

EXEMPT FROM RECORDER'S FEES
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Recording requested by and when recorded return to:

City Clerk
City of Glendale
613 E. Broadway, Room 110
Glendale, CA 91206

(SPACE ABOVE FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT
(Colorado Gardens)

BY AND BETWEEN

CITY OF GLENDALE,
a California municipal corporation,

and

PACIFIC TOWN CENTER DEVELOPMENT, LLC,
a California limited liability company

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO
THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

ORIGINAL

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DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made in Los Angeles County, California as of _____ 2011, by and between the CITY OF GLENDALE, a municipal corporation and charter city (the “City”), and PACIFIC TOWN CENTER DEVELOPMENT, LLC, a California limited liability company (“Developer”). Together, the City and the Developer shall be referred to as the “Parties.”

1. **Recitals.** This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties and each of which is fully incorporated and made part of the Agreement:

(a) WHEREAS, the City is authorized, pursuant to Government Code §§65864 through 65869.5 (“Development Agreement Statutes”), and under its authority as a charter city to enter into binding agreements with persons or entities having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process;

(b) WHEREAS, Developer currently holds a legal interest in real property, consisting of an approximately 20,000 square-foot project site, located at 124 West Colorado Street, which is bounded by West Colorado Street to the north, commercial uses to the east, West Elk Avenue to the south, and commercial uses to the west, in the City of Glendale. Developer's legal interest in the property is established by virtue of Grant Deed recorded on November 8, 2005 in the Los Angeles County Recorder’s Office as Instrument No. 052697784 (APN Nos. 5641-001-008, 021 & 022)

(c) WHEREAS, on November 15, 2011, Developer received approval from the City to construct a 50-unit multi-family complex, consisting of 21 one-bedroom units, 24 two-bedroom units, 4 three-bedroom units and 1 four-bedroom units, and 84 parking spaces with 2 subterranean parking levels and is proposed to be developed with sustainable design features to receive a Silver rating according to the LEED system as administered by the U.S. Green Building Council commonly referred to as “Colorado Gardens” (the “Project” or “Approved Project”). The Project site is depicted in Exhibit A (“Project Site”) and legally defined in Exhibit B (“Legal Description”), both of which are attached hereto and incorporated by reference.

(d) WHEREAS, pursuant to Government Code §65867.5, the City Council of the City of Glendale (“City Council”) finds that: (1) this Agreement, the Applicable Rules and any Future Approvals (as defined herein) of the Project implement the goals and policies of the City of Glendale’s General Plan (“General Plan”) and the Redevelopment Plan (defined below), 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; (2) this Agreement, and the Project is in the best interests of and not in detriment to the public health, safety and general welfare of the residents of the City and the surrounding region; (3) this Agreement and the Project are each compatible with the uses authorized in the zoning district and planning area in which the Project Site is located;

(4) adopting this Agreement is consistent with the General Plan and the Redevelopment Plan and constitutes a present exercise of the City's police power and in accordance with its authority as a charter city; and (5) this Agreement is being entered into pursuant to and in compliance with the requirements of Government Code §65867;

(e) WHEREAS, significant public benefits will be provided by Developer and the Project to the entire community, including but not limited to the following direct and indirect public benefits:

(1) Early payment of the full Development Impact Fee at the time of Plan Check Submission, rather than in two payments as currently provided by Development Impact Fee Ordinance No. 5575, which payment will be used by the City for parks, recreation and library facilities;

(2) An expanded economic base for the City by generating additional property and sales tax revenue;

(3) High quality design that contributes to the downtown's unique sense of place, and provides visual and iconic identity to the downtown and city;

(4) New residential ownership opportunities on land that is currently underutilized;

(5) An increase in the population living downtown through new home ownership opportunities in a mixed-use environment, which will help meet the City's high demand for housing;

(6) Increased employment opportunities for City residents.

(f) WHEREAS, in exchange for these substantial public benefits, including, but not limited to, payment of the Impact Fee Payment at the time of Plan Check Submission (each as defined in Section 2 herein below), and Developer agreeing to waive any request for an Impact Fee Payment refund, the City intends to give Developer assurance that Developer has the vested right to proceed with the development of the Project for the Term and pursuant to the terms and the conditions of this Agreement and in accordance with the Applicable Rules (as hereinafter defined).

(g) WHEREAS, the following actions were taken by the City with respect to the approval of this Agreement and the Project:

(1) On October 24, 2011, the Planning Commission of the City held a duly noticed public hearing on the Developer's application for a Development Agreement and by Resolution recommended to the City Council approval of this Agreement.

(2) On November 15, 2011, the City Council held a duly noticed public hearing on the Developer's application for a Development Agreement, certified a Negative

Declaration and approved the final design for the Project, subject to certain conditions; and

(3) On November 22, 2011, the City Council adopted Ordinance No. 5758 approving this Agreement.

NOW THEREFORE, the Parties, for valuable consideration, receipt of which is hereby acknowledged by the Parties, hereby agree as follows:

2. **Definitions.** In this Agreement capitalized terms shall have the meanings set forth below, or if not defined in this Section 2, shall have the meaning ascribed thereto when such terms are first used herein:

(a) **“Agreement”** means this Development Agreement by and between the City and Developer, including all exhibits attached hereto and all amendments and modifications thereto.

(b) **“Applicable Rules”** are as defined in Section 5(a).

(c) **“Developer”** means PACIFIC TOWN CENTER DEVELOPMENT, Inc., a California corporation, as developer of record, and its successors and/or assigns owning all or any portion of the Project Site attached hereto as Exhibit A and described more particularly in the Legal Description attached hereto as Exhibit B.

(d) **“Development Impact Fees”** means those certain park, recreation and library impact fees assessed by the City with respect to the Project pursuant to Ordinance No. 5575 based on the rates in effect as of December 31, 2011.

(e) **“Effective Date”** is the date the Ordinance approving this Agreement becomes effective.

(f) **“Filing or Processing Fees”** means those fees uniformly charged by various City departments or by the Agency to cover the administrative costs of, among other things, reviewing and analyzing permit applications and similar requests for ministerial and/or discretionary approvals.

(g) **“Future Approvals”** means any action approved by the City, which implements development of the Project, including, without limitation, parcel maps, tentative subdivision maps, Project site plan reviews and/or additional design review (if any), signage plan, density bonus housing plan and granting of incentives, and conditional use permits.

(h) **“Impact Fee Payment”** has the meaning set forth in Section 4 below.

(i) **“Improvements”** means those improvements to be constructed by Developer or by its tenants with respect to the Project pursuant to the Applicable Rules, the Project Approvals and the Plans submitted by Developer and approved by the City.

(j) **“Municipal Code”** means the Glendale Municipal Code and all amendments thereto.

(k) **“Plans”** shall mean plans, specifications, drawings and other information required for the construction of the Improvements, which may include as applicable: (a) designs, locations and dimensions of Improvements, (b) site plans, (c) street level plans, (d) typical building floor plans, (e) key elevations and key building cross sections, (f) features in public areas, (g) landscape features, materials and sizes, (h) locations for signs and signage designs, (i) parking facilities with spaces indicated, (j) general construction techniques, (k) detailed tabulation of floor area by use, (l) structural dimensions and elevations, (m) building materials and colors, and (n) written requirements for materials, equipment, systems, standards and workmanship, and/or working drawings.

(l) **“Plan Check Submission”** for purposes of this Agreement means the initial submission of Plans for a foundation and/or building permit for purposes of Plan checking by the City in compliance with Section 105.3 “Application for Permit” and Section 107 “Submittal Documents” of Volume IA of the Glendale Building and Safety Code, 2011.

(m) **“Project”** has the meaning set forth in Section 1(c) above.

(n) **“Project Site”** has the meaning set forth in Section 1(c) above.

(o) **“Reserved Powers”** means the rights and authority excepted from any restrictions of this Agreement on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that are not in conflict with the Applicable Rules or that may be in conflict with the Applicable Rules but are permitted by Section 5(b) of this Agreement.

(p) **“Term”** means the applicable period of time during which this Agreement shall be in effect and shall bind the City and Developer, as described in Section 13.

(q) Other terms not specifically defined in this Agreement shall have the same meaning as set forth in the Municipal Code.

3. **Binding Effect.** This Agreement, and all of the terms and conditions of this Agreement shall, to the extent permitted by law, constitute covenants which shall run with the land comprising the Project Site for the benefit thereof, and the benefits and burdens of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective assigns, heirs, or other successors in interest.

4. **Plan Check Submission; Development Impact Fees.** Provided that Developer (i) submits the Plan Check Submission for foundation and/or building permit for the Approved Project on or before Friday, December 30, 2011, at 3:00 p.m. local time (the “Plan Check Submission Time”), then Developer shall be permitted to pay (and pre-pay) the full Development

Impact Fee at the rates in effect as of December 31, 2011 (the "Impact Fee Payment")(See Exhibit D attached hereto "Development Impact Fee Rate Chart"); and (ii) upon the Impact Fee Payment, Developer shall not be required to pay any further Development Impact Fees for the Approved Project, except, and to the extent lawfully imposed on any portion of any approved increase or change in the scope of the Project submitted by Developer after the Plan Check Submission Time, as such, and by way of example, an increase by Developer in the number of units for the Project. Notwithstanding the foregoing, the Developer acknowledges and agrees that (i) it shall not be eligible for any reduction, rebate or reimbursement in the amount of Impact Fee Payment should Developer choose to reduce the number of units or square footage in the Approved Project; and (ii) in the event the Plan Check Submission expires, or the Developer otherwise withdraws from the City's building plan check process ("Plan Check"), or the building permit expires and the Project is not completed, at the time of any re-submission of the Approved Project or any approved revision to the Approved Project to Plan Check, the Developer shall be required to pay new Development Impact Fees payable at the rates in effect at the time of payment. The parties acknowledge that Developer's payment of the full Development Impact Fee prior to December 31, 2011 is of substantial benefit to the Developer (by way of a fee at least 50% less than what the Developer would otherwise be required to pay if paid at the time of building permit issuance), and in exchange for, and in consideration of that substantial benefit, the Developer agrees to forego and to forever waive the right to request a refund of, reduction to, or modification of the Impact Fee Payment. If after December 31, 2011, Developer's Impact Fee Payment does not clear, is cancelled by Developer, or is rendered ineffective for any reason, Developer shall then pay the Development Impact Fee rates in effect after December 31, 2011. The provisions of this Section 4 shall survive the termination of this Agreement.

5. **Applicable Rules; Reserved Powers.** The development standards and restrictions set forth in this Section shall govern the use and development of the Project and the Project Site and shall constitute the Applicable Rules, except as subject to the Reserved Powers and otherwise provided herein.

(a) **Applicable Rules.** The following shall be part of the Applicable Rules:

(1) The General Plan and any applicable specific plan as the same may be amended from time to time;

(2) The Municipal Code (including the Zoning Code) to the extent it is not amended or supersede by the Specific Plan as the same may be amended from time to time;

(4) Such other ordinances, rules, regulations, and official policies of the City governing permitted uses of the Project, and density, design, improvement, and construction standards and specifications applicable to the development of the Project, as the same may be amended from time to time;

(5) This Agreement and all attachments thereto;

(6) This Project shall pay all applicable fees; provided, however, that the Impact Fee Payment shall be subject to the requirements set forth in Section 4 herein above; all other fees will be assessed at the time that they are required, and are not fixed as a part of this Agreement. Notwithstanding this provision, the amount of the City's sewer mitigation fee, if any, shall be fixed in the sum imposed by the City Council upon final approval of the Project; and

(7) Any applicable mitigation measures and mitigation monitoring programs imposed in accordance with approval of the Negative Declaration for the Project.

(b) **Reserved Powers.** Notwithstanding any provisions of this Agreement to the contrary, the City reserves the right through its Reserved Powers, as defined herein below, to enact and implement:

(1) Ordinances, rules, regulations and policies relating to uniform codes adopted by City or by the State of California, such as, but not limited to, the Uniform Building Code, the California Building Standards Code, International Building Code as adopted by the California Building Standards Commission, National Electrical Code, Uniform Mechanical Code or Uniform Fire Code, as amended (including those amendments to the promulgated uniform codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide), and the application of such uniform codes to the Project at the time of application for issuance of building permits for structures on the Project Site including such amendments to uniform codes as the City may adopt from time to time;

(2) Rules, regulations, ordinances and/or policies determined by the City to be necessary in order to prevent or remedy conditions dangerous to the health and safety of City residents;

(3) In the event that State or Federal laws or regulations prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. Notwithstanding the foregoing, City shall not adopt or undertake any regulation, program or action or take any action required by State or Federal laws or regulations which is/are inconsistent or in conflict with this Agreement until it has met and discussed the proposed action with the Developer;

(4) City shall retain all of its discretion with respect to determinations regarding requests for Future Approvals consistent with the Applicable Rules and this Agreement.

6. **Limitation on Application of Conflicting Requirements.** This Agreement shall preclude the application to the Project of rules, regulations, ordinances and officially adopted plans and policies in conflict with the Applicable Rules.

7. **Acknowledgments, Agreements and Assurances on the Part of Developer.** In order to effectuate the provisions of this Agreement, and in consideration for the City entering into this Agreement and obligating itself to carry out the covenants and conditions set forth herein, the Developer hereby agrees and acknowledges that:

(a) **Construction of Project.** The Project shall be constructed pursuant to this Agreement, the Applicable Rules and the Negative Declaration and any addendum thereto.

(b) **Other Governmental Permits.** Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project for the development of, or provision of services to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals, but Developer shall have no separate cause of action against City under this Section if Developer fails to obtain such permits and approvals.

8. **Acknowledgments, Agreements and Assurances on the Part of the City.** In order to effectuate the provisions of this Agreement, and in consideration for the Developer entering this Agreement and obligating itself to carry out the covenants and conditions set forth in the preceding Section of this Agreement, the City hereby agrees and acknowledges that:

(a) **Entitlement to Develop.** The Developer is hereby granted the vested right to develop the Project on the Project Site to the extent and in the manner provided in this Agreement, subject to and in accordance with the Applicable Rules and Reserved Powers.

9. **Acknowledgements, Agreements, and Assurances on the Part of the Parties.** In order to effectuate the provisions of this Agreement, and in consideration for the Parties entering this Agreement and obligating themselves to carry out the covenants and conditions set forth in the preceding Section of this Agreement, the Parties hereby agree and acknowledge that:

(a) **Administrative Changes and Amendments.** The Parties acknowledge that further planning and development of the Project may demonstrate that refinements and 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 Project development and with respect to those items covered in general terms under this Agreement. If and when the parties find that "Minor Changes", as herein defined, are necessary or appropriate, they shall, unless otherwise required by law, effectuate such changes or adjustments through administrative amendments executed by the Developer and the City Manager or his or her designee, pursuant to the processes established through the Applicable Rules and Reserved Powers. As used herein, "Minor Changes" are changes, modifications or adjustments, which are consistent with the Applicable Rules, and which do not materially alter the overall nature, scope, or design of the Project, including, without limitation, minor changes in

locations of buildings, streets, or infrastructure, configuration and size of parcels or lots (including lot line adjustments), or development of the infrastructure. Minor Changes shall not be deemed to be an amendment to this Agreement under Government Code Section 65868, and unless otherwise required by law, no such administrative amendments shall require prior notice or hearing by the Planning Commission or City Council.

10. **Cooperation and Implementation.** The City and Developer agree that they will cooperate with one another to the fullest extent reasonable and feasible to implement this Agreement. Such cooperation shall include, but is not limited to, the following:

(a) **Further Assurances: Covenant to Sign Documents.** Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, including estoppel certificates, which may be necessary or proper to achieve the purposes and objectives of this Agreement. The Party requesting the herein described actions, including the execution of any documents, writings and estoppel certificates (collectively documents), shall pay for all legal and other consulting fees and/or costs incurred by the City in reviewing such documents.

(b) **Processing.** Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate filing or processing fees, if any, City shall, subject to all legal requirements, promptly initiate, diligently process, and complete all required steps, and promptly act upon any approvals and permits necessary for the development by Developer in accordance with this Agreement.

(c) **Defense of Agreement.** City and Developer agree to cooperate, and to timely take all actions necessary or required to uphold the validity and enforceability of this Agreement subject to the indemnification provisions of Section 10(d). The City and Developer shall promptly notify one another of any claim, action, or proceeding brought forth within this time period.

(d) **Indemnification.** Developer shall indemnify defend and hold harmless (with counsel reasonably acceptable to the City) the Agency, City, their officers, agents and employees, (the "Indemnitees"), from and against any and all claims, demands, costs, judgments, attorneys' fees and/or liabilities which arise from (1) the performance of this Agreement by Developer or Developer's ownership, development, use, or operation of the Project Site or any portion thereof excepting those liabilities which are caused by the Indemnitees' (or any of them) gross negligence or willful misconduct, and (2) any litigation challenging the validity and/or sufficiency of the Negative Declaration and/or land use entitlements for the Project. City agrees to work with Developer to discuss and effectuate settlement of any litigation hereunder where it is in the parties' best interests to do so. Indemnitees and the Developer shall have the right to require that any case initially be handled through an alternative dispute resolution process. The City and Developer agree to fully cooperate with one another in any case where no conflict of interest between the parties is apparent. Without limiting the generality of the foregoing, Developer specifically agrees to indemnify, defend and hold harmless City and Agency from any

liabilities resulting from Developer's failure to comply with all laws applicable to the Project or the Project Site.

11. **Compliance; Default; Termination; Modifications and Amendments.**

(a) **Review of Compliance.** During the term of this Agreement, the City shall review this Agreement on or before each anniversary of the Effective Date ("Periodic Review") in order to determine whether Developer is in good faith compliance with any specific term or provision of this Agreement. At the commencement of each Periodic Review, the Director shall notify Developer in writing that the Periodic Review will commence or has commenced. City shall notify Developer regarding any alleged non-compliance on the part of the Developer. Within thirty (30) days after receipt of the Director's notice that the Periodic Review will commence or has commenced (and unless Developer requests and is granted a waiver by the City), City may request Developer to demonstrate good faith compliance with this Agreement.

(b) **Non-Compliance/Default by Developer.** In addition to the Periodic Review process set forth in this Section, in the event the Developer does not perform its obligations under this Agreement in a timely manner, the City shall have those rights and remedies provided for in this Agreement.

(c) **Notice of Non-Compliance/Default.** With respect to any non-compliance/default under this Agreement, the City shall submit to Developer, by registered or certified mail return receipt requested, a written notice of default in the manner prescribed in Section 17 herein, identifying with specificity those obligations of Developer, which have not been performed. Upon receipt of the notice of non-compliance/default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured. Pursuant to this Section, mortgagees may be entitled to notice of any default by Developer hereunder and an additional period on which to cure such default.

(d) **Developer Failure to Cure Non-Compliance/Default Procedure.** If, after the cure period has elapsed, the City finds and determines that (1) Developer has not demonstrated that it is in compliance with this Agreement, and (2) Developer is out of compliance with a specific, substantive term or any provision of this Agreement, then the City shall first notify the Developer in writing and then shall make a report to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If, after public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not cured the default pursuant to this Section, then the City shall terminate or modify this Agreement. Notwithstanding the foregoing, non-performance by either Party shall be excused when it is delayed unavoidably and beyond the reasonable control of the Parties as a result of any of the events identified in Section 20 of this Agreement.

(e) **Termination of Agreement.** Subject to compliance with Government Code Section 65868, the City may terminate this Agreement, after final determination of the City Council on the basis of substantial evidence that Developer has not cured its default. Following the transfer of the Project Site, any portion thereof, this Agreement may only be terminated with respect to the transferred parcel on account of a default by the owner of such transferred parcel and no such default shall result in termination of this Agreement with respect to the portion of the Project Site retained by the Developer.

(f) **Non-Compliance/Default by City.** With respect to any non-compliance/default under this Agreement, the Developer shall submit to City, by registered or certified mail return receipt requested, a written notice of default in the manner prescribed in Section 17 herein, identifying with specificity those obligations of City which have not been performed. Upon receipt of the notice of non-compliance/default, City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

(g) **Modification or Amendment.** Notwithstanding Section 9 herein above pertaining to Administrative Amendments, and subject to the notice and hearing requirements of the Development Agreement Statute, this Agreement may be modified or amended from time to time only with the written consent of Developer and the City or their successors and assigns in accordance with the provisions of the Municipal Code and Government Code Section 65868. As a condition precedent to City's execution of any amendment of this Agreement, Developer shall deliver to City a preliminary title report with respect to the portions of the Project Site to be affected by such amendment, together with a notice stating that the mortgagees listed in such report will be entitled to notice of and consent to such amendment pursuant to Section 17 of this Agreement.

12. **Administration.** This Agreement shall be administered and executed by the City Manager or his/her designated representative, following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City Manager (or his/her authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, extend time limits, make minor modifications to City design approvals, and/or revise this Agreement on behalf of the City so long as such actions do not conflict with the substantive provisions of this Agreement, substantially change the Project or the uses, square footages or development permitted on the Project Site by this Agreement or add to the City costs, or conflict with the Applicable Rules. All waivers of this Agreement shall comply with Section 21 of this Agreement. All amendments of this Agreement, other than those minor changes described in this Section 12, shall comply with Section 11(g) of this Agreement.

13. **Term of Agreement.** This Agreement shall become operative on the Effective Date and the Term shall end on June 30, 2012, at 5:00 p.m. after the Effective Date of this Agreement, unless this Agreement is terminated, modified or extended upon mutual written

consent of the Parties hereto or as otherwise provided by this Agreement. Following expiration or termination of the Term hereof, this Agreement shall be deemed terminated and of no further force and effect. The Term shall be extended by the number of days equal to the number of days that any Enforced Delay as defined in Section 20 was in effect. Notwithstanding this provision, the terms and conditions of Section 4 herein above shall survive the termination of this Agreement.

14. **Administration of Agreement and Resolution of Disputes.** All disputes involving the enforcement, interpretation or administration of this Agreement shall first be subject to good faith negotiations between the Parties to resolve the dispute. In the event the dispute is not resolved by negotiations, the Parties shall be permitted to pursue any remedy provided for under this Agreement or otherwise available under applicable law or judicial decision, whether at law or in equity. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available to any Party.

15. **Injunctive Relief.** Any Party to the dispute may, in addition to any other rights or remedies provided by this Agreement, seek to enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the Parties hereto, except as otherwise provided herein.

16. **No Personal Liability.** No board member, councilmember, official or employee of the City or Agency shall be personally liable to Developer in the event of any default or breach by the City for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

17. **Notices.** All notices under this Agreement shall be in writing and shall be deemed delivered when personally received by the addressee, or within three (3) calendar days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, to the following Parties and their counsel at the addresses indicated below; provided, however, if any Party to this Agreement delivers a notice or causes a notice to be delivered to any other Party to this Agreement, a duplicate of that Notice shall be concurrently delivered to each other Party and their respective counsel. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City: City of Glendale
 Department of Development Services
 633 E. Broadway, Suite 201
 Glendale, California 91206-4387
 Attention: City Manager
 FAX: (818) 240-7913

With copies to: City of Glendale, City Attorney's Office
 613 East Broadway, Suite 220
 Glendale, California 91206

Attention: Gillian van Muyden,
General Counsel-Redevelopment
FAX: (818) 547-3402

To Developer: Khan Consulting
Rodney Khan
1111 N. Brand Boulevard, Suite 403
Glendale, California 91202
FAX: (818) 507-1606

Notice given in any other manner shall be effective when received by the addressee. The addresses for notices may be changed by notice given in accordance with this provision.

18. **Severability and Termination.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any law which becomes effective after the Effective Date, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform and the remaining portions of the Agreement, taken as a whole, continue to effect the intent of the Parties, taking into consideration the purposes of this Agreement.

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

20. **Enforced Delay; Extension of Time of Performance.** Required performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; actions in connection with the remediation of Hazardous Materials, including groundwater contamination; or withdrawal of financing not caused by any act or omission of Developer; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; building, sewer, water, or other moratoria; unusually severe weather; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period reasonably attributable to the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and/or Developer. Notwithstanding any provision of this Agreement to the contrary, neither the lack of funding to complete the Improvements nor the inability to timely submit for Plan Check and

make the Impact Fee Payment required by Section 4 herein above shall constitute grounds for enforced delay pursuant to this Section 20.

21. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought.

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

23. **Attorneys' Fees.** If any Party commences any action for the interpretation, enforcement, termination, cancellation or rescission of this Agreement or for specific performance for the breach hereof, the prevailing Party shall be entitled to its reasonable attorneys' fees, litigation expenses and costs arising from the action. Attorneys' fees under this Section shall include attorneys' fees on any appeal as well as any attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

24. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

25. **Authority to Execute; Binding Effect.** Developer represents and warrants to the City that it has the power and authority to execute this Agreement and, once executed, this Agreement shall be final, valid, binding and enforceable against Developer in accordance with its terms. The City represents and warrants to Developer that (a) all public notices and public hearings have been held in accordance with law and all required actions for the adoption of this Agreement have been completed in accordance with applicable law; (b) this Agreement, once executed by the City, shall be final, valid, binding and enforceable against the City in accordance with its terms; and (c) this Agreement may not be amended, modified, changed or terminated in the future by the City except in accordance with the terms and conditions set forth herein.

26. **Entire Agreement; Conflicts.** This Agreement represents the entire agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Rules, then the provisions of this Agreement shall prevail.

27. **City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager, or his designee is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

28. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

29. **Integration.** This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material. This Agreement includes Exhibits A through D, (each such Exhibit incorporated in this Agreement as if fully set forth herein) which together constitute the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

30. **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

31. **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

32. **Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

33. **Assignment.** The burdens of the Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the parties to the Agreement. The parties shall provide thirty (30) days advance written notice of any assignment. Said notice shall be in compliance with Section 17 herein.

34. **Negation of Agency.** The Parties acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection

herewith shall be construed as making the City and Developer joint venturers, partners, agents of the other, or employer/employee.

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

CITY OF GLENDALE, CALIFORNIA

APPROVED AS TO FORM:
MICHAEL J. GARCIA, CITY ATTORNEY


By: _____,
_____, City Manager

By: _____
Gillian van Muyden
General Counsel-Redevelopment

ATTEST:

By: _____
Ardashes Kassakhian, City Clerk

PACIFIC TOWN CENTER
DEVELOPMENT, LLC, a California limited
liability company

By: 

Print Name: DAVID L. HO JR.
Title: MAYNO U.S.A. CORP. Co-MANAGING MEMBER

By: _____
Print Name:
Title:

Date: _____

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

On _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ as _____ of THE CITY OF GLENDALE, a municipal corporation, 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 authorities 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

[Notary Seal]

On December 16, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID L Ho, Jr., 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 authorities 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.

Mabel P. Paja

Signature

[Notary Seal]

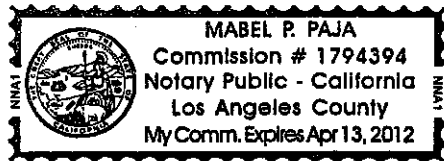


EXHIBIT A
PROJECT SITE

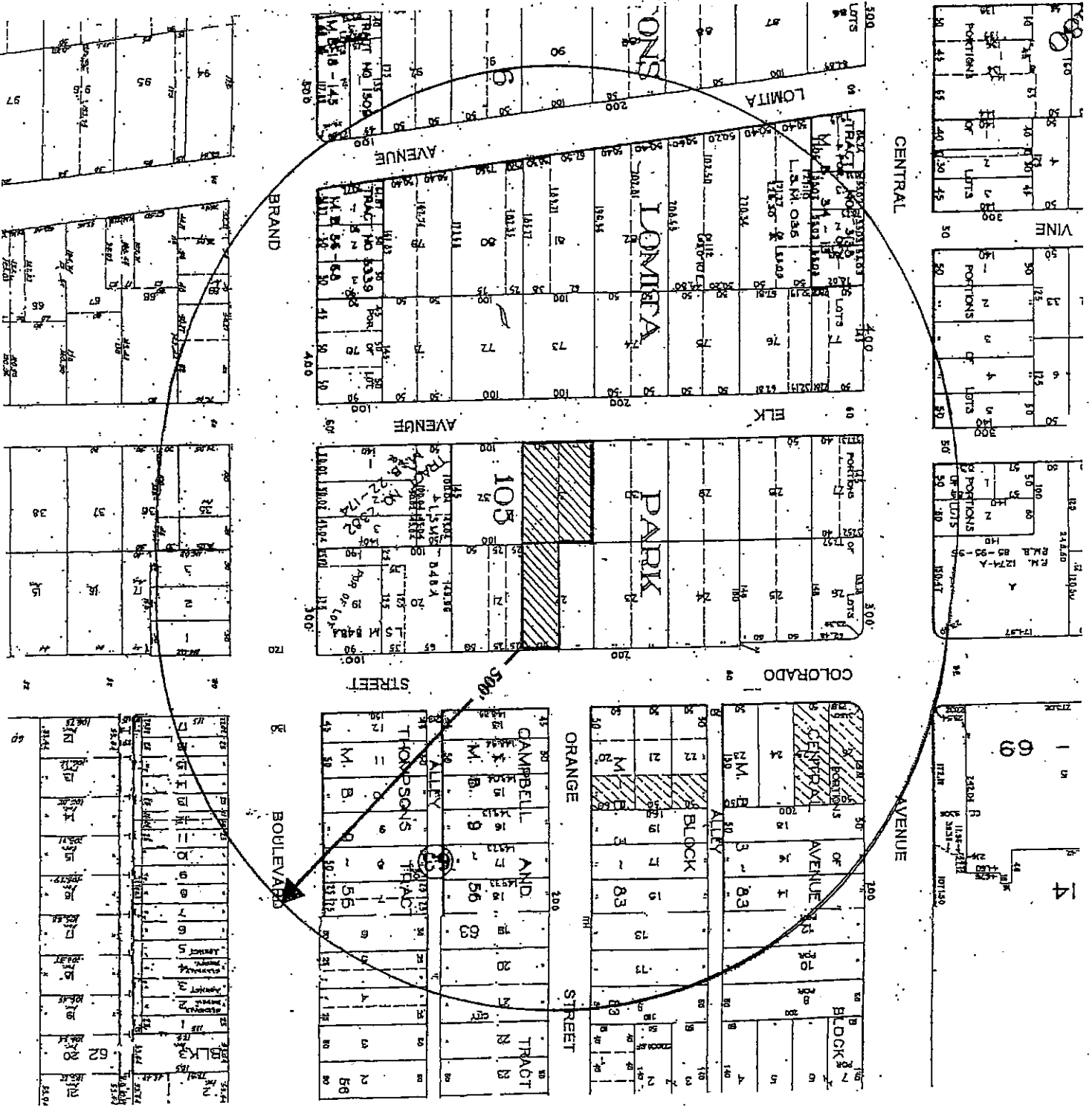


EXHIBIT B

LEGAL DESCRIPTION

LOT 31 AND A PORTION OF LOT 22, GRIDER AND HAMILTON'S LOMITA PARK TRACT,
IN THE CITY OF GLENDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

APN: 5641-001-008; 5641-001-021; 5641-001-022

EXHIBIT C

APPROVED PROJECT

[THE PROJECT FINAL DESIGN WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF GLENDAEL ON NOVEMBER 15, 2011 AND IS AVAILABLE FOR REVIEW IN THE OFFICE OF THE CITY CLERK]

EXHIBIT D

DEVELOPMENT IMPACT FEE RATE CHART

As approved by Resolution 10-199 and amended by Resolution 11-93, on November 30, 2010 and May 3, 2011.

<u>Three Year Phase in Fees for RESIDENTIAL PROJECTS</u>	
<i>Calculated per Residential Unit</i>	
-	-
Year 1 through 3	\$3,500
December 1, 2010- December 31, 2011	\$3,500
January 1, 2012- November 30, 2013	\$7,000
Commencing on December 1, 2013	\$10,500

<u>Three Year Phase in Fees for NON-RESIDENTIAL PROJECTS</u>			
<i>Calculated per Square Foot</i>			
	<u>Commercial</u>	<u>Office</u>	<u>Industrial</u>
Year 1 through 3	\$1.34	\$1.63	\$0.67
December 1, 2010- December 31, 2011	\$1.34	\$1.63	\$0.67
January 1, 2012- November 30, 2013	\$2.67	\$3.26	\$1.33
Commencing on December 1, 2013	\$4.01	\$4.89	\$2.00