall basis is adequate. Curb return radii have been confirmed and are generally adequate for small service/delivery (FedEx, UPS) trucks and trash trucks.
- The proposed Project will provide storage for up to 15 vehicles within the proposed drive-through lane without encroaching into the drive aisle. Therefore, the 85th percentile expected queues can be accommodated without interfering with internal circulation or causing congestion to the drive aisle. It should be further noted that the proposed 15 vehicle storage drive-through lane can also accommodate the observed 95th percentile queues of the five (5) study sites. Lastly, it should be noted that the maximum queue of 17 vehicles can be accommodated on-site within the drive aisles.

Even though it is anticipated that the proposed drive-through lane will accommodate all potential queues on site; Chick-fil-A staff will implement the following program, on an as-needed basis during their peak operating times, to further ensure that vehicles will not queue back onto the public streets. The program consists of the following as provided by Chick-fil-A management staff:

- “Our restaurants are staffed so that if the drive-thru queuing begins stacking onto the street, team members go out and assist with ordering via Chick-fil-A’s iPad ordering

system. Our operators use the iPad ordering during our peak hours of 11:30 am to 1:30 pm and any additional time when needed. The iPad ordering system allows team members to take orders, receive payment, and assist with traffic movement within the parking lot.

Based on data from our other comparable stores, the iPad ordering system increases the CFA drive thru speed of service by 30% than the typical speaker box. Putting people forward in the drive-through is one of our biggest competitive advantages in the market because it personally connects our team members with our valued guest. We want to continue this momentum by building a platform to supporting current and future innovations that increase capacity and put our people forward to care for our guest in every interaction. Our customers enjoy the face to face ordering over the standard drive-thru experience.”

CMP Assessment

The CMP requires that a traffic impact analysis be conducted for any project generating 250 or more peak hour trips. As noted in *Section 5.0* of this traffic study, the proposed Project is forecast to generate 92 AM peak hour trips and 38 PM peak hour trips and thus does not meet the criteria requiring a CMP TIA.

TRAFFIC IMPACT ANALYSIS REPORT

CHICK-FIL-A

Upland, California
December 23, 2019

1.0 INTRODUCTION

This traffic impact analysis addresses the potential traffic impacts and circulation needs associated with the proposed Chick-fil-A Project (hereinafter referred to as Project). The Project proposes to raze the existing 9,401 square-foot (SF) vacant El Torito restaurant and construct a 4,863 SF Chick-fil-A restaurant with drive-through window. The Project site is generally located on the west side of Mountain Avenue and north of 7th Street and the I-10 Freeway in the City of Upland, California.

This report documents the findings and recommendations of a traffic impact analysis conducted by Linscott, Law & Greenspan, Engineers (LLG) to determine the potential impacts associated with the Project. The traffic analysis evaluates the existing operating conditions at five (5) key study intersections within the Project vicinity, estimates the trip generation potential of the Project, and forecasts future operating conditions without and with the proposed Project. Where necessary, intersection improvements/mitigation measures are identified.

This traffic report satisfies the traffic impact requirements of the City of Upland and is consistent with the most current *Congestion Management Program (CMP) for San Bernardino County*. The Scope of Work for this traffic study, which is included in **Appendix A**, was developed in conjunction with City of Upland Development Services and Public Works Department staff.

The Project site has been visited and an inventory of adjacent area roadways and intersections was performed. Existing peak hour traffic information has been collected at five (5) key study intersections for use in the preparation of intersection level of service calculations. Information concerning cumulative projects (planned and/or approved) in the vicinity of the proposed Project has been researched at the Cities of Upland, Montclair, and Ontario. Based on our research, there are fifteen (15) cumulative projects in the City of Upland, six (6) cumulative projects in the City of Montclair, and five (5) cumulative projects in the City of Ontario within the vicinity of the subject site. These twenty-six (26) planned and/or approved cumulative projects were considered in the cumulative traffic analysis for this project.

This traffic report analyzes existing and future weekday AM peak hour and PM peak hour traffic conditions for a near-term (Year 2021) traffic setting upon completion of the proposed Project. Peak hour traffic forecasts for the Year 2021 horizon year have been projected by increasing existing traffic volumes by an annual growth rate of 2.0% per year and adding traffic volumes generated by twenty-six (26) cumulative projects.

1.1 Study Area

Five (5) key study intersections were designated for evaluation based on *San Bernardino County Congestion Management Program (CMP)* criteria and discussions with City of Upland staff. The

five (5) key study intersections selected for evaluation provide local and regional access to the study area and consist of the following:

1. Mountain Avenue at 8th Street
2. Mountain Avenue at Mountain Green Shopping Center Driveway
3. Mountain Avenue at 7th Street
4. Mountain Avenue at Existing Project Driveway No. 1
5. Existing Project Driveway No. 2 at 7th Street

1.2 Traffic Impact Analysis Components

The Highway Capacity Manual (HCM) Delay and corresponding Level of Service (LOS) calculations at the key study locations were used to evaluate the potential traffic-related impacts associated with area growth, cumulative projects and the Project. When necessary, this report recommends intersection improvements that may be required to accommodate future traffic volumes and restore/maintain an acceptable Level of Service and/or addresses the impact of the Project.

Included in this Traffic Impact Analysis are:

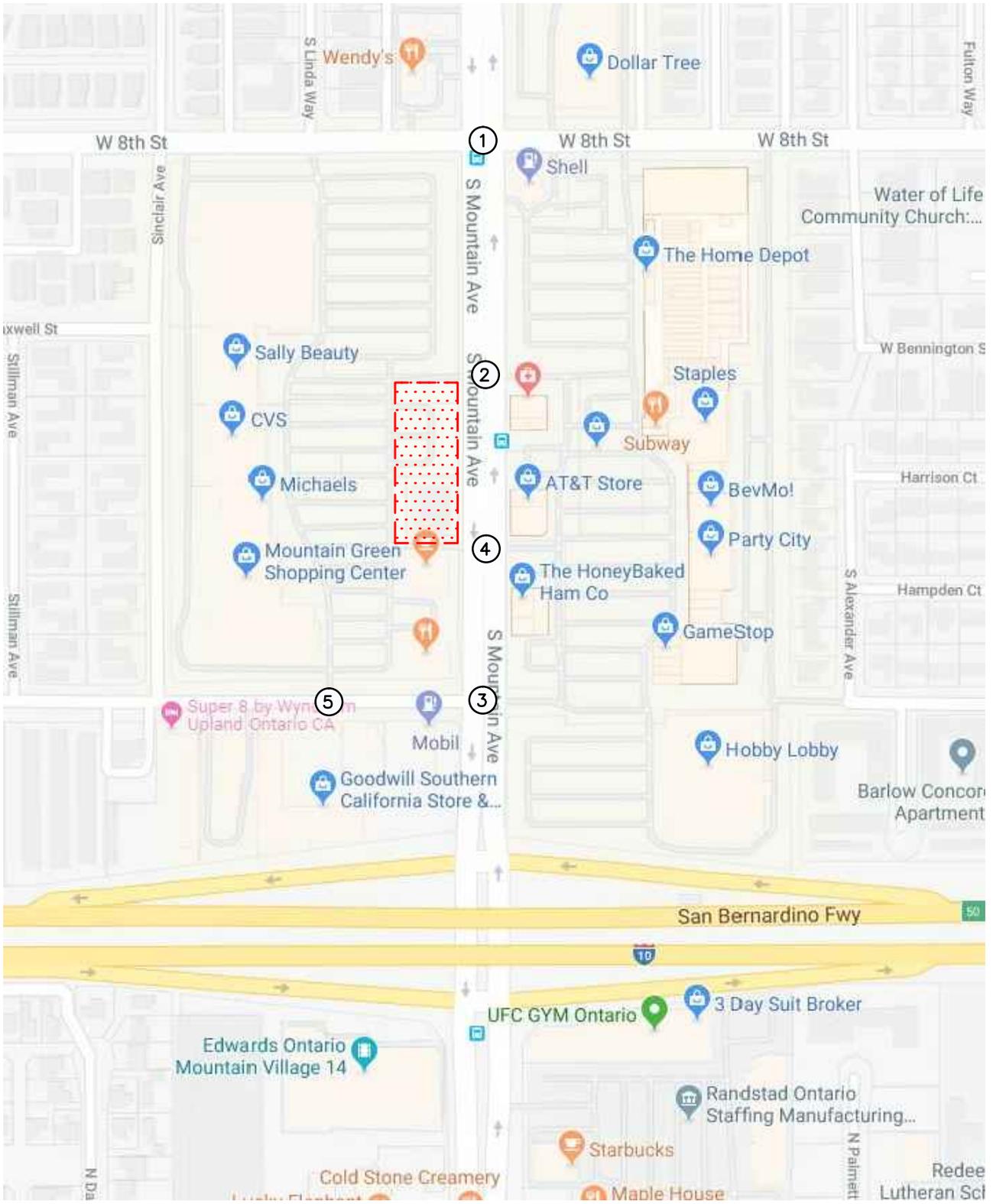
- Existing Traffic Counts,
- Estimated Project trip generation/distribution/assignment,
- Estimated Cumulative Projects trip generation/distribution/assignment,
- AM and PM peak hour capacity analyses for Existing (Year 2019) Conditions,
- AM and PM peak hour capacity analyses for Existing (Year 2019) Conditions with Project traffic,
- AM and PM peak hour capacity analyses for Near-Term (Year 2021) Conditions without and with Project traffic,
- Recommended Improvements, if any,
- Site Access and Internal Circulation Evaluation, and
- Drive-Through Queuing Analysis.

Figure I-1 presents a Vicinity Map, which illustrates the general location of the Project and depicts the study locations and surrounding street system.

1.3 Traffic Impact Analysis Scenarios

The following scenarios are those for which Delay and corresponding LOS calculations have been performed at the key intersections for existing and near-term traffic conditions:

- A. Existing (Year 2019) Traffic Conditions,
- B. Existing Plus Project Traffic Conditions,
- C. Scenario (B) with Recommended Improvements, if any,
- D. Year 2021 Cumulative Traffic Conditions,
- E. Year 2021 Cumulative Plus Project Traffic Conditions, and
- F. Scenario (G) With Recommended Improvements, if any.



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SOURCE: GOOGLE

KEY

- # = STUDY INTERSECTION
- = PROJECT SITE

FIGURE 1-1

VICINITY MAP
CHICK-FIL-A, UPLAND

LINSCOTT
LAW &
GREENSPAN
engineers



NO SCALE

2.0 PROJECT DESCRIPTION AND LOCATION

The Project site is generally located on the west side of Mountain Avenue and north of 7th Street and the I-10 Freeway in the City of Upland, California. The Project site is located within the existing Mountain Green shopping center and will reoccupy the existing vacant El Torito restaurant. *Figure 2-1* presents an existing aerial photograph for the proposed Project.

Based on review of the proposed site plan prepared by CRHO Architects, the proposed Project will consist of razing the existing 9,401 SF vacant El Torito restaurant and constructing a 4,863 SF Chick-fil-A restaurant with drive-through window and drive-through queue storage of 15 vehicles. The Project is expected to be constructed in one phase and fully operational by the Year 2021. *Figure 2-2* presents the proposed site plan prepared by CRHO Architects.

2.1 Site Access

Access to the Project is currently provided and will continue to be provided via the one (1) full-access signalized driveway located along Mountain Avenue (i.e. key study intersection #2), the one (1) right-turn in/right-turn out only unsignalized driveway located along Mountain Avenue (i.e. key study intersection #4) and the one (1) full-access unsignalized driveway located along 7th Street (i.e. key study intersection #5).



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SOURCE: GOOGLE

KEY

 = PROJECT SITE

FIGURE 2-1

EXISTING SITE AERIAL
CHICK-FIL-A, UPLAND

LINSCOTT
LAW &
GREENSPAN
engineers



NO SCALE

3.0 ANALYSIS CONDITIONS AND METHODOLOGY

3.1 Existing Street Network

The I-10 Freeway provides primary regional access to the proposed Project. The I-10 Freeway runs in the east-west direction, south of the Project site. The Principal local network of streets serving the site consists of Mountain Avenue, 8th Street, and 7th Street. The following discussion provides a brief synopsis of the key area streets.

Mountain Avenue is a north-south roadway that borders the Project site on the east. Mountain Avenue is a six-lane divided roadway. Parking is not permitted along either side of the roadway within the immediate vicinity of the Project. Mountain Avenue has a posted speed limit of 40 miles per hour (mph) in the immediate vicinity of the Project. The intersections of Mountain Avenue and 8th Street, Mountain Green Shopping Center Driveway, and 7th Street are controlled by traffic signals. The intersection of Mountain Avenue and Project Driveway No. 1 is stop-controlled.

8th Street is an east-west, four-lane divided roadway located north of the Project site. 8th Street has a posted speed limit of 40 mph in the immediate vicinity of the Project. Parking is not permitted along either side of the roadway within the immediate vicinity of the Project.

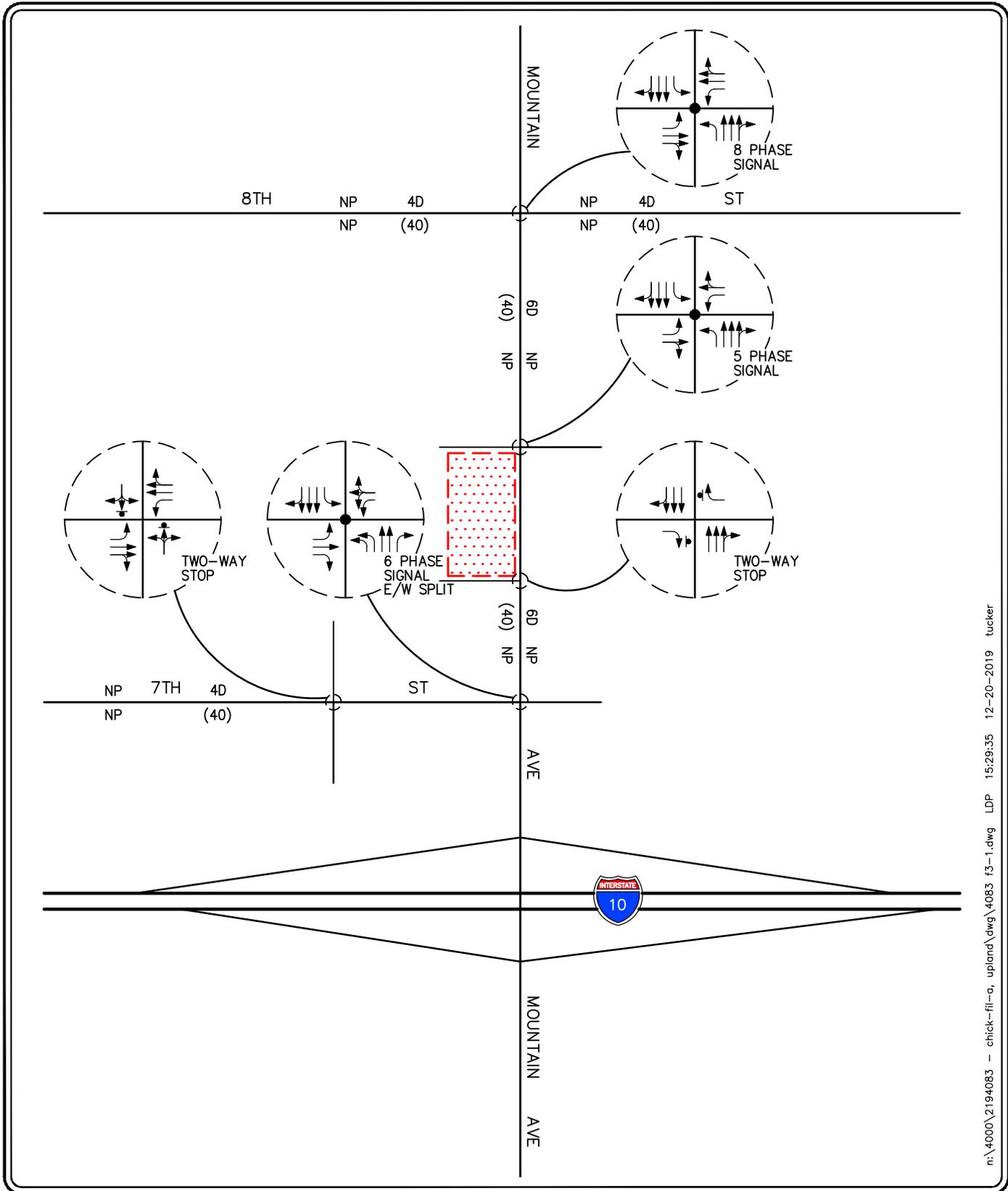
7th Street is an east-west, four-lane divided roadway located south of the Project site. 7th Street has a posted speed limit of 40 mph in the immediate vicinity of the Project. Parking is not permitted along either side of the roadway within the immediate vicinity of the Project. The intersection of 7th Street and Project Driveway No. 2 is stop-controlled.

Figure 3-1 presents an inventory of the existing roadway conditions for the arterials and intersections evaluated in this report. This figure identifies the number of travel lanes for key arterials, as well as intersection configurations and controls for the key area study intersections.

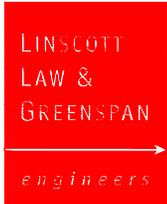
3.2 Existing Traffic Volumes

Five (5) key study intersections have been identified as the locations at which to evaluate existing and future traffic operating conditions. Some portion of potential Project-related traffic will pass through each of these intersections, and their analysis will reveal the expected relative impacts of the Project. These key locations were selected for evaluation based on *San Bernardino County Congestion Management Program (CMP)* criteria and discussions with City of Upland staff.

The data collection for the five (5) key study intersections was conducted by *Transportation Studies, Inc.* in November 2019. *Figures 3-2* and *3-3* illustrate the existing AM and PM peak hour traffic volumes at the key study intersections evaluated in this report, respectively. *Appendix B* contains the detailed peak hour traffic count sheets for the key intersections evaluated in this report.



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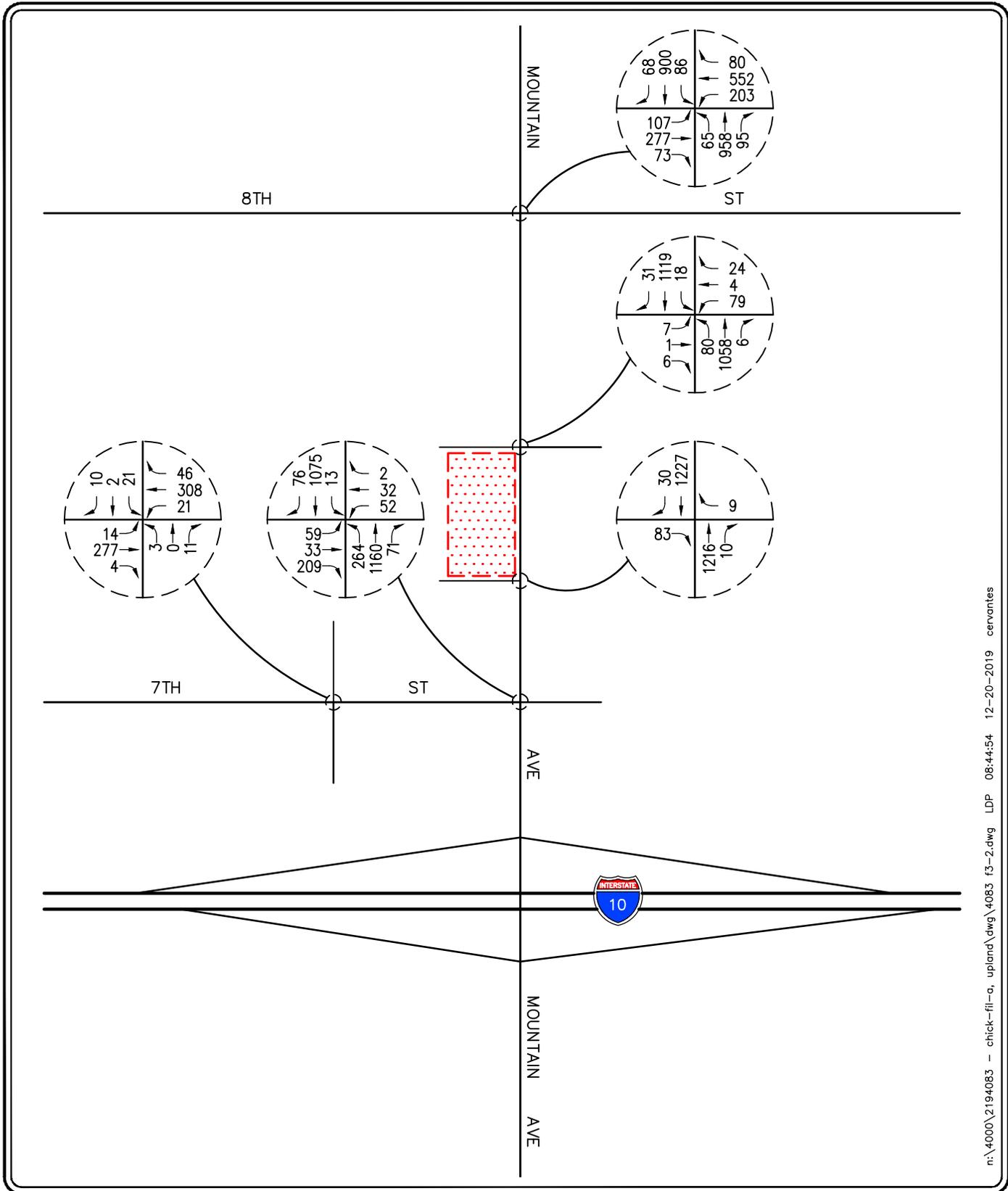
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- KEY**
- ← = APPROACH LANE ASSIGNMENT
 - = TRAFFIC SIGNAL, ▼ = STOP SIGN
 - P = PARKING, NP = NO PARKING
 - U = UNDIVIDED, D = DIVIDED
 - 2 = NUMBER OF TRAVEL LANES
 - (XX) = POSTED SPEED LIMIT (MPH)
 - [Red Hatched Box] = PROJECT SITE

FIGURE 3-1

EXISTING ROADWAY CONDITIONS AND INTERSECTION CONTROLS

CHICK-FIL-A, UPLAND



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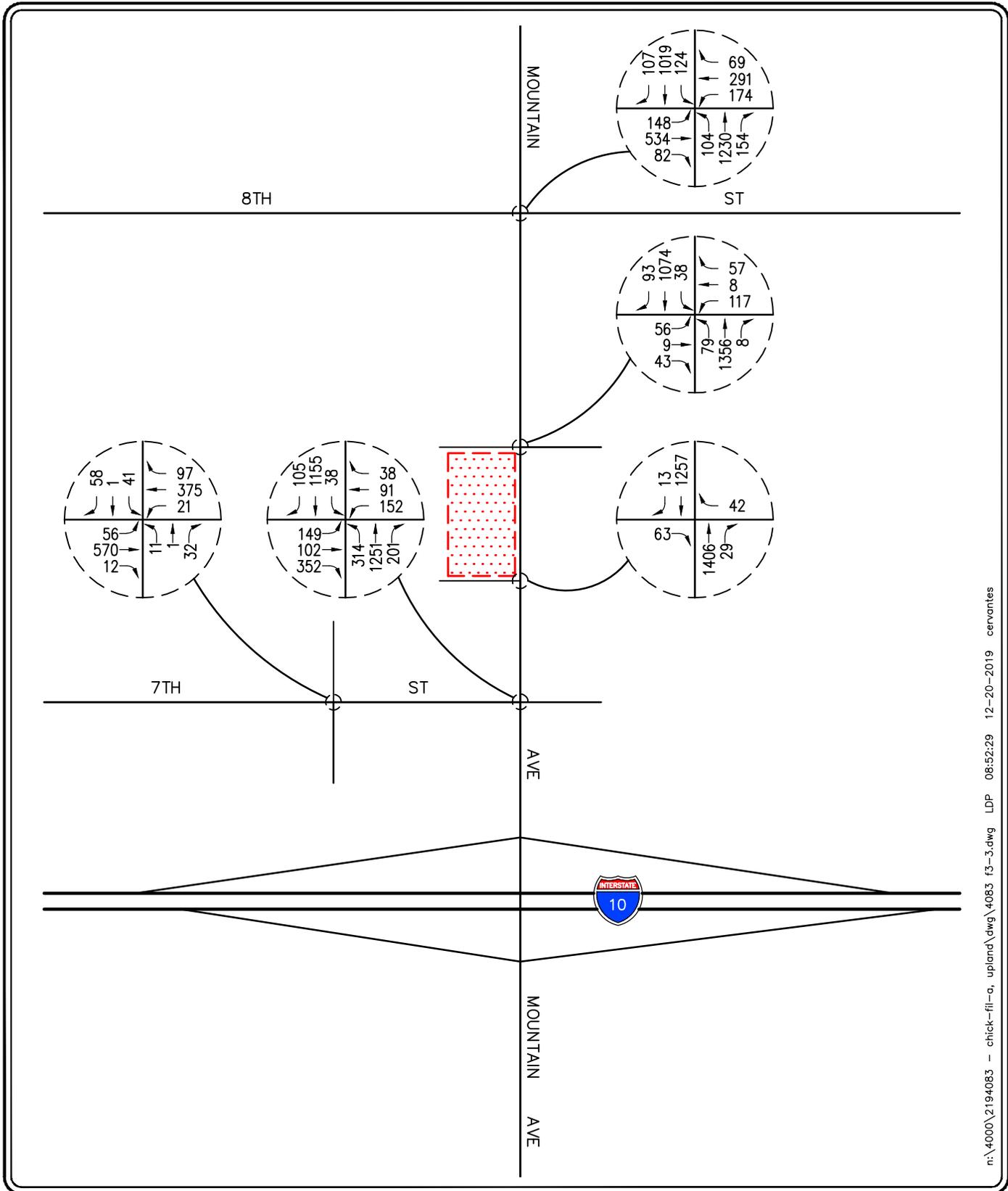


NO SCALE

KEY
 = PROJECT SITE

FIGURE 3-2

EXISTING AM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



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NO SCALE

KEY
 = PROJECT SITE

FIGURE 3-3

EXISTING PM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND

3.3 Level of Service (LOS) Analysis Methodologies

AM and PM peak hour operating conditions for the key study intersections were evaluated using the methodology outlined in *Chapter 19 of the Highway Capacity Manual 6 (HCM 6)* for signalized intersections, the methodology outlined in *Chapter 20 of the HCM 6* for two-way stop-controlled intersections, and the methodology outlined in *Chapter 21 of the HCM 6* for all-way stop-controlled intersections.

3.3.1 Highway Capacity Manual 6 (HCM 6) Method of Analysis (Signalized Intersections)

Based on the HCM operations method of analysis, level of service for signalized intersections and approaches is defined in terms of control delay, which is a measure of the increase in travel time due to traffic signal control, driver discomfort, and fuel consumption. Control delay includes the delay associated with vehicles slowing in advance of an intersection, the time spent stopped on an intersection approach, the time spent as vehicles move up in the queue, and the time needed for vehicles to accelerate to their desired speed. LOS criteria for traffic signals are stated in terms of the control delay in seconds per vehicle. The LOS thresholds established for the automobile mode at a signalized intersection are shown in *Table 3-1*.

3.3.2 Highway Capacity Manual 6 (HCM 6) Method of Analysis (Unsignalized Intersections)

The HCM unsignalized methodology for stop-controlled intersections was utilized for the analysis of the unsignalized intersections. LOS criteria for unsignalized intersections differ from LOS criteria for signalized intersections as signalized intersections are designed for heavier traffic and therefore a greater delay. Unsignalized intersections are also associated with more uncertainty for users, as delays are less predictable, which can reduce users' delay tolerance.

3.3.2.1 Two-Way Stop-Controlled Intersections

Two-way stop-controlled intersections are comprised of a major street, which is uncontrolled, and a minor street, which is controlled by stop signs. Level of service for a two-way stop-controlled intersection is determined by the computed or measured control delay. The control delay by movement, by approach, and for the intersection as a whole is estimated by the computed capacity for each movement. LOS is determined for each minor-street movement (or shared movement) as well as major-street left turns. The worst side street approach delay is reported. LOS is not defined for the intersection as a whole or for major-street approaches, as it is assumed that major-street through vehicles experience zero delay. The HCM control delay value ranges for two-way stop-controlled intersections are shown in *Table 3-2*.

3.3.2.2 All-Way Stop-Controlled Intersections

All-way stop-controlled intersections require every vehicle to stop at the intersection before proceeding. Because each driver must stop, the decision to proceed into the intersection is a function of traffic conditions on the other approaches. The time between subsequent vehicle departures depends on the degree of conflict that results between the vehicles and vehicles on the other approaches. This methodology determines the control delay for each lane on the approach, computes a weighted average for the whole approach, and computes a weighted average for the intersection as a whole. Level of service (LOS) at the approach and intersection levels is based solely on control

delay. The HCM control delay value ranges for all-way stop-controlled intersections are shown in *Table 3-2*.

3.4 Impact Criteria and Thresholds

According to *City of Upland General Plan Policy CIR-1.1c*, dated March 2015, “*Strive to maintain LOS D at all intersections outside of the Downtown Specific Plan area and the Transit Priority Roadways except where such improvements are physically infeasible or would negatively impact bicyclists, pedestrians, or transit patrons.*” Based on the above, LOS “D” is the minimum acceptable condition that should be maintained during the peak commute hours. Hence, any intersection operating at LOS “E” or “F” is considered deficient/unsatisfactory.

In the event that an intersection is operating at or is forecast to operate at a deficient LOS, the CMP guidelines have defined a series of steps to be completed to determine the Project’s contribution to the deficiency of intersections. The steps are as follows:

1. Determine the mitigation measures necessary to achieve an acceptable service level.
2. Calculate the Project’s share in the future traffic volume projections for the peak hours.
3. Estimate the cost to implement recommended mitigation measures.
4. Calculate the Project’s fair-share contribution to offset the project’s traffic impacts.

3.5 Existing Level of Service Results

Table 3-3 summarizes the existing peak hour service level calculations for the five (5) key study intersections based on existing traffic volumes and current street geometry. Review of *Table 3-3* indicates that all five (5) key study intersections currently operate at acceptable levels of service during the AM and PM peak hours when compared to the LOS criteria identified in this report.

Appendix C presents the Delay/LOS calculations for the five (5) key study intersections for the AM and PM peak hour.

TABLE 3-1
LEVEL OF SERVICE CRITERIA FOR SIGNALIZED INTERSECTIONS (HCM 6 METHODOLOGY)¹

Level of Service (LOS)	Control Delay Per Vehicle (seconds/vehicle)	Level of Service Description
A	≤ 10.0	This level of service occurs when progression is extremely favorable and most vehicles arrive during the green phase. Most vehicles do not stop at all. Short cycle lengths may also contribute to low delay.
B	> 10.0 and ≤ 20.0	This level generally occurs with good progression, short cycle lengths, or both. More vehicles stop than with LOS A, causing higher levels of average delay.
C	> 20.0 and ≤ 35.0	Average traffic delays. These higher delays may result from fair progression, longer cycle lengths, or both. Individual cycle failures may begin to appear at this level. The number of vehicles stopping is significant at this level, though many still pass through the intersection without stopping.
D	> 35.0 and ≤ 55.0	Long traffic delays At level D, the influence of congestion becomes more noticeable. Longer delays may result from some combination of unfavorable progression, long cycle lengths, or high v/c ratios. Many vehicles stop and the proportion of vehicles not stopping declines. Individual cycle failures are noticeable.
E	> 55.0 and ≤ 80.0	Very long traffic delays This level is considered by many agencies to be the limit of acceptable delay. These high delay values generally indicate poor progression, long cycle lengths and high v/c ratios. Individual cycle failures are frequent occurrences.
F	≥ 80.0	Severe congestion This level, considered to be unacceptable to most drivers, often occurs with over saturation, that is, when arrival flow rates exceed the capacity of the intersection. It may also occur at high v/c ratios below 1.0 with many individual cycle failures. Poor progression and long cycle lengths may also be major contributing factors to such delay levels.

¹ Source: *Highway Capacity Manual 6*, Chapter 19: Signalized Intersections.

TABLE 3-2

LEVEL OF SERVICE CRITERIA FOR UNSIGNALIZED INTERSECTIONS (HCM 6 METHODOLOGY)^{2,3}

Level of Service (LOS)	Highway Capacity Manual (HCM) Delay Per Vehicle (seconds/vehicle)	Level of Service Description
A	≤ 10.0	Little or no delay
B	> 10.0 and ≤ 15.0	Short traffic delays
C	> 15.0 and ≤ 25.0	Average traffic delays
D	> 25.0 and ≤ 35.0	Long traffic delays
E	> 35.0 and ≤ 50.0	Very long traffic delays
F	> 50.0	Severe congestion

² Source: *Highway Capacity Manual 6*, Chapter 20: Two-Way Stop-Controlled Intersections. The LOS criteria apply to each lane on a given approach and to each approach on the minor street. LOS is not calculated for major-street approaches or for the intersection as a whole.

³ Source: *Highway Capacity Manual 6*, Chapter 21: All-Way Stop-Controlled Intersections. For approaches and intersection-wide assessment, LOS is defined solely by control delay.

**TABLE 3-3
EXISTING PEAK HOUR LEVELS OF SERVICE**

Key Intersections	Time Period	Control Type	HCM	LOS
1. Mountain Avenue at 8 th Street	AM	8Ø Traffic Signal	25.4 s/v	C
	PM	Signal	26.3 s/v	C
2. Mountain Avenue at Mountain Green Shopping Center Driveway	AM	5Ø Traffic Signal	7.8 s/v	A
	PM	Signal	10.6 s/v	B
3. Mountain Avenue at 7 th Street	AM	6Ø Traffic Signal	21.1 s/v	C
	PM	Signal	31.5 s/v	C
4. Mountain Avenue at Existing Project Driveway No. 1	AM	Two-Way Stop	19.6 s/v	C
	PM	Stop	18.4 s/v	C
5. Existing Project Driveway No. 2 at 7 th Street	AM	Two-Way Stop	11.6 s/v	B
	PM	Stop	13.9 s/v	B

Notes:

- s/v = seconds per vehicle (delay)
- LOS = Level of Service, please refer to *Tables 3-1* and *3-2* for the LOS definitions
- **Bold Delay/LOS values** indicate adverse service levels based on the LOS standards mentioned in this report.

4.0 TRAFFIC FORECASTING METHODOLOGY

In order to estimate the traffic impact characteristics of the Project, a multi-step process has been utilized. The first step is traffic generation, which estimates the total arriving and departing traffic on a peak hour and daily basis. The traffic generation potential is forecast by applying the appropriate vehicle trip generation equations and/or rates to the Project development tabulation.

The second step of the forecasting process is traffic distribution, which identifies the origins and destinations of inbound and outbound Project traffic. These origins and destinations are typically based on demographics and existing/expected future travel patterns in the study area.

The third step is traffic assignment, which involves the allocation of Project traffic to study area streets and intersections. Traffic assignment is typically based on minimization of travel time, which may or may not involve the shortest route, depending on prevailing operating conditions and travel speeds.

Traffic distribution patterns are indicated by general percentage orientation, while traffic assignment allocates specific volume forecasts to individual roadway segments and intersection turning movements throughout the study area.

With the forecasting process complete and Project traffic assignments developed, the impact of the Project is isolated by comparing operational (LOS) conditions at selected key intersections using expected future traffic volumes with and without forecast Project traffic. If necessary, the need for site-specific and/or cumulative local area improvements can then be evaluated.

5.0 PROJECT TRAFFIC CHARACTERISTICS

5.1 Project Trip Generation Forecast

Trip generation is expressed in vehicle trip ends, defined as one-way vehicular movements, either entering or exiting the generating land use. Generation rates used in the traffic forecasting procedure are found in the 10th Edition of *Trip Generation*, published by the Institute of Transportation Engineers (ITE), [Washington, D.C., 2017].

The top part of *Table 5-1* summarizes the trip generation rates used in forecasting the vehicular trips generated by the Project and the existing vacant El Torito restaurant. The trip generation potential of the Project has been estimated using trip rates for ITE Land Use 934: Fast-Food Restaurant with Drive-Through Window. The trip generation potential of the existing vacant El Torito Restaurant has been estimated using trip rates for ITE Land Use 931: Quality Restaurant.

A review of the middle portion of *Table 5-1* indicates that the proposed Project is forecast to generate approximately 1,717 daily trips, with 99 trips (50 inbound, 49 outbound) produced in the AM peak hour and 79 trips (41 inbound, 38 outbound) produced in the PM peak hour on a “typical” weekday. Further review of the middle portion of *Table 5-1* indicates that the existing vacant El Torito restaurant generates approximately 591 daily trips, with 7 trips (4 inbound, 3 outbound) produced in the AM peak hour and 41 trips (28 inbound, 13 outbound) produced in the PM peak hour on a “typical” weekday.

As shown at the bottom of *Table 5-1*, when the proposed Project is compared to the existing vacant El Torito restaurant trip generation, the Project is forecast to result in a net addition of 1,126 daily trips, with a net addition of 92 trips (46 inbound, 46 outbound) produced in the AM peak hour and a net addition of 38 trips (13 inbound, 25 outbound) produced in the PM peak hour on a “typical” weekday. The potential impact of these net additional trips have been assessed in the traffic study. It should be noted that the existing vacant El Torito restaurant trips (i.e. 591 daily trips, 7 AM peak hour trips, 41 PM peak hour trips) have been included as part of the background traffic forecast.

It should be further noted that the aforementioned overall Project trip generation includes adjustments for pass-by per the *Trip Generation Handbook, 3rd Edition*, published by ITE (2014), to account for trips that are already in the everyday traffic stream on the adjoining streets (i.e. Mountain Avenue) and will stop as they pass by the Project site as a matter of convenience on their path to another destination. Per the *Trip Generation Handbook*, a pass-by reduction factor of 49% and 50% is recommended for the AM and PM peak hours, respectively, for the fast-food restaurant with drive-through land use. The daily pass-by percentage is estimated to be 25%. Furthermore, a pass-by reduction factor of 44% is recommended for the PM peak hour for the quality restaurant land use. The pass-by percentages are estimated to be 25% and 0% for the daily and AM peak hour, respectively.

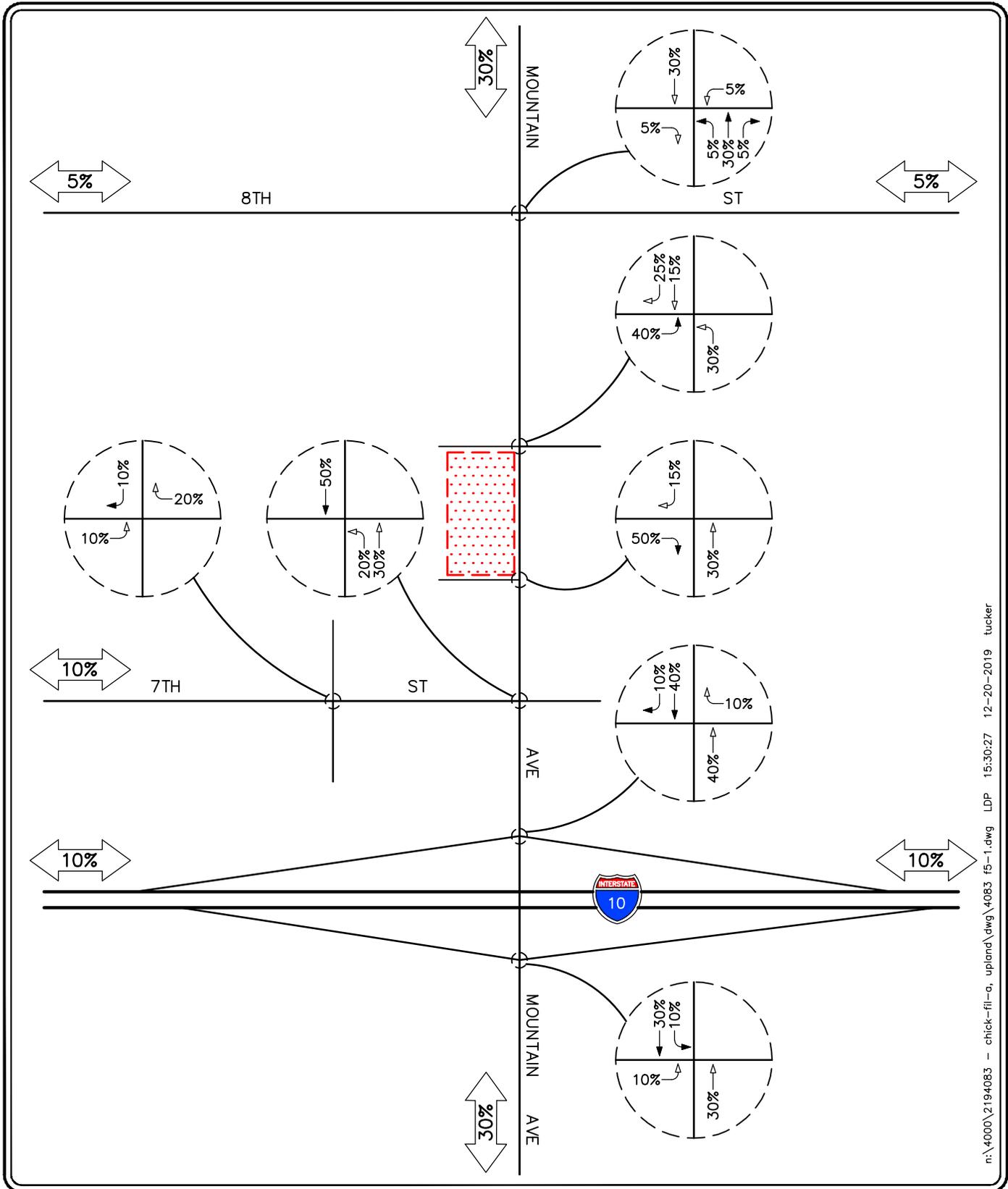
5.2 Project Trip Distribution and Assignment

The directional trip distribution pattern for the Project is presented in *Figure 5-1*. Project traffic volumes, both entering and exiting the site, have been distributed and assigned to the adjacent street system based on the following considerations:

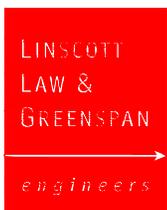
- the site's proximity to major traffic carriers (i.e. Mountain Avenue, etc.),
- expected localized traffic flow patterns based on adjacent street channelization and presence of traffic signals,
- existing intersection traffic volumes,
- ingress/egress availability at the Project site, and
- input from City of Upland staff.

The Project trip distribution pattern was submitted to City of Upland staff for their review and approval prior to proceeding with further analyses.

The anticipated AM and PM peak hour Project traffic volumes at the five (5) key study intersections are presented in *Figures 5-2* and *5-3*, respectively. The traffic volume assignment presented in the above-mentioned figures reflects the Project trip distribution characteristics shown in *Figure 5-1* and the Project trip generation forecast presented in the *Table 5-1*.



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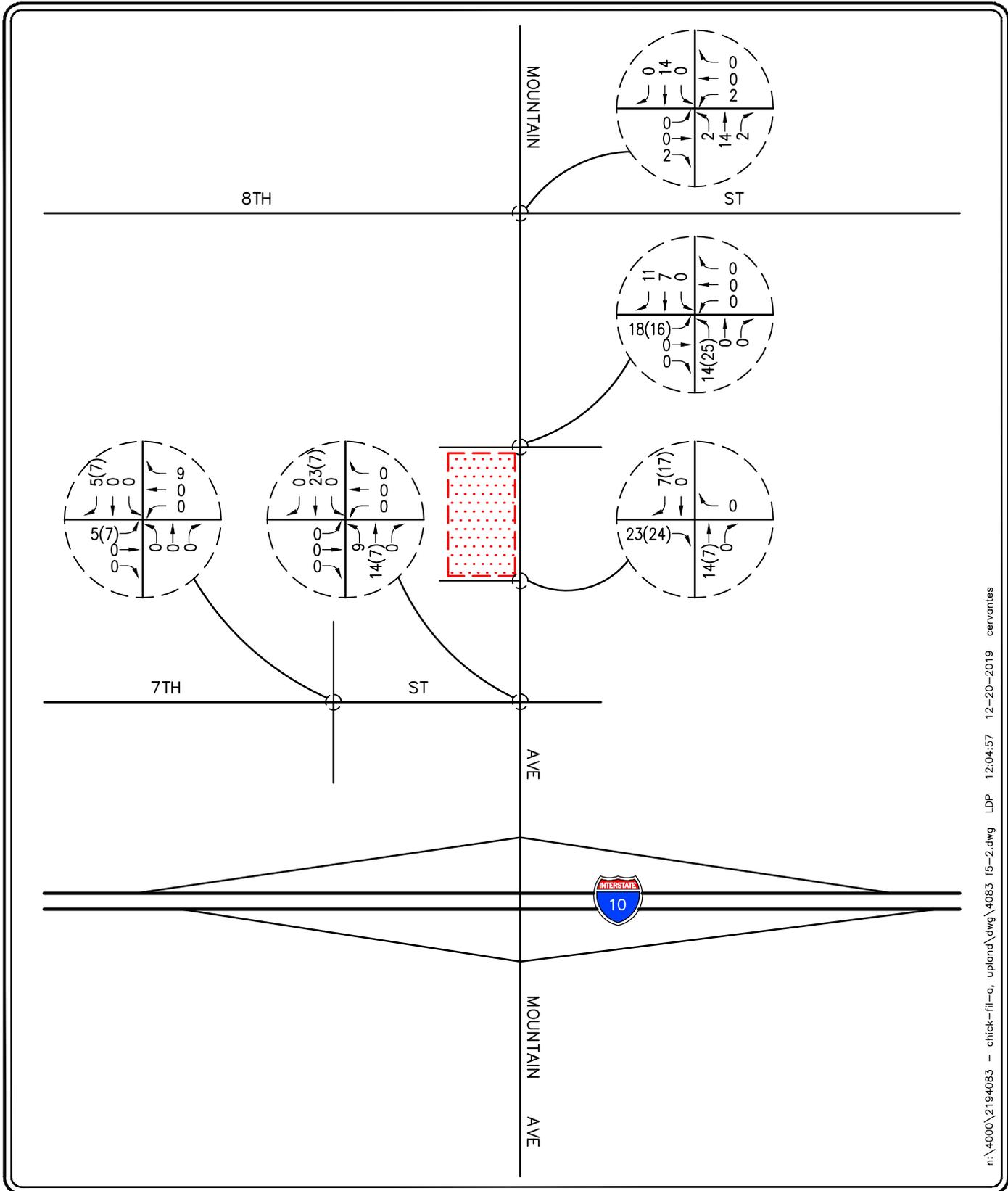


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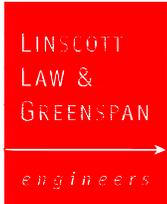
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- ↔ = INBOUND PERCENTAGE
 - ← = OUTBOUND PERCENTAGE
 - ▨ = PROJECT SITE

FIGURE 5-1

PROJECT TRAFFIC DISTRIBUTION PATTERN
CHICK-FIL-A, UPLAND



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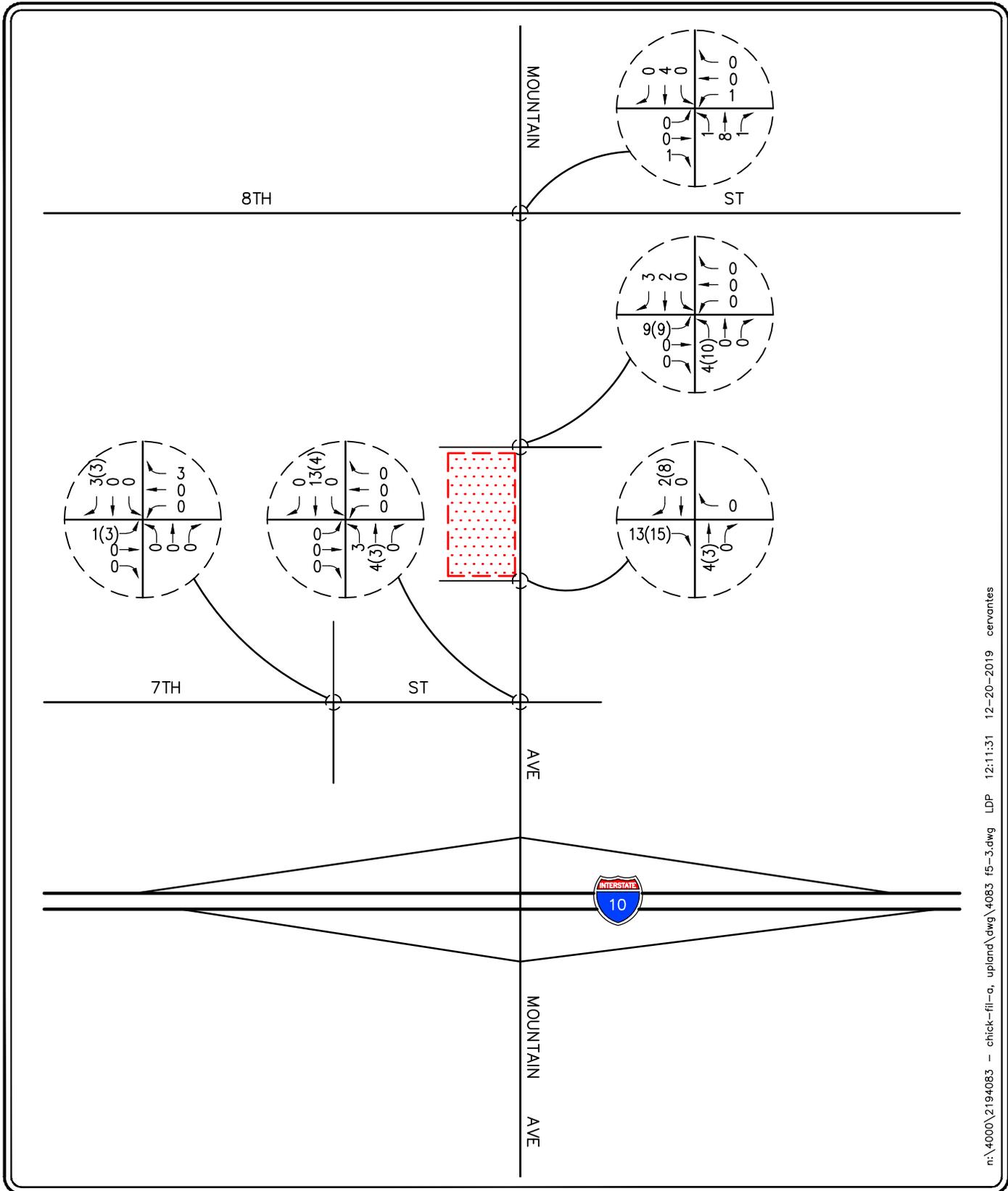
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XX(X) = PROJECT TRIPS (PASS-BY TRIPS)

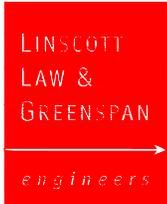
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FIGURE 5-2

AM PEAK HOUR PROJECT TRAFFIC VOLUMES
CHICK-FIL-A, UPLAND



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NO SCALE

KEY
 XX(XX) = PROJECT TRIPS (PASS-BY TRIPS)
 = PROJECT SITE

FIGURE 5-3

PM PEAK HOUR PROJECT TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND

6.0 FUTURE TRAFFIC CONDITIONS

6.1 Existing With Project Traffic Volumes

The estimates of Project generated traffic volumes were added to the Existing traffic conditions to develop traffic projections for the Existing With Project traffic conditions. *Figures 6-1* and *6-2* present the anticipated AM and PM peak hour Existing With Project traffic volumes, respectively, at the key study intersections.

6.2 Year 2021 Without Project Traffic Volumes

6.2.1 Ambient Growth Traffic

Near-term horizon year traffic growth estimates have been calculated using an ambient growth factor. The ambient growth factor is intended to include unknown and future cumulative projects in the study area, as well as account for regular growth in traffic volumes due to the development of projects outside the study area. Applied to the Year 2019 existing traffic volumes, this factor results in a 4.0% growth in existing volumes to the near-term horizon year 2021.

6.2.2 Cumulative Projects Traffic

The Cities of Upland, Montclair and Ontario identified a total of twenty-six (26) cumulative projects within the Project study area. Cumulative projects, as defined by Section 15355 of the CEQA Guidelines, are “closely related past, present and reasonably foreseeable probable future projects”. The Traffic Impact Analysis assumes that these cumulative projects will be developed and operational when the proposed Project is operational. This is the most conservative, worst-case approach, since the exact timing of each cumulative project is uncertain. In addition, impacts for these cumulative projects would likely be, or have been, subject to mitigation measures, which could reduce potential impacts. Under this analysis, however, those mitigation measures are not considered. The locations of these twenty-six (26) cumulative projects are presented in *Figure 6-3*.

Table 6-1 presents the jurisdiction, description and development totals of the twenty-six (26) cumulative projects. *Table 6-2* presents the resultant trip generation for the twenty-six (26) cumulative projects. As shown in *Table 6-2*, the cumulative projects are expected to generate 17,646 daily trips (one half arriving, one half departing) on a “typical” weekday, with 1,203 trips (418 inbound and 785 outbound) forecast during the weekday AM peak hour and 1,503 trips (859 inbound and 644 outbound) forecast during the weekday PM peak hour.

The anticipated AM and PM peak hour cumulative projects traffic volumes at the key study intersections are presented in *Figures 6-4* and *6-5*, respectively.

Figures 6-6 and *6-7* present Year 2021 Without Project AM and PM peak hour traffic volumes at the key study intersections, respectively. It should be noted that the Year 2021 Without Project traffic volumes include ambient traffic growth as well as the traffic from the twenty-six (26) cumulative projects.

It should again be emphasized that because this traffic impact analysis utilizes both an ambient growth factor along with a list of cumulative projects approach to analyze cumulative impacts, this traffic impact analysis is highly conservative and would tend to overstate cumulative traffic impacts.

6.3 Year 2021 With Project Traffic Volumes

The estimates of Project generated traffic volumes were added to the Year 2021 Without Project traffic conditions to develop traffic projections for the Year 2021 With Project traffic conditions. **Figures 6-8** and **6-9** present the anticipated AM and PM peak hour Year 2021 With Project traffic volumes, respectively, at the key study intersections.

**TABLE 6-1
LOCATION AND DESCRIPTION OF CUMULATIVE PROJECTS⁸**

No.	Cumulative Project	Address	Description/Size
City of Upland			
1.	Foothill Blvd/Dewey Way Residential	SEC of Foothill Boulevard and Dewey Way	193 DU Single-Family/Condominium
2.	The Enclave Specific Plan	SEC of Foothill Boulevard and Dewey Way	350 DU Single-Family Attached/Detached
3.	Foothill Blvd/Benson Avenue Residential	NEC of Foothill Blvd and Benson Avenue	37 DU Townhomes
4.	Monte Vista Avenue/Arrow Route Hwy Residential	SEC of Monte Vista Avenue and Arrow Route Highway	40 DU Apartments
5.	Euclid Ave/8 th Street Residential	NEC of N. Euclid Avenue and E. 8 th Street	61 DU Apartments
6.	4 th Avenue/A Street Residential	NEC of N. 4 th Avenue and A Street	111 DU Apartments
7.	Bodenhamer Street/9 th Street Residential	SEC of Bodenhamer Street and E. 9 th Street	52 DU Townhomes
8.	9 th Street/San Antonio Avenue Residential	NWC of 9 th Street and San Antonio Avenue	6 DU Apartments
9.	Mesa Court Apartments	790 Mesa Court	60 DU Apartments
10.	Central Avenue/Foothill Blvd Industrial	NEC of Central Avenue and Foothill Boulevard	201,096 SF Warehouse
11.	Central Ave/11 th St Industrial	NEC of Central Avenue and 11 th Street	71,384 SF Warehouse
12.	1701 W. 11 th Street Industrial	1701 W. 11 th Street	83,000 SF Warehouse
13.	1794 W. 11 th Street Industrial	1794 W. 11 th Street	44,570 SF Warehouse
14.	1704 W. 11 th Street Industrial	1704 W. 11 th Street	56,000 SF Warehouse
15.	Existing El Torito Restaurant	335 S. Mountain Avenue	9,401 SF Restaurant
City of Montclair			
16.	Arrow Highway Industrial	5566 Arrow Highway	95,429 SF General Light Industrial
17.	Alexan Montclair	SWC of Arrow Hwy and Monte Vista Ave	211 DU Apartment
18.	Monte Vista Ave Residential	8949 Monte Vista Avenue	23 DU Apartment
19.	Arrow Highway Residential	5050 Arrow Highway	375 DU Multifamily
20.	Fremont Avenue Residential	SEC of Arrow Highway and Fremont Ave	89 DU Multifamily
21.	Costco Gas Station	9404 Central Avenue	16 Pump Gas Station (8 Additional Pumps)
City of Ontario			
22.	PDEV17-011	214 North Vine Avenue 422 West B Street	8 DU Apartment

⁸ Source: City of Upland, Montclair and Ontario Planning Departments.

TABLE 6-1(CONTINUED)
LOCATION AND DESCRIPTION OF CUMULATIVE PROJECTS⁹

No.	Cumulative Project	Address	Description/Size
23.	PDEV17-017	SWC of Fern Avenue and Holt Boulevard	75 DU Apartment
24.	Raising Cane's Restaurant	1437 North Mountain Avenue	3,233 SF Fast-Food Restaurant with Drive-Thru
25.	PDEV18-004	NWC of Sixth Street and Palmetto Avenue	10,858 SF Office Building
26.	PDEV19-006	1533 West Holt Boulevard	35,435 SF Industrial Park

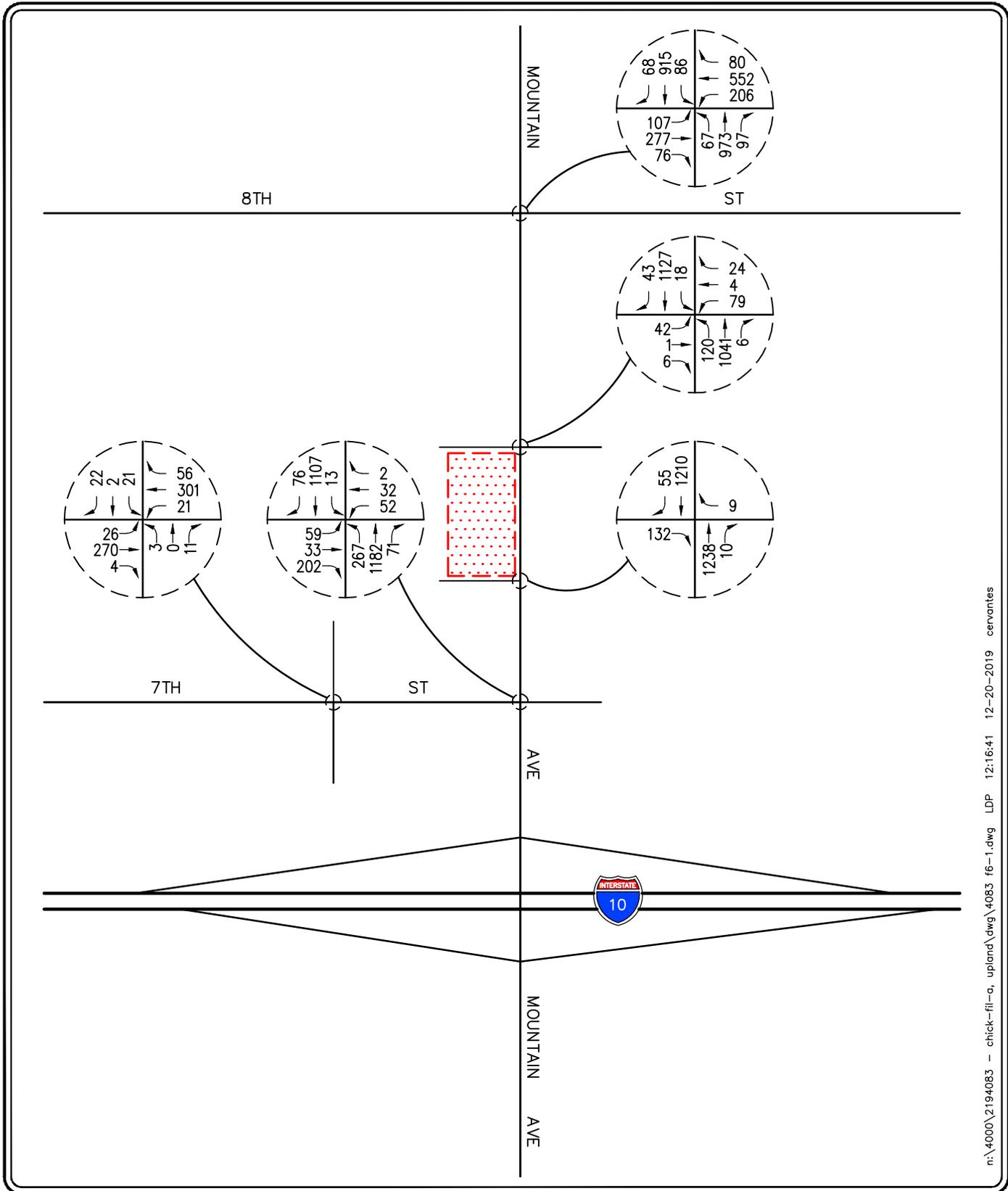
⁹ Source: City of Upland, Montclair and Ontario Planning Departments.

**TABLE 6-2
CUMULATIVE PROJECTS TRIP GENERATION FORECAST¹⁰**

Cumulative Project Description	Daily 2-Way	AM Peak Hour			PM Peak Hour		
		Enter	Exit	Total	Enter	Exit	Total
1. Foothill Blvd/Dewey Way Residential	1,822	36	107	143	120	71	191
2. The Enclave Specific Plan	3,304	65	194	259	219	128	347
3. Foothill Blvd/Benson Avenue Residential	271	4	13	17	13	8	21
4. Monte Vista Avenue/Arrow Route Hwy Residential	293	4	14	18	14	8	22
5. Euclid Ave/8 th Street Residential	447	6	22	28	21	13	34
6. 4 th Avenue/A Street Residential	813	12	39	51	39	23	62
7. Bodenhamer Street/9 th Street Residential	381	6	18	24	18	11	29
8. 9 th Street/San Antonio Avenue Residential	44	1	2	3	2	1	3
9. Mesa Court Apartments ¹¹	439	6	22	28	21	13	34
10. Central Avenue/Foothill Blvd Industrial	350	26	8	34	10	28	38
11. Central Ave/11 th St Industrial	124	9	3	12	4	10	14
12. 1701 W. 11 th Street Industrial	144	11	3	14	4	12	16
13. 1794 W. 11 th Street Industrial	78	6	2	8	2	6	8
14. 1704 W. 11 th Street Industrial	97	8	2	10	3	8	11
15. Existing El Torito Restaurant	591	4	3	7	28	13	41
16. Arrow Highway Industrial	473	59	8	67	8	52	60
17. Alexan Montclair	1,545	22	75	97	74	44	118
18. Monte Vista Ave Residential	168	3	8	11	8	5	13
19. Arrow Highway Residential	2,745	40	133	173	132	78	210
20. Fremont Avenue Residential	651	9	32	41	32	18	50
21. Costco Gas Station	1,032	17	17	34	32	33	65
22. PDEV17-011	59	1	3	4	3	1	4
23. PDEV17-017	408	7	20	27	20	13	33
24. Raising Cane's Restaurant	1,142	34	32	66	27	26	53
25. PDEV18-004	106	11	2	13	2	10	12
26. PDEV19-006	119	11	3	14	3	11	14
Cumulative Projects Trip Generation Potential	17,646	418	785	1,203	859	644	1,503

¹⁰ Unless otherwise noted; Source: *Trip Generation, 10th Edition, Institute of Transportation Engineers (ITE), Washington, D.C. (2017)*. Where applicable, pass-by adjustment factors were utilized and are reflected in the cumulative projects trip generation potential.

¹¹ Source: *Focused Traffic Impact Assessment for the Proposed Mesa Court Apartments*, prepared by LLG Engineers, dated August 9, 2019.



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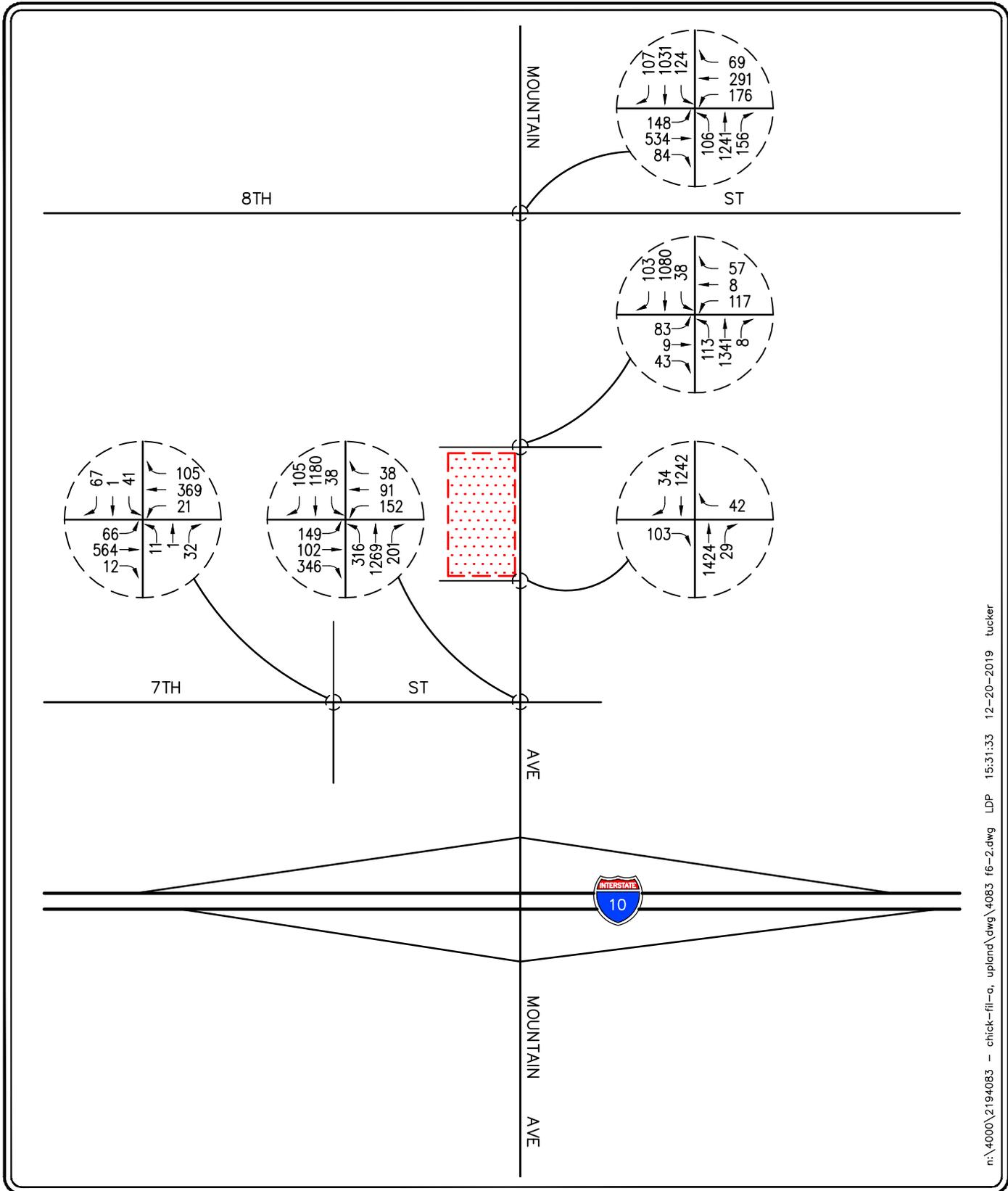


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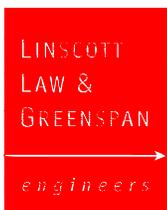
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FIGURE 6-1

EXISTING WITH PROJECT
 AM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



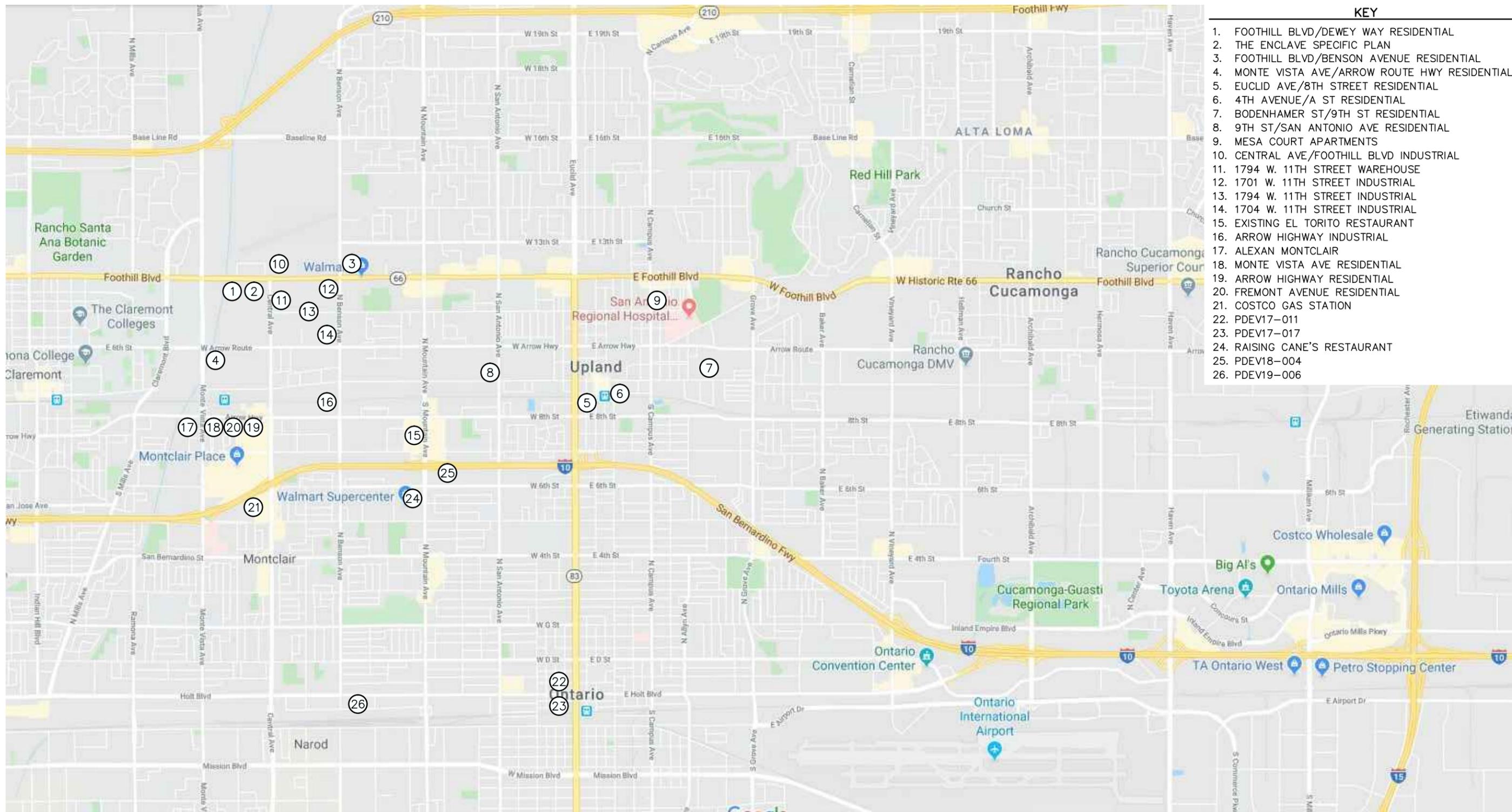
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FIGURE 6-2

EXISTING WITH PROJECT
 PM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



KEY

1. FOOTHILL BLVD/DEWEY WAY RESIDENTIAL
2. THE ENCLAVE SPECIFIC PLAN
3. FOOTHILL BLVD/BENSON AVENUE RESIDENTIAL
4. MONTE VISTA AVE/ARROW ROUTE HWY RESIDENTIAL
5. EUCLID AVE/8TH STREET RESIDENTIAL
6. 4TH AVENUE/A ST RESIDENTIAL
7. BODENHAMER ST/9TH ST RESIDENTIAL
8. 9TH ST/SAN ANTONIO AVE RESIDENTIAL
9. MESA COURT APARTMENTS
10. CENTRAL AVE/FOOTHILL BLVD INDUSTRIAL
11. 1794 W. 11TH STREET WAREHOUSE
12. 1701 W. 11TH STREET INDUSTRIAL
13. 1794 W. 11TH STREET INDUSTRIAL
14. 1704 W. 11TH STREET INDUSTRIAL
15. EXISTING EL TORITO RESTAURANT
16. ARROW HIGHWAY INDUSTRIAL
17. ALEXAN MONTCLAIR
18. MONTE VISTA AVE RESIDENTIAL
19. ARROW HIGHWAY RESIDENTIAL
20. FREMONT AVENUE RESIDENTIAL
21. COSTCO GAS STATION
22. PDEV17-011
23. PDEV17-017
24. RAISING CANE'S RESTAURANT
25. PDEV18-004
26. PDEV19-006

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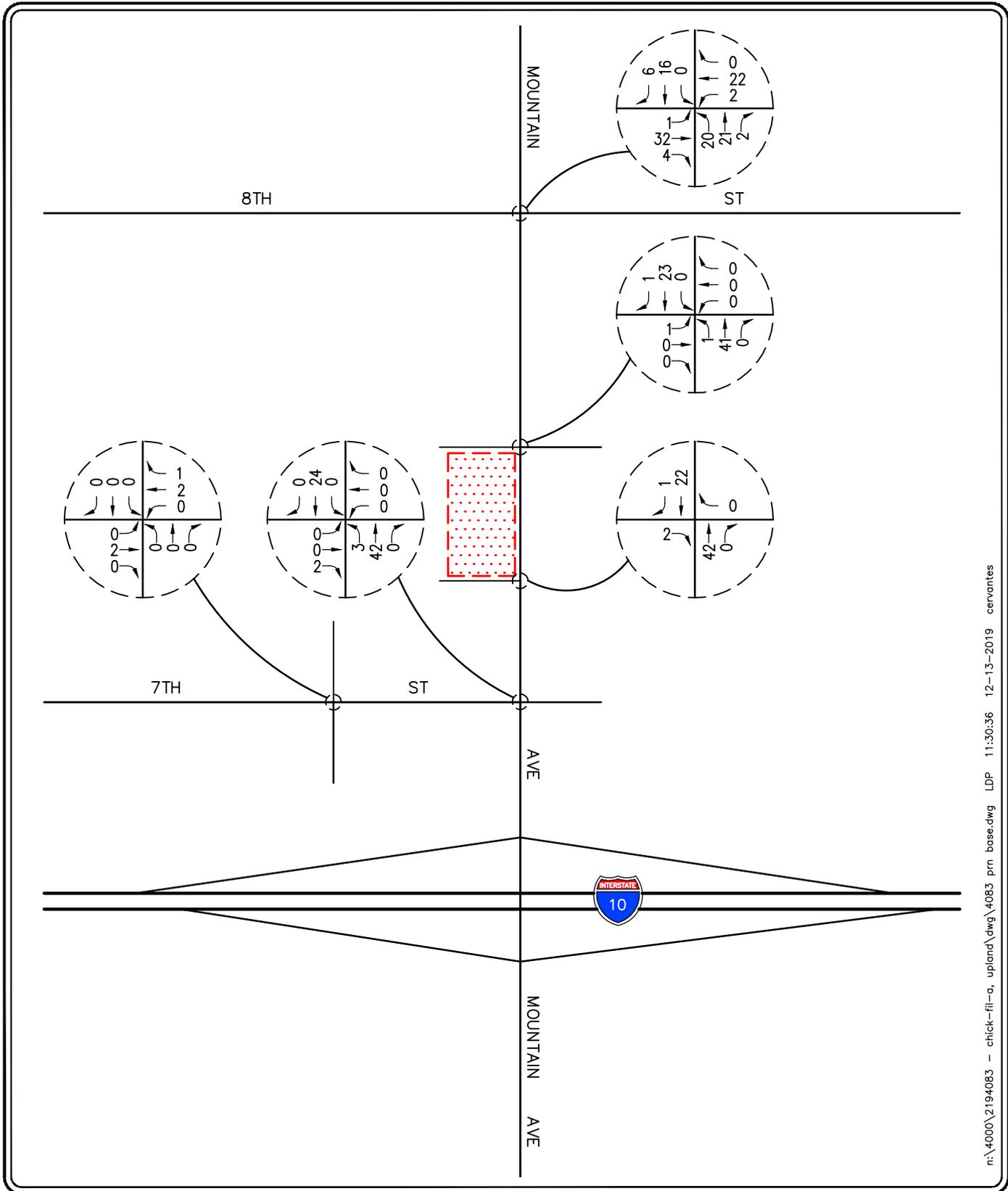
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⊕ = CUMULATIVE PROJECT LOCATION

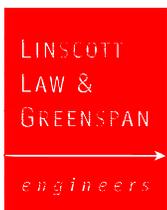


FIGURE 6-3

LOCATION OF CUMULATIVE PROJECTS
CHICK-FIL-A, UPLAND



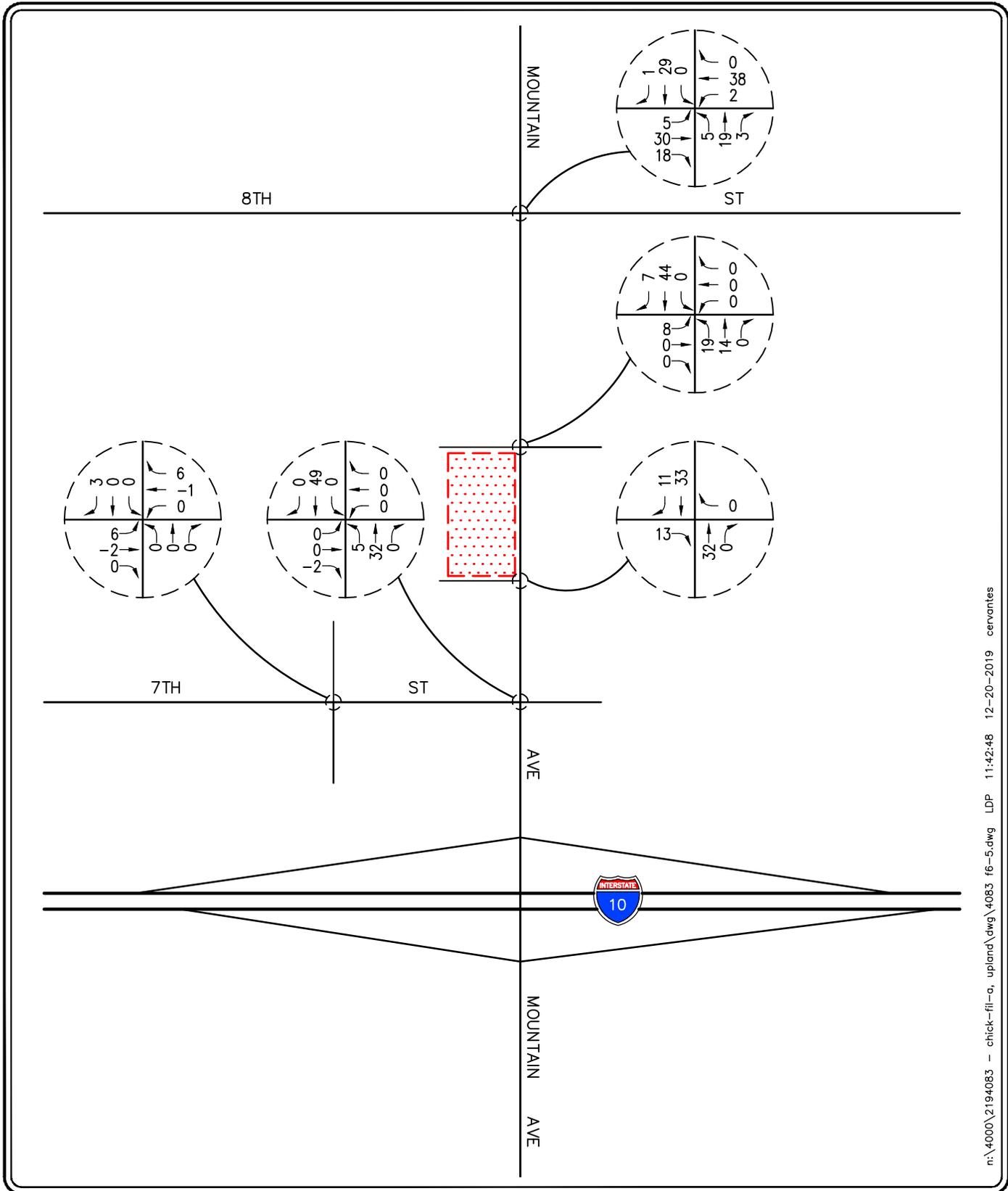
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KEY
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FIGURE 6-4

AM PEAK HOUR
 CUMULATIVE PROJECTS TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



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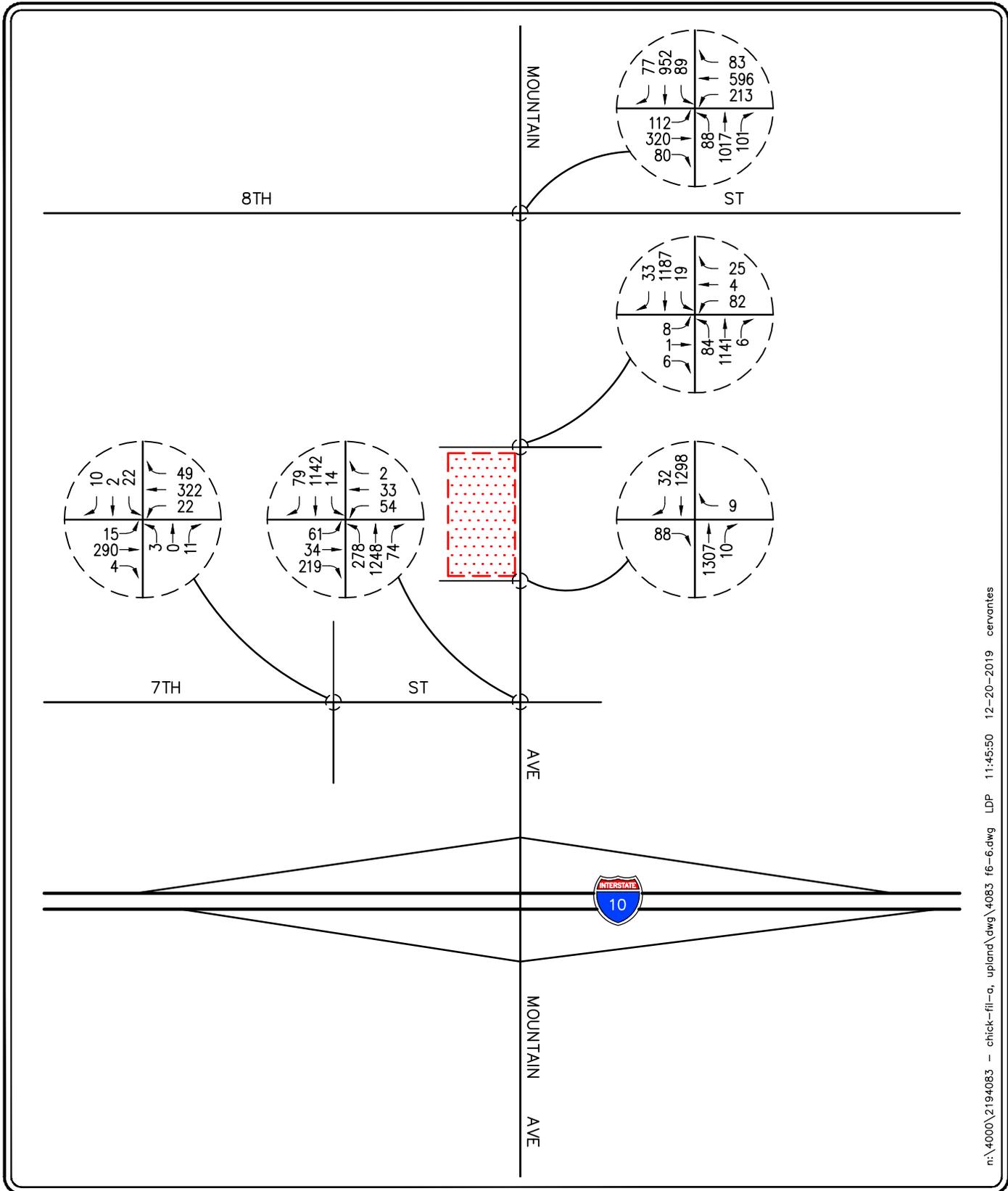


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FIGURE 6-5

PM PEAK HOUR
 CUMULATIVE PROJECTS TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



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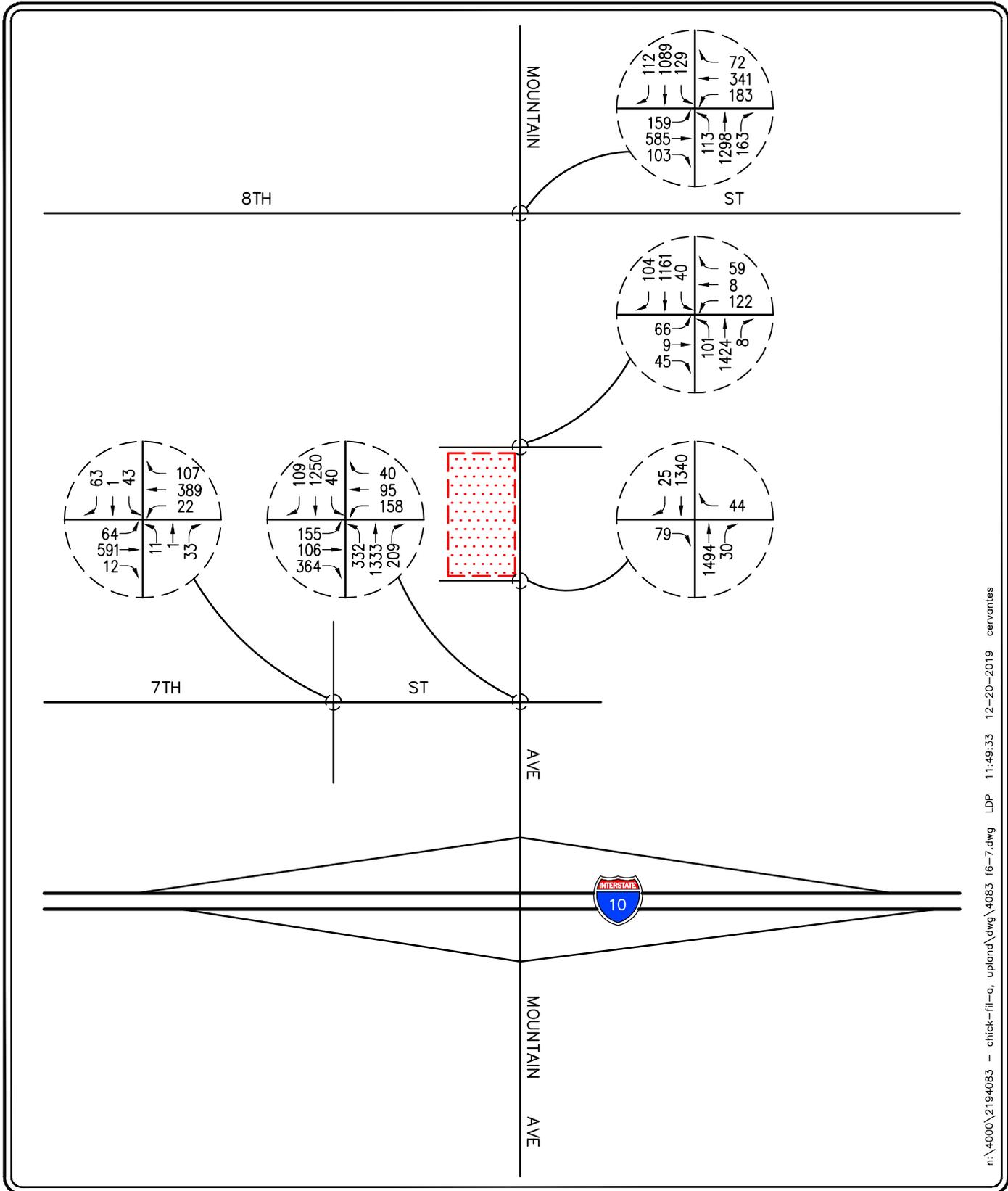


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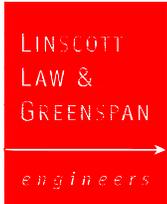
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FIGURE 6-6

YEAR 2021 WITHOUT PROJECT
 AM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



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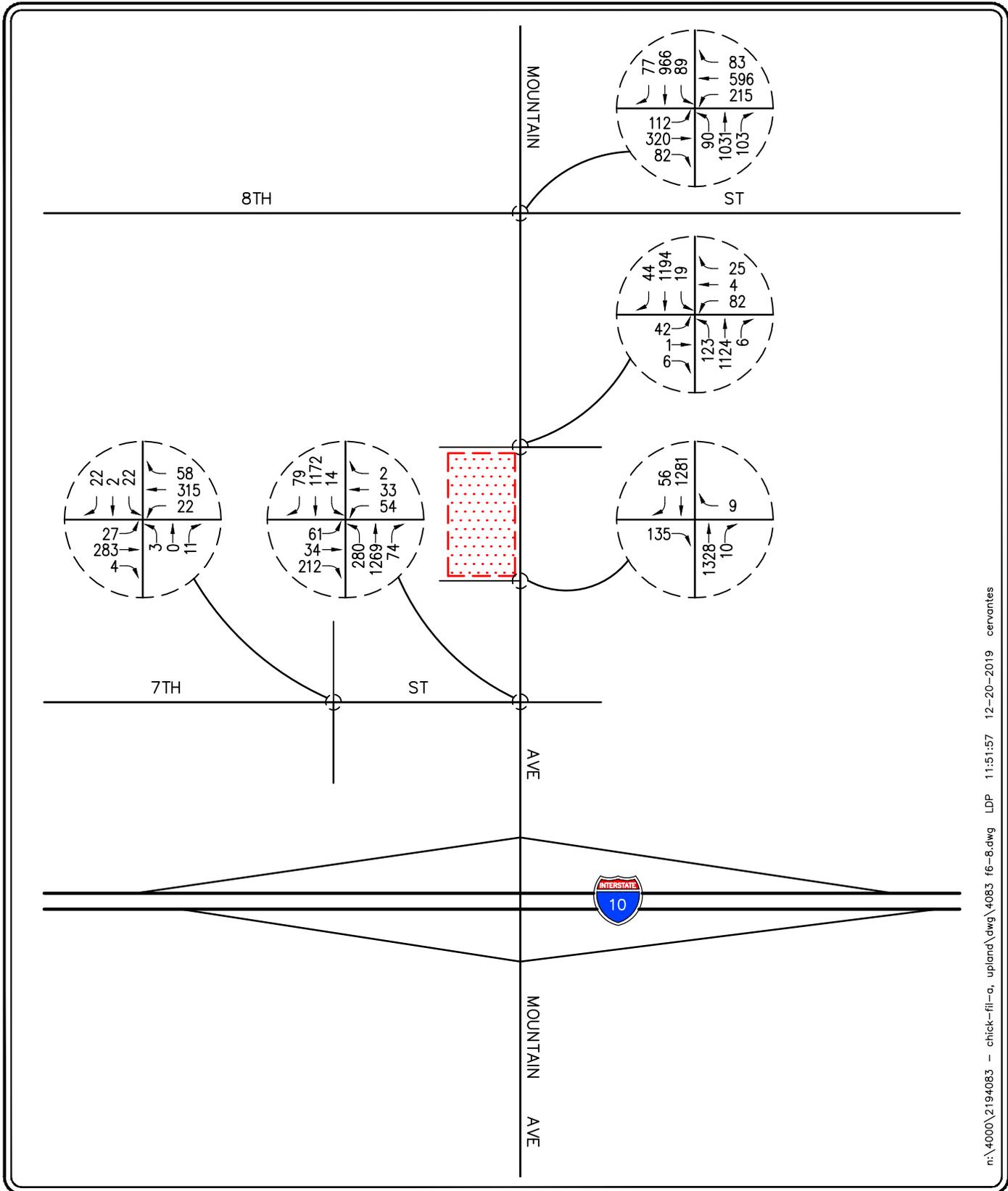


NO SCALE

KEY
 = PROJECT SITE

FIGURE 6-7

YEAR 2021 WITHOUT PROJECT
 PM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



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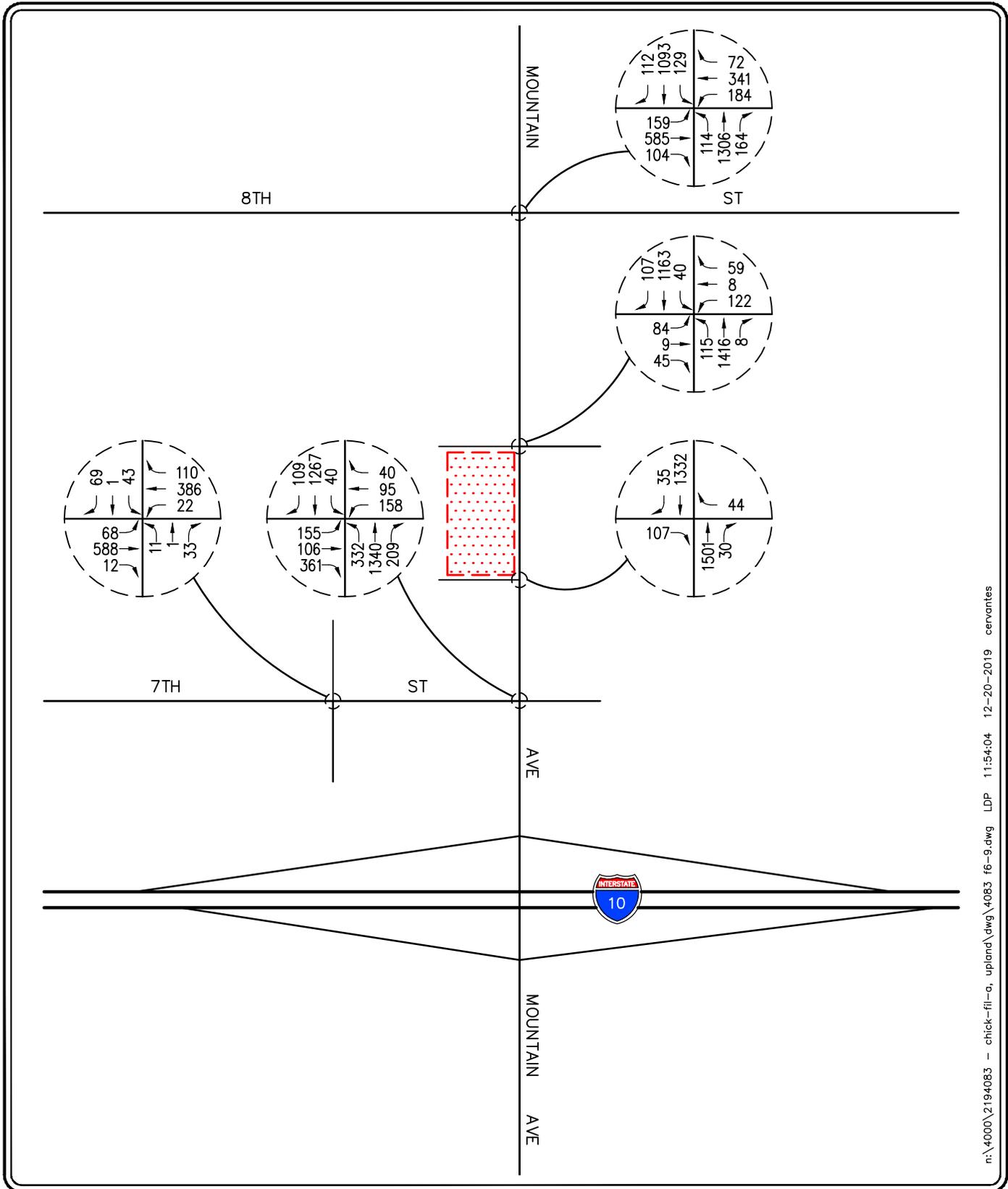


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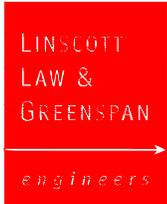
KEY
 = PROJECT SITE

FIGURE 6-8

YEAR 2021 WITH PROJECT
 AM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND



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NO SCALE

KEY
 = PROJECT SITE

FIGURE 6-9

YEAR 2021 WITH PROJECT
 PM PEAK HOUR TRAFFIC VOLUMES
 CHICK-FIL-A, UPLAND

7.0 EXISTING PLUS PROJECT ANALYSIS

Table 7-1 summarizes the peak hour level of service results at the five (5) key study intersections for existing plus project traffic conditions. The first column (1) of HCM/LOS values in *Table 7-1* presents a summary of existing AM and PM peak hour traffic conditions (which were also presented in *Table 3-3*). The second column (2) lists existing plus project traffic conditions. The third column (3) indicates whether the traffic associated with the Project will have a significant impact based on the LOS standards and significant impact criteria defined in this report. The fourth column (4) indicates the anticipated level of service with planned and/or recommended improvements, if necessary.

7.1 Existing Traffic Conditions

Review of column (1) of *Table 7-1* (also shown in *Table 3-3*) indicates that for Existing traffic conditions, all of the existing key study intersections currently operate at an acceptable level of service (i.e. LOS C or better) during the AM and PM peak hours.

7.2 Existing Plus Project Traffic Conditions

Review of columns 2 and 3 of *Table 7-1* indicates that traffic associated with the proposed Project ***will not*** significantly impact any of the five (5) key study intersections when compared to the LOS standards and significant impact criteria specified in this report. The five (5) key study intersections currently operate and are forecast to continue to operate at an acceptable LOS C or better during the AM and PM peak hours with the addition of Project generated traffic to existing traffic.

Appendix C contains the Delay/LOS calculation worksheets for the five (5) key study intersections for Existing Plus Project Traffic Conditions.

TABLE 7-1
EXISTING PLUS PROJECT CONDITIONS PEAK HOUR INTERSECTION CAPACITY ANALYSIS SUMMARY¹²

Key Intersection	Minimum Acceptable LOS	Time Period	(1) Existing Traffic Conditions		(2) Existing Plus Project Traffic Conditions		(3) Significant Impact	(4) Existing Plus Project With Improvements	
			HCM	LOS	HCM	LOS	Yes/No	HCM	LOS
1. Mountain Avenue at 8 th Street	D	AM	25.4 s/v	C	25.5 s/v	C	No	--	--
		PM	26.3 s/v	C	26.4 s/v	C	No	--	--
2. Mountain Avenue at Mountain Green Shopping Center Dwy	D	AM	7.8 s/v	A	9.3 s/v	A	No	--	--
		PM	10.6 s/v	B	11.6 s/v	B	No	--	--
3. Mountain Avenue at 7 th Street	D	AM	21.1 s/v	C	21.3 s/v	C	No	--	--
		PM	31.5 s/v	C	31.5 s/v	C	No	--	--
4. Mountain Avenue at Existing Project Driveway No. 1	D	AM	19.6 s/v	C	23.6 s/v	C	No	--	--
		PM	18.4 s/v	C	19.5 s/v	C	No	--	--
5. Existing Project Driveway No. 2 at 7 th Street	D	AM	11.6 s/v	B	11.8 s/v	B	No	--	--
		PM	13.9 s/v	C	14.0 s/v	B	No	--	--

Notes:

- s/v = seconds per vehicle (delay)
- LOS = Level of Service, please refer to *Tables 3-1* and *3-2* for the LOS definitions
- **Bold Delay/LOS values** indicate adverse service levels based on the LOS standards mentioned in this report.

¹² Appendix C contains the Delay/LOS calculation worksheets for all study intersections.

8.0 YEAR 2021 CUMULATIVE PLUS PROJECT ANALYSIS

Table 8-1 summarizes the peak hour level of service results at the five (5) key study intersections for Year 2021 traffic conditions. The first column (1) of HCM/LOS values in *Table 8-1* presents a summary of existing AM and PM peak hour traffic conditions (which were also presented in *Table 3-3*). The second column (2) lists projected cumulative traffic conditions (existing plus ambient traffic plus cumulative project traffic) based on existing intersection geometry, but without any traffic generated from the proposed Project. The third column (3) presents forecast Year 2021 near-term traffic conditions with the addition of Project traffic. The fourth column (4) indicates whether the traffic associated with the Project will have a significant impact based on the LOS standards and significant impact criteria defined in this report. The fifth column (5) indicates the anticipated level of service with planned and/or recommended improvements, if necessary.

8.1 Year 2021 Cumulative Traffic Conditions

Review of column (2) of *Table 8-1* indicates that for Year 2021 Cumulative traffic conditions, all five (5) of the key study intersections are forecast to operate at an acceptable level of service (i.e. LOS C or better) during the AM and PM peak hours when compared to the LOS standards defined in this report.

8.2 Year 2021 Cumulative Plus Project Traffic Conditions

Review of columns 3 and 4 of *Table 8-1* indicates that traffic associated with the proposed Project ***will not*** significantly impact any of the five (5) key study intersections when compared to the LOS standards and significant impact criteria specified in this report. The five (5) key study intersections are forecast to continue to operate at an acceptable LOS C or better during the AM and PM peak hours with the addition of project generated traffic in the Year 2021.

Appendix D contains the Delay/LOS calculation worksheets for the five (5) key study intersections for Year 2021 Cumulative Traffic Conditions.

TABLE 8-1
YEAR 2021 CONDITIONS PEAK HOUR INTERSECTION CAPACITY ANALYSIS SUMMARY¹³

Key Intersection	Time Period	(1) Existing Traffic Conditions		(2) Year 2021 Cumulative Traffic Conditions		(3) Year 2021 Cumulative Plus Project Traffic Conditions		(4) Significant Impact	(5) Year 2021 Cumulative Plus Project With Mitigation	
		HCM	LOS	HCM	LOS	HCM	LOS	Yes/No	HCM	LOS
1. Mountain Avenue at 8 th Street	AM	25.4 s/v	C	31.3 s/v	C	31.6 s/v	C	No	--	--
	PM	26.3 s/v	C	27.9 s/v	C	28.0 s/v	C	No	--	--
2. Mountain Avenue at Mountain Green Shopping Center Dwy	AM	7.8 s/v	A	7.8 s/v	A	9.2 s/v	A	No	--	--
	PM	10.6 s/v	B	11.2 s/v	B	11.7 s/v	B	No	--	--
3. Mountain Avenue at 7 th Street	AM	21.1 s/v	C	23.3 s/v	C	23.3 s/v	C	No	--	--
	PM	31.5 s/v	C	33.6 s/v	C	33.6 s/v	C	No	--	--
4. Mountain Avenue at Existing Project Driveway No. 1	AM	19.6 s/v	C	20.3 s/v	C	24.3 s/v	C	No	--	--
	PM	18.4 s/v	C	19.6 s/v	C	21.3 s/v	C	No	--	--
5. Existing Project Driveway No. 2 at 7 th Street	AM	11.6 s/v	B	11.6 s/v	B	11.9 s/v	B	No	--	--
	PM	13.9 s/v	B	14.2 s/v	B	14.2 s/v	B	No	--	--

Notes:

- s/v = seconds per vehicle (delay)
- LOS = Level of Service, please refer to *Tables 3-1* and *3-2* for the LOS definitions
- **Bold Delay/LOS values** indicate adverse service levels based on the LOS standards mentioned in this report

¹³ Appendix D contains the Delay/LOS calculation worksheets for all study intersections.

9.0 RECOMMENDED IMPROVEMENTS

For those intersections and roadway segments where projected traffic volumes are expected to result in significant cumulative impacts, this report recommends traffic improvements that change the intersection and/or roadway segments geometry to increase capacity. These capacity improvements involve roadway widening and/or re-striping to reconfigure (add lanes) roadways to specific approaches of a key intersection and/or roadway segments. The identified improvements are expected to:

- Address the impact of existing traffic, Project traffic and future non-project (ambient traffic growth and Cumulative) traffic, and
- Improve Levels of Service to an acceptable range and/or to pre-project conditions.

9.1 Existing Plus Project Traffic Conditions

The results of the “Existing Plus Project” intersection capacity analysis presented previously in *Table 7-1* indicates that the proposed Project will not significantly impact any of the five (5) key study intersections. Given that there are no significant project impacts, no improvements are required under Existing Plus Project traffic conditions.

9.2 Year 2021 Plus Project Traffic Conditions

The results of the “Year 2021 Cumulative Plus Project” intersection capacity analysis presented previously in *Table 8-1* indicates that the proposed Project will not significantly impact any of the five (5) key study intersections. Given that there are no significant project impacts, no improvements are required under Year 2021 Cumulative Plus Project traffic conditions.

10.0 SITE ACCESS AND INTERNAL CIRCULATION EVALUATION

10.1 Site Access

Access to the Project is currently provided and will continue to be provided via the one (1) full-access signalized driveway located along Mountain Avenue (i.e. key study intersection #2), the one (1) right-turn in/right-turn out only unsignalized driveway located along Mountain Avenue (i.e. key study intersection #4) and the one (1) full-access unsignalized driveway located along 7th Street (i.e. key study intersection #5).

As shown previously in *Tables 7-1* and *8-1*, the three (3) Project driveways (i.e. key study intersections #2, #4 and #5) are forecast to operate at acceptable service levels during the AM and PM peak hours under Existing Plus Project traffic conditions and Year 2021 Cumulative Plus Project traffic conditions. As such, project access will be adequate. Motorists entering and exiting the Project site will be able to do so comfortably, safely, and without undue congestion.

10.2 Internal Circulation Evaluation

The on-site circulation layout of the proposed Project as illustrated in *Figure 2-2* on an overall basis is adequate. Curb return radii have been confirmed and are generally adequate for small service/delivery (FedEx, UPS) trucks and trash trucks.

10.3 Drive-Through Queuing Analysis

To confirm the adequacy of storage provided for the proposed drive-through lane, which consists of 15 vehicles, the results of drive-through queuing observations conducted at five (5) existing comparative Chick-fil-A restaurants were utilized. The five (5) locations consisted of the following:

- Chick-fil-A Tustin, located at 2889 Park Avenue
- Chick-fil-A Orange, located at 2575 N. Tustin Street
- Chick-fil-A Irvine, located at 6428 Irvine Boulevard
- Chick-fil-A Laguna Hills, located at 24011 El Toro Road
- Chick-fil-A Corona, located at 3555 Grand Oaks

Drive-through queuing observations were conducted at each of the five (5) locations on a weekday during the morning, mid-day and evening service periods, generally between the hours of 7:00 AM and 9:00 AM, 11:00 AM and 2:00 PM, and 4:00 PM and 7:00 PM. Saturday queuing observations were also collected between 11:30 AM and 2:30 PM and 4:00 PM and 10:00 PM at only the Laguna Hills site and the Corona site.

Table 10-1 summarizes the results of the drive-through queuing analysis summary for the proposed Project. Column one (1) presents the study sites and column two (2) presents the study site locations. Column three (3) presents the observed 85th percentile queue, the observed 95th percentile queue and the observed maximum queue for each site. Column four (4) compares the 85th percentile queue for each site to the proposed drive-through lane storage and indicates whether or not the proposed drive-through lane will provide adequate storage. It should be noted that the 85th

percentile queue is generally utilized when designing/sizing the length of the proposed drive-through lane.

Review of column 3 of *Table 10-1* indicates that the five (5) study sites experienced an 85th percentile queue range between 6 vehicles and 13 vehicles. As shown in column 4 of *Table 10-1*, the proposed Project will provide storage for up to 15 vehicles within the proposed drive-through lane without encroaching into the drive aisle. Therefore, the 85th percentile expected queues can be accommodated without interfering with internal circulation or causing congestion to the drive aisle. It should be further noted that the proposed 15 vehicle storage drive-through lane can also accommodate the observed 95th percentile queues of the five (5) study sites. Lastly, it should be noted that the maximum queue of 17 vehicles can be accommodated on-site within the drive aisles.

Even though it is anticipated that the proposed drive-through lane will accommodate all potential queues on site, Chick-fil-A staff will implement the following program, on an as-needed basis during their peak operating times, to further ensure that vehicles will not queue back onto the public streets. The program consists of the following as provided by Chick-fil-A management staff:

- “Our restaurants are staffed so that if the drive-thru queuing begins stacking onto the street, team members go out and assist with ordering via Chick-fil-A’s iPad ordering system. Our operators use the iPad ordering during our peak hours of 11:30 am to 1:30 pm and any additional time when needed. The iPad ordering system allows team members to take orders, receive payment, and assist with traffic movement within the parking lot.

Based on data from our other comparable stores, the iPad ordering system increases the CFA drive thru speed of service by 30% than the typical speaker box. Putting people forward in the drive-through is one of our biggest competitive advantages in the market because it personally connects our team members with our valued guest. We want to continue this momentum by building a platform to supporting current and future innovations that increase capacity and put our people forward to care for our guest in every interaction. Our customers enjoy the face to face ordering over the standard drive-thru experience.”

Appendix E presents the drive-through queuing study data for the five (5) existing comparative sites.

**TABLE 10-1
DRIVE-THROUGH LANE QUEUING ANALYSIS SUMMARY**

(1) Study Site	(2) Location	(3) Number of Vehicles Observed In The Drive-Through Lane			(4) Proposed Project	
		85 th Percentile	95 th Percentile	Maximum	Drive-Through Lane Storage	Adequate For 85 th Percentile (Yes/No)
Chick-fil-A (City of Tustin)	2889 Park Avenue, Tustin, CA	6	13	15	15	Yes
Chick-fil-A (City of Orange)	2575 N. Tustin Street, Orange, CA	11	14	15	15	Yes
Chick-fil-A (City of Irvine)	6428 Irvine Boulevard, Irvine, CA	8	10	12	15	Yes
Chick-fil-A (City of Laguna Hills)	24011 El Toro Road, Laguna Hills, CA	11	14	17	15	Yes
Chick-fil-A (City of Corona)	3555 Grand Oaks, Corona, CA	13	13	16	15	Yes

11.0 CONGESTION MANAGEMENT PROGRAM (CMP) ASSESSMENT

This analysis is consistent with the requirements and procedures outlined in the current *San Bernardino County Congestion Management Program (CMP)*. The CMP requires that a traffic impact analysis be conducted for any project generating 250 or more peak hour trips. As noted in *Section 5.0* of this traffic study, the proposed Project is forecast to generate 92 AM peak hour trips and 38 PM peak hour trips and thus does not meet the criteria requiring a CMP TIA.



PLANNING COMMISSION REPORT

BUSINESS ITEM NO. 1

DATE: March 25, 2020

TO: PLANNING COMMISSION

FROM: ROBERT D. DALQUEST, DEVELOPMENT SERVICES DIRECTOR

PREPARED BY: LIZ CHAVEZ, DEVELOPMENT SERVICES MANAGER
MEL PICAZO, ECONOMIC DEVELOPMENT COORDINATOR

SUBJECT: GENERAL PLAN CONFORMITY DETERMINATION IN REGARDS TO THE DISPOSITION OF CITY-OWNED SURPLUS PARCELS LOCATED AT EUCLID AVENUE, SOUTH OF THE 210 FREEWAY AT THE TERMINUS OF LAUREL AVENUE (APNS: 1044-061-42, 43, 44, 45).

REQUEST

The Development Services Department staff requests that the Planning Commission adopt the attached resolution (See Exhibit A – Draft Resolution) finding that the disposition of four City-owned surplus properties located at Euclid Avenue, south of the 210 Freeway, at the terminus of Laurel Avenue (APNS: 1044-061-42, 43, 44, 45) (“Properties”) is in conformance with the City of Upland’s General Plan.

SYNOPSIS

<i>Applicant:</i>	City of Upland
<i>Representative:</i>	Robert Dalquest
<i>Property Owner:</i>	Same as Applicant
<i>Property Location:</i>	APNS: 1044-061-42, 43, 44, 45 (Exhibit B)
<i>Existing General Plan Land Use Designation:</i>	Single Family Residential Low (SFR-L)
<i>Existing Zoning Classification:</i>	Residential Single-Family Low (RS-20) (Minimum 20,000 sq. ft. lots)

<i>Site Size:</i>	Site Size is 1.82 Acres (79,652 square feet) Laurel Avenue 2 parcels - 21,346 square feet each Euclid Avenue 2 parcels - 18,480 square feet each																							
<i>Building/Suite Size:</i>	Not applicable - Vacant lots																							
<i>Access:</i>	N. Euclid Avenue and Laurel Avenue																							
<i>Surrounding Land Uses:</i>	<table border="1"> <thead> <tr> <th>Direction</th> <th>Land Use</th> <th>General Plan</th> <th>Zone</th> </tr> </thead> <tbody> <tr> <td>North</td> <td>Single-family Residential</td> <td>SFR-L</td> <td>RS-20</td> </tr> <tr> <td>East</td> <td>Single-Family Residential</td> <td>SFR-L</td> <td>RS-15</td> </tr> <tr> <td>South</td> <td>Single-Family Residential</td> <td>SFR-L</td> <td>RS-20</td> </tr> <tr> <td>West</td> <td>Single-Family Residential</td> <td>SFR-L</td> <td>RS-20</td> </tr> </tbody> </table>				Direction	Land Use	General Plan	Zone	North	Single-family Residential	SFR-L	RS-20	East	Single-Family Residential	SFR-L	RS-15	South	Single-Family Residential	SFR-L	RS-20	West	Single-Family Residential	SFR-L	RS-20
Direction	Land Use	General Plan	Zone																					
North	Single-family Residential	SFR-L	RS-20																					
East	Single-Family Residential	SFR-L	RS-15																					
South	Single-Family Residential	SFR-L	RS-20																					
West	Single-Family Residential	SFR-L	RS-20																					

AUTHORIZATION/GUIDELINES

California Government Code Section 65402 (Planning and Zoning Law) requires the City to determine that the location, purpose, and extent of the disposition of the City-owned surplus properties and its potential development is in conformance with the City’s General Plan.

PROJECT BACKGROUND

In September 2019, the City Council directed staff to sell the Properties and an RFP was issued for 60 days with a response due by January 13, 2020. The subject site has been listed as City-owned surplus land since 2013.

A proposal was received by Crestwood Communities for the purchase of all 4 Properties and the proposed development of a single-family home on each lot. Crestwood Communities is a family-owned homebuilder, which began over 70 years ago, with corporate offices in Glendora.

The developer has proposed to construct high-end single-family residential dwelling on each lot. The Developer’s architect has designed a conceptual site plan in accordance with the development design standards and guidelines in the City of Upland’s Zoning Code. City staff will continue to work with the developer and architect to finalize the conceptual plans and prepare for formal plan check submittal to the Building & Safety Division.

The Development Services Department is currently drafting a disposition and development agreement (DDA) with Crestwood Communities for the City Council’s consideration at a future meeting tentatively for April/May 2020.

The City intends to dispose the properties to the developer by satisfying the City’s Asset Management Policy.

ANALYSIS

GENERAL PLAN CONFORMITY

California Government Code Section 65402 requires the City to determine that the location, purpose and extent of the proposed disposition of the City-owned excess surplus Properties is in conformance with the General Plan. The Planning Commission is the review authority tasked with making the General Plan Conformity Determination.

Upon review of the project and General Plan, the Planning Division has found the requested disposition of the City-owned surplus properties is in conformance with the General Plan, described below in Table 1 for consideration of the Planning Commission:

Table 1

General Plan Policy	Conformity
<p>Single-Family Low (SFR-L). This designation provides for the development of detached, single-family units and contributes to the preservation of existing single-family suburban residential neighborhoods. The permitted density range is from zero up to four (4) dwelling units per acres.</p>	<p>Development of the subject property will result in four (4) single-family homes which equates to a density of 2.20 dwelling units per acre, and will result in enhancing the existing neighborhood by developing vacant land to complete the existing residential neighborhood.</p>
<p>Policy LU-1.5 Range of Housing Types and Densities. Provide high quality housing in a range of types, densities, and unit sizes that meets the housing needs of residents of all income levels.</p>	<p>The proposed project will result in development of four (4) high-quality single-family homes with varying architectural designs that will be compatible with the existing neighborhood..</p>
<p>Policy LU-2.1 Low-Density Residential. Maintain low-density residential designations in existing low-density residential areas.</p>	<p>This project proposes development of low-density, single-family residential homes and will result in enhancing the existing neighborhood by developing infill, vacant land to complete the existing residential neighborhood.</p>
<p>Policy LU-6.1 Quality Development. Ensure that development is attractive and promotes harmony in the visual relationship and transitions between newer and older buildings.</p>	<p>The proposed project will result in the development of four (4) high-quality and attractive single-family residential homes and will blend within the existing neighborhood and provide harmony in the visual integration between newer and older residences.</p>

<p>Policy CC-2.6 Neighborhood Enhancement. Promote infill development that contribute positively (e.g. site layout and architectural design) to existing neighborhoods and surrounding uses.</p>	<p>The project proposes attractive single-family residential units that incorporate two floor plans, with three architectural styles, that will give each home a unique design.</p>
<p>Policy CC-2.9 Infill Development. Require infill development to be compatible with surrounding uses and to equal or exceed the quality of adjacent development.</p>	<p>The developer proposes development of high-quality and attractive single-family residential units that will be compatible with the surrounding residential neighborhood.</p>

Based on the factors described above, and consideration of the location, purpose, and extent of the proposed disposition of the City-owned excess surplus Properties, the project is in conformance with the General Plan, as required by California Government Code (Planning and Zoning Law) Section 65402.

General Plan

The project site has a Single Family Residential Low (SFR-L) General Plan land use designation. According to the General Plan, this designation provides for the development of detached single-family units and contributes to the preservation of existing single-family suburban residential neighborhoods. The project is consistent with the General Plan, as the proposed residential units would not adversely affect the intent of the residential designation, and the density would be well under the maximum density of four (4) dwelling units per acre.

Zoning

The proposed use is a permitted use in the Residential Single-Family Low (RS-20) Zone. The RS-20 Zone is intended to support the development of single family residential units on a variety of parcels to suit the range of lifestyles and space needs of all segments of the Upland community; Continue to preserve and protect the character and quality of existing residential neighborhoods and ensure that new residential dwellings are compatible in scale, mass, and character with the existing neighborhood; Ensure adequate light, air, privacy, and open space for each dwelling unit; and Allow for uses compatible with a single family residential setting, including day cares, public and quasi-public uses, park and residential facilities, and accessory and second units. The subject Properties are surrounded by single family residential units. The proposed use is not anticipated to result in any land use conflicts or nuisances to adjacent uses (such as noise, dust, odor, etc.).

Project Concept Characteristics

The proposed project will consist of four (4) single family detached homes, with one single family dwelling built on each lot. There will be an offering of two plans, each with three distinct architectural styles, which will give each home a unique style all

on its own. Plan One will be approximately 3,000 square feet as a single-story home. Plan Two will be approximately 3,400 square feet as a 2-story home. Both home styles will have a 3-car garage. There will be parking for 4-6 cars per home. The homes will consist of 4 or 5 bedrooms and 3 or 4 bathrooms footprints. The architecture of the homes will be designed to blend in with the existing homes in the neighborhood. The proposed homes on Euclid Avenue will have access from Euclid Avenue in addition to access from the existing rear alley. The proposed homes on Laurel Avenue will have access from the Laurel Avenue cul-de-sac. The Laurel Avenue homes on the east side of the cul-de-sac, will also have access from the existing rear alley. Price points are estimated to range from \$900,000 to \$990,000 (See Exhibit C – Conceptual Site Plan/Floor Plan/Elevations).

Development Plan/Standards

The project will comply with all required development standards as shown in Table 2 below.

Table 2

Development Standard	Code Requirement	Provided (Concept)
Front Yard Setback	40 feet	40 feet (Laurel) 60 feet (Euclid)
Rear Yard Setback	20 feet	72 feet (Laurel) 82 Feet (Euclid)
Side Yard Setback (North)	10 feet	15 feet
Side Yard Setback (South)	10 feet	25 feet (Laurel) 20 feet (Euclid)
Building Height	35 feet	Single/2-Story
Maximum Lot Coverage	35 %	14% (Laurel) 18% (Euclid)

ENVIRONMENTAL ASSESSMENT

The Planning Department staff has determined that the General Plan Conformity finding for the disposition of City-owned excess surplus property is categorically exempt from environmental proceedings pursuant to *Article 5, Section 15061(b)(3), review for exemption, of the California Environmental Quality Act (CEQA) Guidelines*, since the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

Further, the Planning Department staff has determined that the potential development project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines. The project qualifies as a Class 32 exemption under State CEQA Guidelines Section 15332-In-Fill Development Projects for the following reasons: (1) the project is consistent with the applicable General Plan designations and all applicable General Plan policies as well as with the applicable zoning designation and regulations, (2) the proposed development occurs within the City limits on a project site of no more than five acres substantially surrounded by

urban uses, (3) the project site has no value as a habitat for endangered, rare or threatened species, (4) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and (5) the site can be adequately served by all required utilities and public services.

TECHNICAL REVIEW COMMITTEE

This General Plan Conformity finding did not require review by the Technical Review Committee.

RECOMMENDED ACTION

The Planning Division recommends the Planning Commission adopt a Resolution entitled:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND MAKING A FINDING OF GENERAL PLAN CONFORMITY DETERMINATION FOR THE DISPOSITION OF CITY-OWNED SURPLUS PROPERTY LOCATED AT EUCLID AVENUE, SOUTH OF THE 210 FREEWAY AT THE TERMINUS OF LAUREL AVENUE (APNS: 1044-061-42, 43, 44, 45).

MOTION

- Find that the determination for General Plan Conformity for the disposition of City-owned surplus property is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.
- Find that the disposition of the City-owned surplus property located at Euclid Avenue, south of the 210 Freeway and at the terminus of Laurel Avenue is in conformity with the City of Upland General Plan.
- Recommend the Planning Commission find the project is Categorically Exempt from environmental proceedings pursuant to Section 15332 (In-Fill Development Projects) of the California Environmental Quality Act Guidelines, since the proposed project is consistent with applicable general plan designations and policies as well as applicable zoning designation and regulations; occurs within city limits on a property that is no more than five acres substantially surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all required utilities and public services.

EXHIBITS

- Exhibit A: Draft Resolution
- Exhibit B: Aerial Map
- Exhibit C: Conceptual Site Plan/Floor Plan/Elevations

Exhibit A – Draft Resolution



RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UPLAND MAKING A FINDING OF GENERAL PLAN CONFORMITY DETERMINATION FOR THE DISPOSITION OF CITY-OWNED SURPLUS PROPERTY LOCATED AT EUCLID AVENUE, SOUTH OF THE 210 FREEWAY AT THE TERMINUS OF LAUREL AVENUE (APNS: 1044-061-42, 43, 44, 45)

THE PLANNING COMMISSION OF THE CITY OF UPLAND DOES HEREBY FIND, ORDER, AND RESOLVE AS FOLLOWS:

SECTION 1. RECITALS.

- A. The City of Upland ("applicant"), 460 N. Euclid Avenue, Upland, California, 91786, directed staff to sell four City-Owned surplus properties located at Euclid Avenue, south of the 210 Freeway, at the terminus of Laurel Avenue (APNS: 1044-061-42, 43, 44, 45), containing 79,652 square feet. In response to a request for proposal, a proposal was received by Crestwood Communities for the purchase of all four (4) properties for the proposed development of single-family residential homes on each lot.
- B. California Government Code (Planning and Zoning Law) Section 65402 requires the City to determine that the location, purpose and extent of the proposed disposition of City-owned surplus properties is in conformance with the General Plan.
- C. The Planning Commission is the review authority tasked with making the General Plan Conformity Determination.
- D. On March 25, 2020, at 6:30 p.m., the Planning Commission conducted a hearing for General Plan Conformity Determination, after providing notice to the public in the manner and for the time required by law.
- E. At said time and place, the Planning Commission heard and considered both oral and written evidence.

SECTION 2. FINDINGS. The Planning Commission hereby makes the following findings and determinations in connection with the approval of the Project:

- A. Recitals A through E of Section 1, above, are true and correct.
- B. The proposed project has been determined to be exempt from environmental proceedings pursuant Section 15061 (b)(3) of the California Environmental Quality Act (CEQA) Guidelines, since the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.
- C. In addition, the Planning Commission finds that the project is Categorically Exempt from environmental proceedings pursuant to Section 15332 (In-Fill

Development Projects) of the California Environmental Quality Act, since the proposed project is consistent with applicable general plan designations and policies as well as applicable zoning designation and regulations; occurs within city limits on a property that is no more than five acres substantially surrounded by urban uses; has no value as habitat for endangered, rare or threatened species; approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all required utilities and public services.

- D. The Planning Commission finds that the disposition of the City-owned surplus property located at Euclid Avenue, south of the 210 Freeway at the terminus of Laurel Avenue is in conformity with the City of Upland General Plan.
- E. The disposition of the City-owned surplus properties will accommodate for the future development of four (4) high quality single-family residential units, consistent with the Upland Zoning Code.

SECTION 3. DETERMINATION. In light of the evidence presented at the hearing on this application, and based on the findings set forth above, the Planning Commission hereby determines that the disposition of the City-owned surplus properties conforms to the General Plan.

SECTION 4. APPEAL. Pursuant to Upland Municipal Code Section 17.47.040, the decision of the Planning Commission may be appealed to the City Council provided that written notice of the appeal is filed with the City Clerk within ten (10) days following the date the decision was rendered, unless a longer appeal period is specified as part of the project approval. Failure to file a timely appeal shall constitute a waiver of the right of appeal, and the decision of the Planning Commission shall be final.

SECTION 5. INCONSISTENCY. If any section, division, sentence, clause, phrase or portion of this resolution or the document in the record in support of this resolution is determined by a court of competent jurisdiction to be invalid, unenforceable, unconstitutional or otherwise void, that determination shall not affect the validity of the remaining sections, divisions, sentences, clauses, phrases of this resolution.

SECTION 6. CERTIFICATION. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this Resolution, and shall cause this Resolution and their certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Robin Aspinall, CHAIR

ATTEST:

Robert D. Dalquest, SECRETARY

I HEREBY CERTIFY that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of Upland at a regular adjourned meeting thereof held on the 25th day of March, 2020, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Robert D. Dalquest, SECRETARY

Exhibit B - Aerial Map



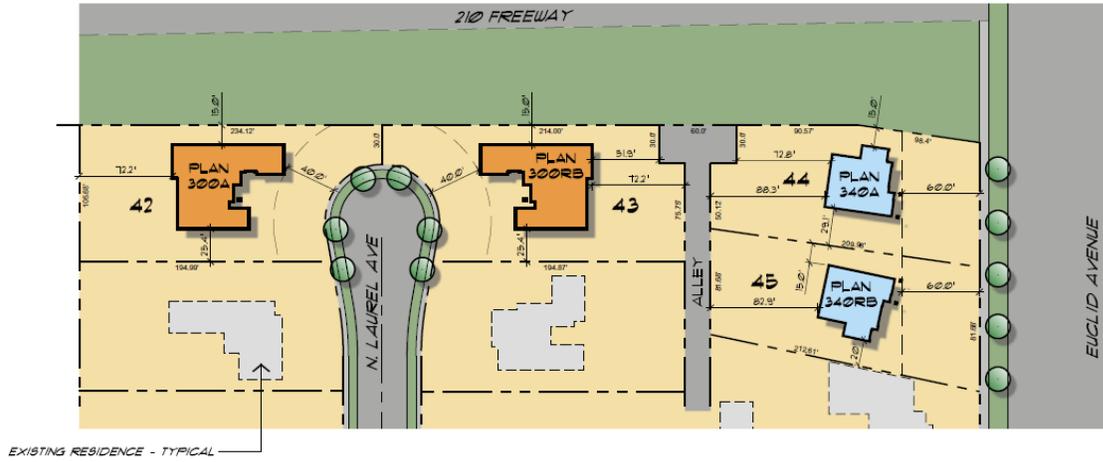
Exhibit B – Aerial Map



**Exhibit C – Conceptual Site Plan,
Floor Plan, and Elevations**



Exhibit C: Conceptual Site Plan/Floor Plan/Elevations



PRELIMINARY SITE PLAN

LAUREL AVENUE and EUCLID AVENUE NORTH OF 19th STREET, UPLAND, CA 91763



SCALE 1" = 60'
JANUARY 13, 2010

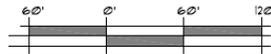
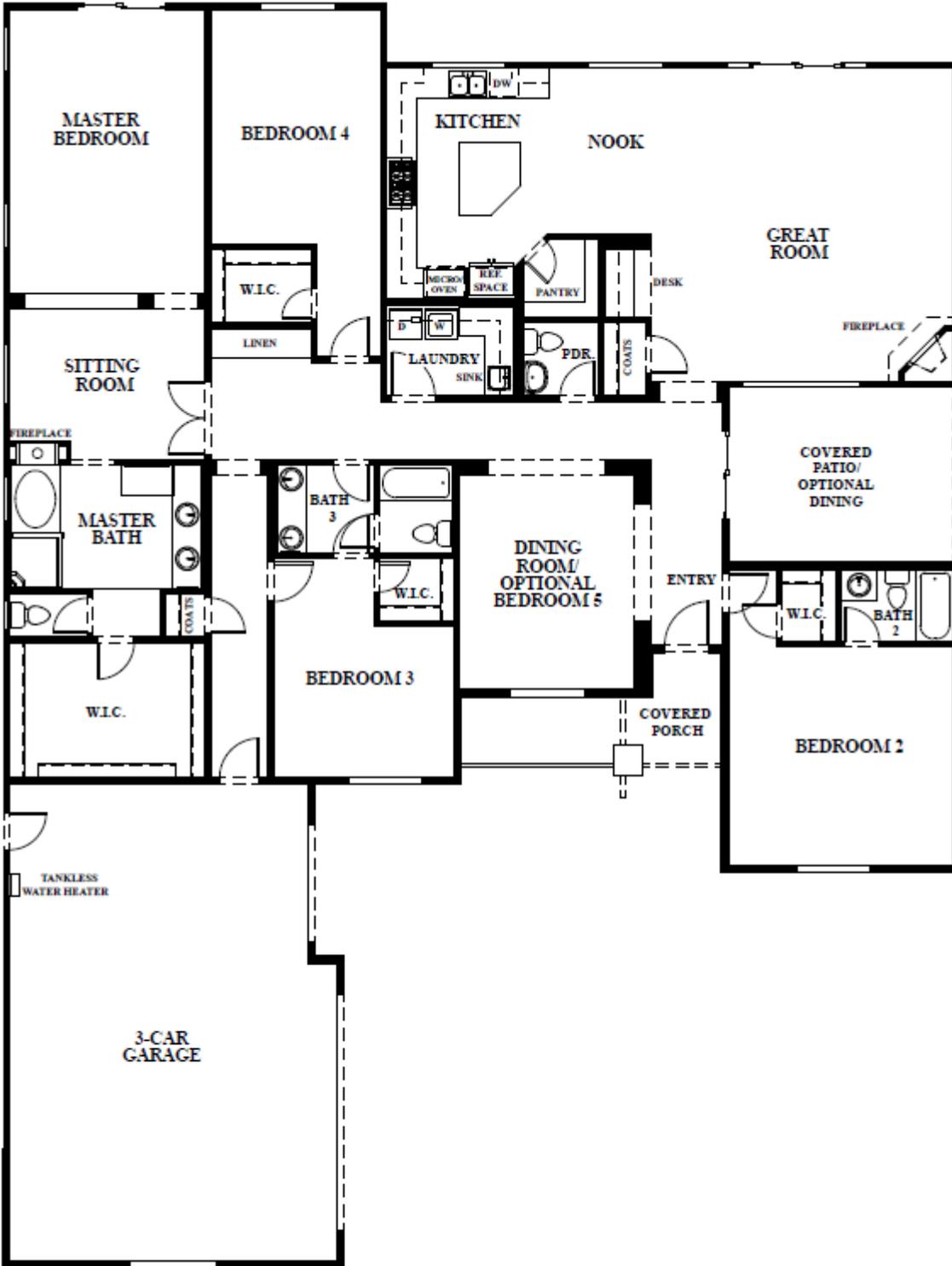


Exhibit C: Conceptual Site Plan/Floor Plan/Elevations

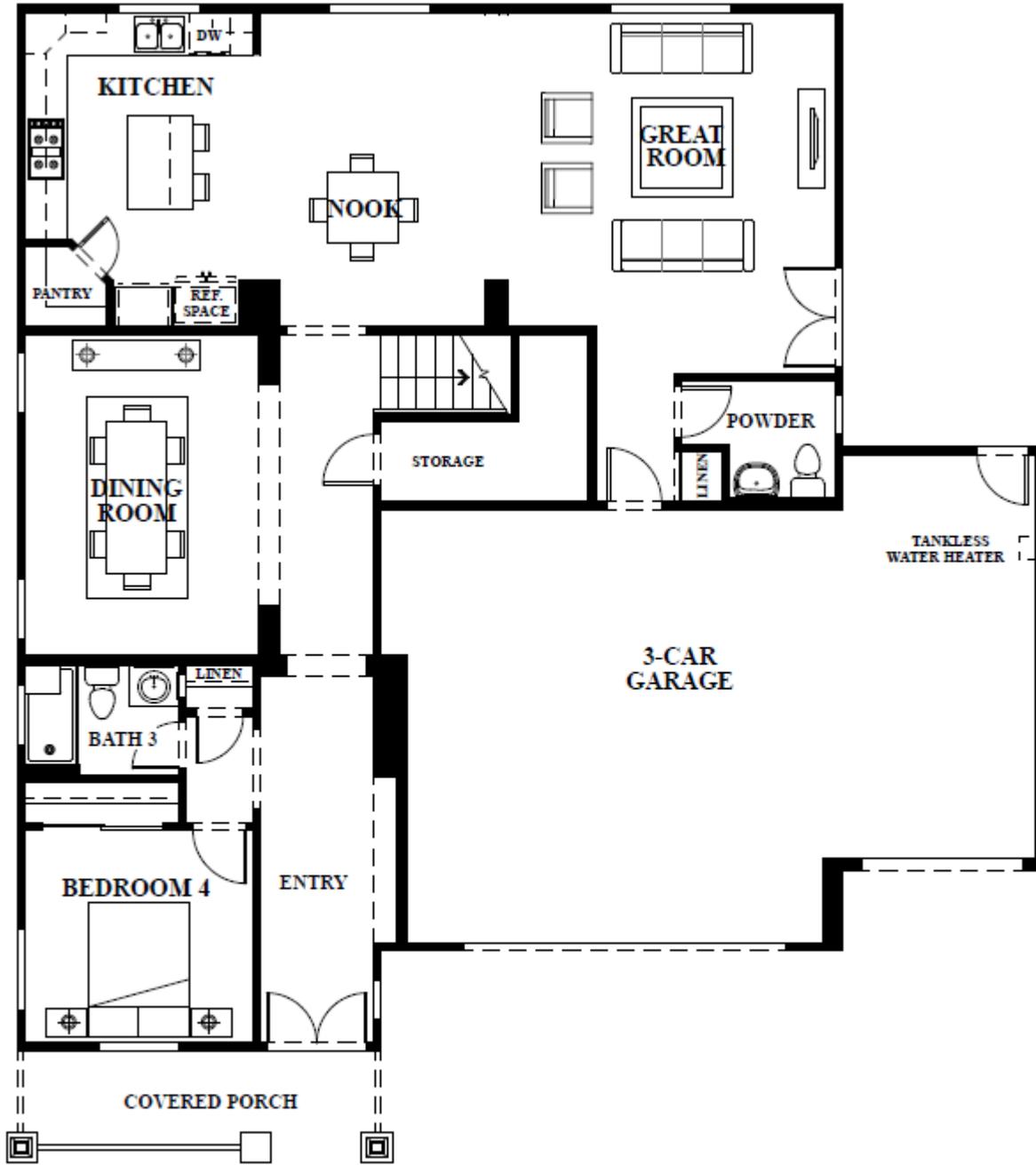


PLAN 300
FLOOR PLAN

Exhibit C: Conceptual Site Plan/Floor Plan/Elevations

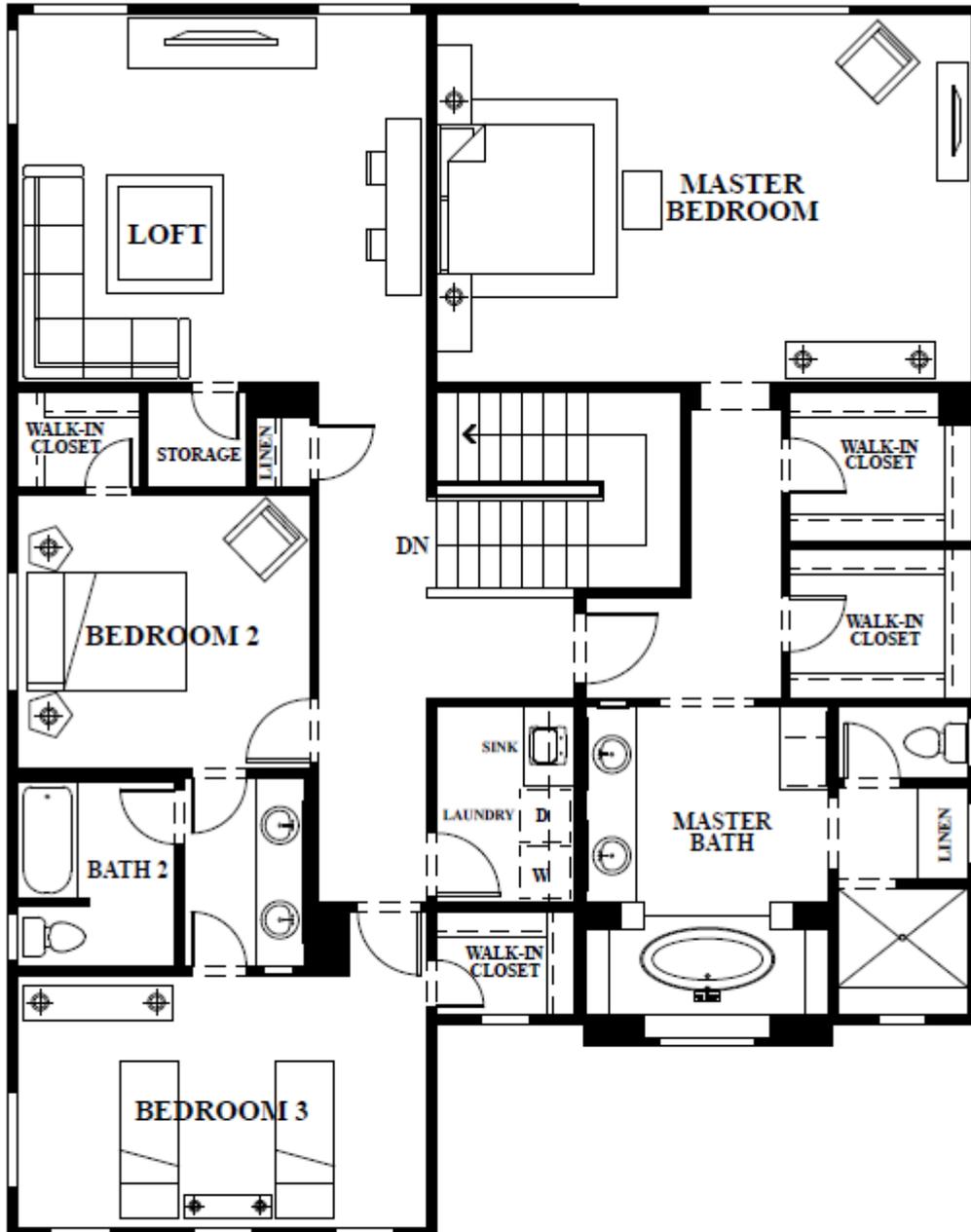


Exhibit C: Conceptual Site Plan/Floor Plan/Elevations



PLAN 340
1st FLOOR PLAN

Exhibit C: Conceptual Site Plan/Floor Plan/Elevations



PLAN 340
2nd FLOOR PLAN

Exhibit C: Conceptual Site Plan/Floor Plan/Elevations

