CITY OF DUARTE
PLANNING COMMISSION
M I N U T E S
August 20, 2018

Planning Commission
Commissioners
Sara Vasquez, Chair
Wally Wolff, Vice-Chair
George K. Farra
Paula Watson-Gardner
Tina Heany

1. CALL TO ORDER AND NOTATION OF ANY ABSENCES:

Chairperson Vasquez called the meeting to order at 7:03 p.m.

The following were in attendance:

PRESENT:	Vasquez, Wolff, Farra, Heany, Watson-Gardner
ABSENT:	None
STAFF:	Hensley, Golding, Baldwin, Eoff IV, Hernandez, and Serna
DEPUTY CITY ATTORNEY:	Alisha Patterson

2. PLEDGE OF ALLEGIANCE:

Farra lead the Pledge of Allegiance

3. APPROVAL OF MINUTES: July 16, 2018

Watson-Gardner moved to approve the minutes of July 16, 2018. Seconded by Wolff. Motion approved 4-0-1-0. (Vote: Yes: Vasquez, Wolff, Heany, Watson-Gardner; No: None; Abstain: Farra; Absent: None)

4. ORAL COMMUNICATIONS ITEMS NOT ON THE AGENDA:

Chair Vasquez opened Oral Communications for items not on the Agenda. Farra changed his vote to abstained on the approval of the minutes. There were no other comments, Chair Vasquez closed Oral Communication.

5. PUBLIC HEARINGS:

A. Conditional Use Permit 14-02; Site Plan and Design Review 14-34: A request to operate and construct a new wireless communication facility for Verizon Wireless in the Royal Oaks Park Extension located at 2701 Royal Oaks Drive.

Attachments: Staff Report CUP 14-02; SDPR 14-34; PC Resolution 18-17 and PC Resolution 18-18

David Eoff IV, Associate Planner, presented the staff report, a power point presentation and a recap of previous meetings from the Architectural Review Board and Planning Commission. Eoff ended his presentation and acknowledge attendance of Verizon Representatives that were available for any questions.

Vice-Chair Wolff inquired about the approval process for the proposed project based upon previous legal recommendations. Alisha Patterson, City Attorney addressed his inquiry.

Farra opted to wait for his questions after the public inquires. Therefore, Chairperson Vasquez opened public hearing.

Lisa Desmond, Verizon Representative provided information on the need for a tower in the area for better coverage, elaborated on condition #3 and #4, and discussed the aspects of the project in depth.

Chair Vasquez closed the public hearing and opened Commissioners' inquiries.

Farra inquired on health impacts from tower's transmission. Patterson explained Federal thresholds, City's jurisdiction and limitations for local government review on health impacts from cell towers.

Farra inquired about the alternative sites that were considered for the proposed project and why were they unsuitable locations. Eoff IV provided information on the various locations that were considered; zoning; impacts and limitations with space for the tower.

Vice-Chair Wolff inquired about future carriers wanting to add their tower into the location or is it possible to share space with the proposed tower. Eoff IV discussed the City's Wireless Facility Guidelines, changes to accommodate new antennas, options to collocate new towers that will require Verizon and City agreements, and similarities of the current carriers on the west side of the park.

There were comments from Farra about the two existing towers, site location, view impact and art design of tower. Watson-Gardner commented on the art and design of the tower that enhances the looks of the city. Heany commented in support of the art design of the tower and project. Chair Vasquez commented on wishing for additional site alternatives for the tower, coverage limitations and the lack of complaints from residents that indicate a need for better coverage.

Chair Vasquez called for a motion on the items.

Watson-Gardner motioned to approve CUP 14-02 and PC Resolution 18-17. Seconded by Heany. The motion was approved 4-1-0-0 (Vote: Yes: Vasquez, Wolff, Heany, Watson-Gardner; No: Farra; Abstain: None; Absent: None).

Watson-Gardner motioned to approve SPDR 14-34 and PC Resolution 18-18. Seconded by Heany. The motion was approved 4-1-0-0 (Vote: Yes: Vasquez, Wolff, Heany, Watson-Gardner; No: Farra; Abstain: None; Absent: None).

Chair Vasquez called for a motion on the two Alternatives; (1) for the original location and (2) for a setback of 75 feet from the intersection as follow:

ALTERNATIVE (1) ONE: (Vote: Yes: Vasquez, Wolff, Heany, Watson-Gardner; No: None; Abstain: Farra; Absent: None).

B. General Plan Amendment 18-01, Zone Change 18-01, Tentative Tract Map 82129, Planned Development Permit 18-01, and Site Plan and Design Review 18-17: A request from MJW Investments to develop four parcels of land with a new, multi-family residential project located at 946, 952, 956, and 962 Huntington Drive.

Attachments: Staff Report; GPA 18-01; ZC 18-01; TTM 82129; PDP 18-01; SPDR 18-17; MND; PC Resolution 18-08; PC Resolution 18-09; PC Resolution 18-10; PC Resolution 18-11; PC Resolution 18-12 and PC Resolution 18-13.

David Eoff IV, Associate Planner, gave a staff report and power point presentation on the item. Eoff IV ended his presentation and acknowledged the attendance of the applicant and several representatives of the project: Matt Waken, MJW Investments; Project Architect from KTGY Group; Project Civil Engineer from MF Kessler, Project Builder from Brandywine Homes; and the Environmental Consultant from Morse Planning Group.

Chairperson Vasquez opened Commissioners inquiries.

Wolff inquired about the traffic impacts entering and exiting the establishment. Eoff IV discussed the traffic study as part of the environmental review, traffic counts and concerns. Director Hensley provided additional information on the reduction of traffic during peak hours with a residential as compared to a commercial project.

Farra inquired about ownership of driveway between project and shopping center and asked if that could be used as part of the project. Eoff IV discussed ownership, explained the purpose of driveway is for service/deliveries for businesses, and not intended to be use as a throughout access point.

Chairperson Vasquez opened public hearing.

Matt Waken, MJW Investments, thanked Staff for the joint team work on the design; discussed aspects, elements and materials of the project; and concurrence with the City's conditions.

Chairperson Vasquez asked Mr. Waken about other completed projects done in the city. Mr. Waken provided information of the approved mixed-use project across from City Hall.

Joey Kouchakian spoke in support of project, as he has seen great development projects completed by the developer in the Arcadia and Monrovia.

Hensley commented on the joint project between the developer and City, and how this project is transforming the last piece of former redevelopment property. He commended the Developer for the ability to purchase the property that has the house were the owners refused to sell in the past.

Chairperson Vasquez closed public hearing and opened Commissioners inquiries.

Farra complemented the project and commented on the lighting shown in the rendering presented.

There were no comments from the Commission, Chair Vasquez called for a motion on the items.

Watson-Gardner motioned to approve PC Resolutions 18-08 thru 18-13. Seconded by Heany. The motion was approved 5-0-0-0 (Vote: Yes: Vasquez, Wolff, Farra, Heany, Watson-Gardner; No: None; Abstain: None; Absent: None).

There was a two-minute recess before the following item.

C. Conditional Use Permit 18-03; Site Plan and Design Review 18-30: A request to allow the operation of a full-service restaurant with accessory entertainment and hookah service, sales and service of alcoholic beverages (Type 47 - General), outdoor dining, valet parking, and late-night hours. The project also includes a request for exterior modifications to an existing buildings and construction of structures accessory to the proposed use.

Attachments: Staff Report; CUP 18-03; SPDR 18-30; PC Resolution 18-19 and PC Resolution 18-20

Jason Golding, Planning Division Manager, presented a staff report and power point slideshow on the item. Golding acknowledged the attendance of the Property

Owners, Suki Thind Representative of the Family Trust; and the applicants, Medinvestments Inc., Joey Kouchakian, Jeff Almaz and their designer Mark Houston.

Chairperson Vasquez opened public hearing

Joey Kouchakian provided a background of his businesses in other local cities, discussed interest in bringing an upscale restaurant to the City, cost to improve the restaurant addressing all previous code violations, and working with neighbors to approach their concerns.

Mrs. Thind and her son Suki Thind, Residents and Property Owners of 1525 Huntington Dr., provided information about the property, apologized to neighbors that were affected by the nuisances of the previous restaurant tenants. Mr. Thind discussed code violations, process and selectivity of new restaurant owners, distribution of a petition by Days Inn owners against the project, and creation of a support petition that was signed by more people. Both petitions were presented to Commissioners.

There was discussion between the applicant and Commissioners about his other restaurant's focus on hookah, entertainment and food. Mr. Kouchakian explained elements and operation setting of his other restaurants.

Watson-Gardner shared an email that expressed concern about the definition of accessory entertainment and asked the applicant for clarity on this matter. She also asked for comments about peoples' concerns related to hookah smoking and health impacts. Mr. Kouchakian explained the ingredients and usage of the hookah versus traditional tobacco and discussed operation of his business that addressed the accessory entertainment concern.

The following people spoke in support of the project:
Joel Burney; Julie Gentry; Esther Miller; Kasey O; Tracy Karsey; Patrick McCloskey; Rana Madain; Margaret Finlay; Nick Zigic; Steve Hernandez; John, San Dimas Resident; Annie, Restaurant Owner; O'brain Levens, Carlos, Resident.

The following people spoke opposing the project:
Victor Patel, Monika Patel, Owners of Days In, and provided a copy of the signed opposed petition to the Commissioners.

Mr. Kouchakia discussed concerns related to noise nuisance; Yelp reviews; attempted contacts with Mr. and Mrs. Patel prior to acquiring business; drainage issues; new extended wall cost; age requirement to smoke hookah, pollution and no previous fire hazards.

Chairperson Vasquez closed public hearing and after a two-minute recess, she opened Commissioner's comments.

Commissioners Wolff and Heany commented about other great restaurants in the City, parking and noise concerns.

There were no comments from the Commission, Chair Vasquez called for a motion on the items.

Farra moved to approve CUP 18-03 and PC Resolution 18-19; and SPDR 18-30 and PC Resolution 18-20. Seconded by Watson-Gardner. The motion was approved 5-0-0-0 (Vote: Yes: Vasquez, Wolff, Farra, Heany, Watson-Gardner; No: None; Abstain: None; Absent: None).

6. ITEMS FROM DIRECTOR:

There were no items from the Director.

7. ITEMS FROM COMMISSIONERS:

There were no items from the Commissioners.

8. ADJOURNMENT: Monday, September 17, 2018

Chair Vasquez adjourned the meeting at 10:10 p.m. The next meeting is scheduled for September 17, 2018.

_____

Craig Hensley, Secretary

PLANNING COMMISSION STAFF REPORT

Date: September 17, 2018

Subject: **Development Agreement 2018-1** – Consideration of a Development Agreement Between the City of Duarte and the City of Hope Regarding the City of Hope Campus Plan and the Related Build-out in the Plan Area

Location: 1500 Duarte Road

BACKGROUND

In March 2018, the City Council approved the City of Hope Specific Plan (Campus Plan) along with the related general plan amendment, zone change and Environmental Impact Report. The Ordinance adopting the specific plan had first reading but second reading was held until the City of Irwindale acted on the project. A portion of the City of Hope campus is in Irwindale. The City of Irwindale City Council approved the project in May 2018 but made some changes to the plan, specifically related to the how the permitting process works for structures that are bisected by city boundaries. The zone change and specific plan will be reheard by the Duarte City Council in October. Since the changes were non-substantive, re-review by the Planning Commission is not required.

For the past several months, Staff has been working with the City Hope on a Development Agreement that will guide the specific plan implementation process. That Development Agreement is before the Commission for consideration and for its recommendation to the City Council. The Development Agreement provides benefits for both the City of Duarte and the City of Hope.

ANALYSIS

The process for Development Agreements is set forth in the California Government Code and in the Duarte Development Code. A Development Agreement is a contract, in this case between the City of Duarte and the City of Hope. It will create benefits for both parties. Having a Development Agreement for large developments and expansion plans is not a requirement, but in this case it is a proper tool to provide benefit to the City and reduced risk for the City of Hope.

The City will receive the following benefits in the proposed Development Agreement:

Circulation and Parking Impact Fee - The City of Hope will pay a $400,000 one time impact fee to address the off-site impacts of circulation to the campus. The City will use these funds for local street and circulation improvements.

Transient Occupancy Tax – The City of Hope operates approximately 40 units that are used for overnight stays. This is the Property's Hope Village and Parsons Village areas of campus. The campus plan calls for a new hospitality building, but until that building is completed, the City of Hope is subject to the City's transient occupancy tax. The payment schedule will extend until a new hotel is constructed on campus to replace the current facilities. In this agreement, the City of Hope will pay the following:

Year 1:	$75,000
Year 2:	$95,000
Year 3:	$105,000
Year 4:	$115,000
Years 5 - 20:	$125,000 (increasing annually after Year 5 based on CPI)

This provides an adequate in-lieu revenue to the City and also provides an incentive to the City of Hope to move forward quickly on a hotel that will, most likley, have more rooms thus creating an increased annual revenue.

Traffic Improvements – A mitigation in the EIR requires the installation of traffic signal improvements at the 210 West Freeway exit and Central Avenue. These improvements will also require upgrade to the existing traffic signals on Buena Vista Street and Central Avenue and Evergreen Avenue. The Development Agreement requires the City of Hope to either make those improvements or, if the City is able to negotiate signal improvements from another source, pay the City half of the cost of improvements. The City will use these funds for local street and circulation improvements.

The City of Hope also receives benefit in the proposed agreement. The agreement allows the City of Hope flexibility on its timeline to build out campus improvements. The City of Hope receives immunity from future development impact fees other than processing fees. The agreement also provides the City of Hope an entitlement to develop which basically means that the City will not use its legislative powers to make future changes to the specific plan that limits the build-out that is addressed in the specific plan and EIR.

RECOMMENDATION

Staff recommends that the Planning Commission approve PC Resolution 18-21 that recommends, to City Council, approval of the proposed Development Agreement.

Respectfully submitted,

Craig Hensley, AICP
Community Development Director

Attached: PC Resolution 18-21
Development Agreement

RESOLUTION NO. PC 18-21

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DUARTE RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN CITY OF HOPE AND THE CITY OF DUARTE, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 65864 ET SEQ., AND CHAPTER 19.148 OF THE DUARTE DEVELOPMENT CODE, FOR DEVELOPMENT OF THE PROPERTY AT 1500 EAST DUARTE ROAD IN THE CITY, IN ACCORDANCE WITH THE CITY OF HOPE CAMPUS PLAN, A DEVELOPMENT PLAN FOR THE LONG-TERM GROWTH AND BUILD-OUT OF THE CITY OF HOPE CAMPUS AND ITS SURROUNDING AREAS, INCLUDING NEW INPATIENT, OUTPATIENT, AND RESEARCH AREAS, OFFICE USES, AND RELATED DEVELOPMENT, KNOWN AS THE CITY OF HOPE CAMPUS PLAN

WHEREAS, Chapter 19.148 of the Duarte Development Code provides a process for preparing, processing, reviewing, adopting, and amending Development Agreements in compliance with Government Code Section 65864 et seq. or as that section may be amended or replaced from time to time; and

WHEREAS, the City of Duarte and City of Hope recognize that the expansion, modernization, and development of City of Hope's property, located at 1500 East Duarte Road in the City (the "Property"), will contribute to the improvement of the City; and

WHEREAS, a development plan for the long-term growth and build-out of the City of Hope campus and its surrounding areas, including new inpatient, outpatient, and research areas, office uses, and related development, known as the City of Hope Campus Plan, proposes City of Hope facilities' expansion in proximity to jobs and public transit, and will build upon and enhance the existing hospital and research uses within the City; and

WHEREAS, this Development Agreement is requested by the Property Owner in order that the Project will not be reduced in density, intensity or use or be subjected to after-enacted rules, regulations, ordinances or policies unless otherwise allowed by this Agreement or applicable law; and

WHEREAS, the implementation of the Project Approvals as defined in the Development Agreement and related actions will allow further development of the Project consistent with the Project objectives;

WHEREAS, a copy of the proposed Development Agreement is and has been available fro public review at City Hall, and a public notice was duly published in print and posted at the Duarte Public Library and the City of Duarte Public Safety Office; and

NOW THEREFORE, the Planning Commission of the City of Duarte resolves as follows:

SECTION 1. That the Planning Commission approves PC Resolution 18-21 that recommends to the Duarte City Council approval of the Development Agreement.

SECTION 2. All the facts set forth in the Recitals of this Resolution are true and correct and incorporated herein by this reference.

SECTION 3. The Planning Commission finds and determines as follows, findings for Development Agreements, as set forth in DDC Section 19.148.050.B, as:

1. The Development Agreement provides clear and substantial benefit to the residents of the City;

   The Development Agreement provides several benefits to the City including promoting the development of the City of Hope campus area in accordance with the City of Hope Specific Plan. That plan charts the long term growth for one of the City's leading non-profit businesses, and a leader worldwide in advanced cancer and other medical treatments. The City of Hope one of the most accomplished and distinctive of the City's many fine corporate citizens, and its success does now, and in the future will continue to, redound to the City's benefit n publicity, prestige, and access to premier health care services. In addition, the Development Agreement provides to the City benefit of funding for circulation and transportation improvements in the City, and establishes procedures for the collection of revenue from transient occupancy on the campus. These revenues provide the ability to address and fund is projects for circulation and other improvements to respond to the impacts created by both by the increased development from the Project, and elsewhere.

2. The Development Agreement is consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan, any applicable specific plan, and this Development Code;

   The Development Agreement facilitates the policies, procedures, of the City of Hope Specific Plan, which has received extensive public review, from both an environmental and land use policy standpoint and found to be compatible and consistent with the goals and policies in the Duarte General Plan, the Duarte Development Code and the City of Hope Specific Plan.

3. The Development Agreement complies with the requirements of Government Code Sections 65865 through 65869.5;

   The Development Agreement has been developed to be consistent with California Government Code. It specifies duration, permitted property uses, density and intensity of use, building height and size requirements, and provisions for land for public purposes, all through reference to City of Hope Specific Plan standards and criteria. In addition, the Development Agreement contains provisions for periodic review per Duarte Development Code sec. 19.148.080.

4. The Development Agreement will promote the public convenience, health, interest, safety, and general welfare of the City and will not be detrimental to or cause adverse effects to adjacent property owners, residents, or the general public;

   The Development Agreement is in the best interest and welfare of the City and its residents in that the Development Agreement provides the ability to address and fund projects for circulation and other improvements to respond to the impacts created by the increased development. It also assists in promoting the expansion of the City of Hope campus which will create jobs and an economic advantage to the city.

5. The associated project will be compatible with the uses authorized in, and the regulations prescribed for, the zone in which the real property is located;

   The Development Agreement anticipates the final approval of the City of Hope Specific Plan and related Campus Plan and all future development will be compatible with that plan.

6. The associated project will not adversely affect the orderly development of property or the preservation of property values;

   The Development Agreement will provide revenue to the City with the purpose of funding projects for circulation and other improvements to respond to the impacts created by the increased development. The campus buildout will create a positive economic impact by creating jobs, revenue from the permitting process and general community investment which will be a positive impact on the community and property values.

7. The associated project will further important citywide goals and policies that have been officially recognized by the Council; and

   This Development Agreement promotes the buildout of the City of Hope campus which is an expressed goal of the City Council.

8. The associated project will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

   The City of Hope is the City's largest employer and the largest local landowner. The plan for the buildout of the campus plan provided a significant advantage to the City economically. Increased jobs, both temporary during the 20 year build out and permanently, as a result of expansion, is a very positive benefit. Increased investment in the community by a nationally recognized cancer treatment and research center is also a very positive benefit.

SECTION 4. The Planning Commission approves Development Agreement 2018-1 based on the findings listed in Section 3.

APPROVED, AND ADOPTED by the Planning Commission of the City of Duarte at a regular meeting held on the 17th day of September 2018.

_____
Sara Vasquez, Chairperson
City of Duarte Planning Commission

ATTEST:

_____
Craig Hensley, Community Development Director

CITY OF DUARTE
COUNTY OF LOS ANGELES } ss.
STATE OF CALIFORNIA

I, Craig Hensley, Secretary of the Planning Commission of the City of Duarte, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission of the City of Duarte held on September 17, 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Craig Hensley, Community Development Director

Exhibit A

Development Agreement

begins next page

DEVELOPMENT AGREEMENT

by and between

THE CITY OF DUARTE

and

CITY OF HOPE

dated as of

_____

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed this _____ day of _____, 2018, by and between the CITY OF DUARTE, a municipal corporation ("City"), and CITY OF HOPE, a California nonprofit public benefit corporation ("City of Hope" or the "Property Owner"), pursuant to California Government Code Section 65864 et seq., and Chapter 19.148 of the Duarte Development Code, with respect to the following:

RECITALS

WHEREAS, the City and City of Hope recognize that the expansion, modernization, and development of City of Hope's property, located at 1500 East Duarte Road in the City (the "Property"), will contribute to the improvement of the City; and

WHEREAS, a development plan for the long-term growth and build-out of the City of Hope campus and its surrounding areas, including new inpatient, outpatient, and research areas, office uses, and related development, known as the City of Hope Campus Plan (the "Project"), in close proximity to jobs and public transit will build upon and enhance the existing hospital and research uses within the City; and

WHEREAS, City of Hope wishes to obtain reasonable assurances that the Property may be developed in accordance with the Project Approvals, as defined below, and the terms of this Agreement; and

WHEREAS, City of Hope will implement public benefits above and beyond the necessary mitigation for the Project, including without limitation those public benefits listed in Section 3.1.3 of this Agreement; and

WHEREAS, this Agreement is requested by the Property Owner in order that the Project will not be reduced in density, intensity or use or be subjected to new rules, regulations, ordinances or policies unless otherwise allowed by this Agreement or applicable law; and

WHEREAS, the implementation of the Project Approvals and related actions will allow further development of the Project consistent with the Project objectives;

AGREEMENT

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

1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context requires:

1.1 "Agreement" means this Development Agreement and all amendments and modifications thereto.

1.2 "Applicable Rules" means the rules, regulations, ordinances and officially adopted policies of the City in full force and effect as of the Effective Date of this Agreement which are generally applicable to all or some properties within the City, as well as the Specific Plan. The Applicable Rules shall apply to the Project, Project Approvals, and any subsequent discretionary actions which are necessary for implementation of the Project. Notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of public works facilities, if any, shall be those that are in effect at the time the project plans are being processed for approval and/or under construction.

1.3 "Assignment Agreement" means a written agreement between the Property Owner and a Transferee of the Property Owner, consistent with the terms of this Agreement, in which the parties agree to specific obligations of this Agreement being transferred from the Property Owner to the Transferee of the Property Owner.

1.4 "CEQA" means the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code of Regs., Title 14, Sections 15000 et seq.).

1.5 "City" means the City of Duarte, a general law city and municipal corporation, including each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and the Planning Commission.

1.6 "City Council" means the City Council of the City and the legislative body of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.7 "Director" means the Director of Community Development Director for the City.

1.8 "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

1.9 "Discretionary Action" means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board, commission or department or any officer or employee thereof, in the process of approving or disapproving a particular activity, including all such decisions set forth in the Specific Plan, as distinguished from a ministerial activity which merely requires the City, including any board, commission or department or any officer or employee thereof, to determine whether there has been compliance with statutes, ordinances or regulations, either as presented or as may be conditioned.

1.10 "Effective Date" is the date on which this Agreement is attested by the City Clerk of the City of Duarte after execution by the Property Owner and the Mayor of the City of Duarte pursuant to Section 6.1.

1.11 "Fees" means Impact Fees, Processing Fees and any other fees or charges imposed or collected by the City.

1.12 "FEIR" means the Final Environmental Impact Report for the Project, State Clearinghouse No. 2015101047, certified by the City in accordance with the requirements of CEQA.

1.13 "General Plan" means the General Plan of the City.

1.14 "Impact Fees" means impact fees, linkage fees, monetary exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City in full force and effect as of the Effective Date of this Agreement. Impact Fees do not include (i) Processing Fees or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed solely on impacts of new development.

1.15 "Ministerial Permits and Approvals" means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Property Owner to implement, develop and construct the Project and the Mitigation Measures, including without limitation, grading permits, building permits, foundation permits, stockpile permits, and other similar permits and approvals which are required by the Duarte Municipal Code and/or Duarte Development Code and project plans and other actions required by the Project Approvals to implement the Project and the Mitigation Measures. Ministerial Permits and Approvals shall not include any Discretionary Actions, but may be conditioned by the City, in order to ensure that they are otherwise consistent with the Duarte Municipal Code, the Duarte Development Code, and/or the Specific Plan, as applicable.

1.16 "Mitigation Measures" means the mitigation measures described in the FEIR and in the Mitigation Monitoring and Reporting Program for the Project which is attached hereto as Exhibit A, Mitigation Monitoring and Reporting Program.

1.17 "Parties" means collectively Property Owner and the City.

1.18 "Party" means any one of Property Owner or the City.

1.19 "Planning Commission" means the City Planning Commission and the planning agency of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.20 "Processing Fees" means all processing fees and charges required by the City including, but not limited to, fees for land use applications, consultant fees for environmental or legal review, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all Impact Fees which may be imposed by the City on development projects pursuant to rules, regulations, ordinances, and policies enacted after the Effective Date of this Agreement, except as specifically provided for in this Agreement. The amount of the Processing Fees to be applied in connection with the

development of the project shall be the amount which is in effect on a City-wide basis at the time an application for the City action is made. Notwithstanding the language of this Section or any other language in this Agreement, Property Owner shall not be exempt from the payment of fees, if any, imposed on a City-wide basis as part of the City's program for storm water pollution abatement mandated by the Federal Water Pollution Control Act of 1972 and subsequent amendments thereto, unless a waiver of these fees is provided by the City in a subsequent agreement.

1.21 "Project" means development within the City on the Property as described in Exhibit B, including, but not limited to, construction of outpatient (clinic), inpatient (hospital), research, office, hospitality, and parking uses, and ancillary uses, as described in the Project Approvals.

1.22 "Project Approvals" means those Discretionary Actions authorizing the Project which have been approved by the City on or before the Effective Date and not rescinded or superseded by City action taken on or before the Effective Date. Project Approvals include, but are not limited to, certification of the FEIR and approval of the Specific Plan, a General Plan Amendment, and a Zone Change Ordinance, all as adopted by the City on March 13, 2018 and [___], 2018, and all subsequent extensions thereto. The Project Approvals are listed in Exhibit C, Project Approvals.

1.23 "Property" means the real property owned by Property Owner as described in Exhibit D, Legal Property Description.

1.24 "Property Owner" means City of Hope, a California nonprofit public benefit corporation ("City of Hope").

1.25 "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but: (1) are necessary to protect the public health and safety, and are generally applicable on a City-wide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes and similar acts of God); (2) are amendments to Uniform Codes, as adopted by the City of Duarte, and the Duarte Municipal Code, as applicable, regarding the construction, engineering and design standards for private and public improvements to be constructed on the Property; or (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3.

1.26 "Specific Plan" means the City of Hope Specific Plan, Ordinance No. [XXX], adopted by the City Council on [DATE], a copy of which is attached as Exhibit E.

1.27 "Term" means the period of time for which this Agreement shall be effective in accordance with Section 6.2 hereof.

1.28 "Transferee" means individually or collectively, Property Owner's successors in interest, assignees or transferees of all or any portion of the Development Agreement Property.

1.29 "Uniform Codes" means those building, electrical, mechanical, plumbing, fire and other similar regulations of a City-wide scope which are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building Code, the Uniform Electrical Code, the Uniform Mechanical Code, Uniform Plumbing Code, or the Uniform Fire Code (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).

2. RECITALS OF PREMISES, PURPOSE AND INTENT.

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

> "The Legislature finds and declares that:
>
> "(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.
>
> (b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the parties; and (2) to offset such restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

2.2 City Procedures and Actions.

2.2.1 City Planning Commission Action. The City Planning Commission held duly noticed public hearing[s] on [_____], 2018 and recommended approval of this Agreement.

2.2.2 City Council Action. The City Council on [____], 2018, after conducting a duly-noticed public hearing, adopted [Ordinance No. ____], to become effective on the thirtieth day following the date of final passage, found that its provisions are consistent with the City's General Plan, the Specific Plan, and the Development Code, and authorized the execution of this Agreement.

2.3 Purpose of this Agreement.

2.3.1 Public Benefits. This Agreement provides assurances that the public benefits identified below in Section 3.1.3 will be achieved and developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. The Project will provide local and regional public benefits to the City, including without limitation those public benefits listed in Section 3.1.3 below.

2.3.2 Property Owner Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, the Property Owner wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. To the extent of Project development, and as provided by Section 3.1.1, Property Owner anticipates making capital expenditures or causing capital expenditures to be made in reliance upon this Agreement. In the absence of this Agreement, Property Owner would lack full assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is intended to assure Property Owner that the Project will not be (1) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals, or (2) subjected to new rules, regulations, ordinances or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers.

2.3.3 Mutual Objectives. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide public benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, and creation and retention of jobs. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, the Property Owner will receive assurance that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules, Project Approvals and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4 Applicability of the Agreement. This Agreement does not: (1) grant density or intensity in excess of that otherwise established in the Project Approvals or Applicable Rules; (2) eliminate future Discretionary Actions relating to the Project if applications requiring such Discretionary Action are initiated and submitted by the owner of the Property after the Effective Date of this Agreement; (3) guarantee that Property Owner will receive any profits from the Project; or (4) amend the City's General Plan. This Agreement has a fixed Term. Furthermore, in any subsequent actions applicable to the Property, the City may apply such new rules, regulations and official policies as are contained in its Reserved Powers.

3. AGREEMENT AND ASSURANCES.

3.1 Agreement and Assurance on the Part of Property Owner. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, Property Owner hereby agrees as follows:

3.1.1 Project Development. Property Owner agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into account market conditions and economic considerations, to undertake any development of the Project in accordance with the terms and conditions of this Agreement and the Project Approvals. However, nothing in this Agreement shall be deemed to obligate Property Owner to initiate or complete development of the Project or any portion thereof within any period of time or at all, or deemed to obligate Property Owner to commence or complete any Mitigation Measure or Condition of Approval prior to construction of the Project, unless otherwise set forth in the Project's Mitigation Monitoring and Reporting Program or elsewhere in the Project's Approvals. Furthermore, nothing in this Agreement shall be deemed to prohibit Property Owner from seeking any necessary land use approvals for any different land use project on the Property.

3.1.2 Timing of Development. The parties acknowledge that Property Owner cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Property Owner, such as market orientation and demand, interest rates and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, it is the intent of Property Owner and the City to hereby acknowledge and provide for the right of Property Owner to develop the Project in such order and at such rate and times as Property Owner deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement; provided, however, that this Section 3.1.2 does not in any way affect the specific timing or implementation of improvements or other requirements of development to the extent such provisions are set forth in the Project Approvals.

3.1.3 Additional Obligations of Property Owner as Consideration for this Agreement. Property Owner shall provide public benefits as set forth below:

3.1.3.1. Traffic Improvements. Property Owner is required under Mitigation Measure TRAS-1 in the Specific Plan's Mitigation Monitoring Program ("MMP"), at its own expense, to fund and ensure the construction of the traffic signal at the I-210 Westbound Off-Ramp & Central Avenue (the "Signal"). City has agreed to pursue potential third party funding of some or all of the cost of the Signal. If the City is successful in obtaining from any other party or entity any funding to pay in full, or offset in part, Property Owner's cost liability for the Signal prior to the date Property Owner is required to construct the Signal pursuant to the MMP (the "Third Party Signal Commitment"), then (i) City shall commit all such funding to the cost of the Signal either by providing such funding to Property Owner or placing such funding into an account such that it will be applied to reduce Property Owner's expenses to fund and ensure the construction of the Signal; and (ii) following confirmation of the commitment under subsection (i), Property Owner shall pay to the City one-half of all such obtained funding. A payment by Property Owner to City pursuant to this Section shall be deposited by City into a fund established by City for the purpose of constructing and implementing circulation improvements and local street maintenance. If the City does not obtain the Third Party Signal Commitment before Property Owner is required to construct the Signal pursuant to the MMP, as approved or may be modified by the City, then Property Owner shall proceed with construction of the Signal and shall have no further obligations under this Section.

3.1.3.2. Transit Occupancy Tax. Property Owner agrees to pay the City an annual fee in lieu of a transient occupancy tax ("TOT") for overnight stays by guests in units within the Property's Hope Village and Parsons Village areas, which collectively contain 40 short-term overnight stay units. The payment shall be a flat annual amount during the Term as set forth in the Payment Schedule below in lieu of TOT that may otherwise be required or collectable for overnight stays in those guest rooms pursuant to Duarte Municipal Code Section 3.05. Property Owner's obligation to pay the fee required by this Section shall cease upon either (i) the issuance of a Certificate of Occupancy for a new hotel on the Property, which new hotel shall be subject to Duarte Municipal Code Chapter 3.05, as may be amended over time; or (ii) the conversion of the Property's Hope Village and Parsons Village units to another use besides overnight guest stays, such as hospice care. If Property Owner obtains a Certificate of Occupancy for a new hotel, but continues to use either the Property's Hope Village or Parsons Village units for overnight guest stays, then Property Owner shall apply Duarte Municipal Code Chapter 3.05's TOT requirements to any such Hope Village or Parsons Village units for which it charges guests an overnight fee or rent, based on the fee or rent charged, but any such Hope Village or Parsons Village units that are provided to guests free of charge shall not be subject to Duarte Municipal Code Chapter 3.05.

<u>Payment Schedule</u>

Year 1:	$75,000
Year 2:	$95,000
Year 3:	$105,000
Year 4:	$115,000

Year 5 to Year 20: $125,000 (this amount shall be increased annually after Year 5 based on the Consumer Price Index)

3.1.3.3 Circulation and Parking Impact Fee. Within 30 days of the Effective Date of this Agreement, Property Owner shall pay the City a one-time circulation impact fee of $400,000, which the City agrees to use for circulation improvements and local street maintenance. The impact fee shall be deposited into a City fund established for the purpose of implementing such improvements and maintenance.

3.2 Agreement and Assurances on the Part of the City. In consideration for Property Owner entering into this Agreement, and as an inducement for Property Owner to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, the City hereby agrees as follows: Entitlement to Develop. Property Owner has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules, Project Approvals and the Reserved Powers. Property Owner's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace the Project or any portion thereof throughout the applicable Term for any reason, including, without limitation, in the event of damage, destruction or obsolescence of the Project or any portion thereof, subject to the Applicable Rules, Project Approvals and Reserved Powers. To the extent that all or any portion of the Project is remodeled, renovated, rehabilitated, rebuilt or replaced, Property Owner may locate that portion of the Project at any other location of the Property within the same Land Use district, subject to the requirements of the Project Approvals, the Applicable Rules, and the Reserved Powers.

3.2.2 Consistency in Applicable Rules. Based upon all information made available to the City up to or concurrently with the execution of this Agreement, the City finds and certifies that no Applicable Rules prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, intensities, densities, designs and heights, permitted demolition, and other development entitlements incorporated and agreed to herein and in the Project Approvals.

3.2.3 Changes in Applicable Rules.

3.2.3.1. Nonapplication of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general or specific plan, zoning or building regulation, adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City, the Mayor, City Council, Planning Commission or any other Board, Commission, Department or Agency of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with the Applicable Rules, Project Approvals, or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers, or are otherwise agreed to in this Agreement. Notwithstanding the foregoing, Property Owner may, in

its sole discretion, consent to the application to the Project of any change in the Applicable Rules. The foregoing shall not apply to transit occupancy tax rates applicable on the Property, which rates shall be collected and remitted in accordance with rates in effect at the time of the occupancy to which they pertain, consistent with Section 3.1.3.2 of this Agreement.

3.2.3.2. Changes in Building and Fire Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes which may occur from time to time in the Uniform Codes, as such Codes are adopted by the City of Duarte. In addition, development of the Project shall be subject to changes occurring from time to time in Title 16 (Buildings and Construction) of the Duarte Municipal Code regarding the construction, engineering and design standards for both public and private improvements provided that these changes are (1) necessary to the health and safety of the residents of the City, and (2) are generally applicable on a Citywide basis (except in the event of natural disasters found by the Mayor or City Council, such as floods, earthquakes and similar disasters).

3.2.3.3. Changes Mandated by Federal or State Law. This Agreement shall not preclude the application to the Project of changes in, or additions to, the Applicable Rules, including rules, regulations, ordinances and official policies, to the extent that such changes or additions are mandated to be applied to developments such as this Project by state or federal regulations, pursuant to the Reserved Powers. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

3.2.4 Subsequent Development Review. The City shall not require Property Owner to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals which are required by the Applicable Rules, the Reserved Powers and/or the Project Approvals. However, any subsequent Discretionary Action initiated by Property Owner which substantially changes the entitlements allowed under the Project Approvals shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

3.2.5 Effective Development Standards. The City agrees that it is bound to permit the uses, intensities of use and densities on this Property which are permitted by this Agreement and the Project Approvals, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers. The City hereby agrees that it will not unreasonably withhold or unreasonably condition any non-legislative Discretionary Action which must be issued by the City in order for the Project to proceed, provided that Property Owner reasonably and satisfactorily complies with all City-wide standard procedures for processing applications for Discretionary Actions.

3.2.6 Interim Use. The City agrees that Property Owner may use the Property during the Term of this Agreement for any use that is an existing legal nonconforming use on the Property as of the Effective Date, otherwise permitted by the applicable zoning regulations and the General Plan in effect at the time of the interim use, or pursuant to any approvals, permits, or other vested entitlements previously granted and in effect as of the Effective Date.

3.2.7 Moratoria or Interim Control Ordinances. In the event an ordinance, resolution, policy, or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates directly or indirectly to the Project or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property or the implementation of the Mitigation Measures adopted in connection with approval of the Project, City agrees that such ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless such changes are adopted pursuant to the Reserved Powers or other applicable provisions of this Agreement.

3.2.8 Special Taxes and Assessments. Property Owner shall not be obligated to support infrastructure financing undertaken by the City or others. Property Owner shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, Mello Roos or community facilities districts, maintenance districts or other similar districts.

3.2.9 Impact Fees. Impact Fees imposed by the City with respect to the Project shall be only those Impact Fees in full force and effect as of the Effective Date, including those whose amounts are subject to ongoing annual or other specified periodic increases, which shall be paid subject to such increases, as calculated at time of payment. The installation of improvements identified in the Mitigation Measures implemented in connection with the Project shall be accepted by the City in lieu of otherwise applicable Impact Fees, where applicable. This Agreement shall not limit any impact fees, linkage fees, exaction, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

3.2.10 Processing Fees. Property Owner shall pay all then-applicable rates of existing Processing Fees for Discretionary Actions and Ministerial Permits and Approvals, as such Processing Fees are identified in the City's existing fee Resolution No. _____.

3.2.11 Timeframes and Staffing for Processing and Review. The City agrees that expeditious processing of Ministerial Permits and Approvals and Discretionary Actions, if any, and any other approvals or actions required for the Project are critical to the implementation of the Project. In recognition of the importance of timely processing and review of Ministerial Permits and Approvals, the City agrees to work with Property Owner to establish time frames for processing and reviewing such Ministerial Permits and Approvals and to comply with timeframes established in the Project Approvals. Furthermore, the City shall expedite all requests by Property Owner for Discretionary Actions requested for the Project, if any, pursuant to any fee agreement or expedited processing that may be negotiated between the City and Property Owner.

4. ANNUAL REVIEW.

4.1 Annual Review. During the Term of this Agreement, the City shall review annually Property Owner's good faith compliance with this Agreement in accordance with Section 19.148.080 of the Duarte Development Code. Such annual review shall be limited in

scope to determining whether Property Owner has complied in good faith with the conditions and terms of this Agreement, as provided in the Development Agreement Act and the Duarte Development Code. Property Owner shall have the burden of demonstrating such good faith compliance.

4.2 Notice of Annual Review. In accordance with Section 19.148.080 of the Duarte Development Code, the Community Development Director shall initiate the annual review by giving notice to Property Owner at least ten (10) days in advance of the time when the matter will be considered by the Planning Commission. Property Owner may submit evidence of its good faith compliance with this Agreement in accordance with Section 4.3, below, to the Community Development Director prior to receipt of such notice from the Community Development Director.

4.3 Pre-Determination Procedure. Property Owner shall submit evidence of its good faith compliance with this Agreement, in a form which the Director may reasonably establish, in writing to the Director not later than ten (10) days prior to the yearly anniversary of the Effective Date or within ten (10) days of receipt of notice from the Director that the Planning Commission will review Property Owner's good faith compliance with this Agreement.

4.4 Planning Commission Review. On or within thirty (30) days of the yearly anniversary of the Effective Date of the Agreement, the Planning Commission shall conduct a hearing and make a determination, on the basis of substantial evidence, regarding whether or not Property Owner has complied in good faith with the conditions and terms of this Agreement, in accordance with Government Code Section 65865.1 and Section 19.14.080.D-F of the Duarte Development Code.

4.4.1 Determination of Compliance. If the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner has complied in good faith with the conditions and terms of this Agreement, the notice of determination of compliance shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Property Owner in the manner prescribed in Section 6.15. The City Council may review the Planning Commission's findings and may schedule a public hearing for further review if it so desires, but no third-party shall have any rights to appeal the Planning Commission's determination to the City Council.

4.4.2 Determination of Non-Compliance. If the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the conditions and terms of this Agreement, the Planning Commission shall forward its recommendation to the City Council. The City Council shall hold a hearing on the matter and shall provide Property Owner with notice at least ten (10) days prior to such hearing. Such notice shall contain the following information: (i) the time and place of the hearing, (ii) a statement as to whether the City Council proposes to modify or terminate this Agreement, and (iii) other information the City Council considers necessary to inform Property Owner of the nature of the proceedings. At the hearing, the City Council shall provide Property Owner with an opportunity to be heard, and the City Council may modify or

terminate this Agreement, or may refer the matter back to the Planning Commission for further proceedings or for report and recommendation.

4.5 Termination Or Modification Of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after a hearing and finding or determination of noncompliance by the City Council. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Section 65867.5 and Section 19.148.080.G of the Duarte Development Code.

4.6 Reimbursement Of Costs. Property Owner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

5. DEFAULT PROVISIONS.

5.1 Default By Property Owner.

5.1.1 Default. Outside of the Annual Review process set forth in Section 4 of this Agreement, in the event Property Owner does not perform its obligations under this Agreement in a timely manner, the City shall have all rights and remedies provided by this Agreement which shall include compelling the specific performance of the obligations of Property Owner under this Agreement pursuant to Section 6.6 below, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2 hereof.

5.1.2 Notice of Default. City shall first submit to Property Owner a written notice of default stating with specificity those obligations which have not been performed. Upon receipt of the notice of default, Property Owner 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 sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Property Owner shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether Property Owner has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 6.5 of this Agreement.

5.1.3 Failure to Cure Default Procedures. If after the cure period has elapsed, the Community Development Director finds and determines that Property Owner, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Community Development Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with Section 4.4.2, above, and with the notice and hearing requirements of Government Code Section 65867 . If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner, or its successors, transferees and/or assigns, as the case may be, has not cured such default pursuant to this Section, and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Property Owner and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City

Council in accordance with Section 6.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

5.1.4 Termination or Modification of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council in accordance with Section 4.4.2 above or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Section 65867.5 , irrespective of whether an appeal is taken as provided in Section 6.3.

5.2 Default By The City.

5.2.1 Default. In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements thereof, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Property Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Property Owner or Transferee, as the case may be, has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages.

5.2.2 Notice of Default. Property Owner shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed. Upon receipt of the notice of default, the 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 one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 6.5 of this Agreement.

5.3 No Monetary Damages. It is acknowledged by the Parties that neither the City nor the Property Owner would have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Therefore, the Parties agree that the Parties shall not be liable in monetary damages and the Parties specifically waive and covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement shall be effective as set forth in Section 1.10 above.

6.2 Term. The Term of this Agreement shall commence on the Effective Date and extend until twenty (20) years thereafter. unless said Term is otherwise terminated, modified or

extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto pursuant to Government Code Section 65868. Following the expiration of this Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property, approved prior to, concurrently with, or subsequent to, the Effective Date of this Agreement. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria, or from legal actions, administrative proceedings such as appeals or delays of ministerial actions, or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or for the period of time during which a lawsuit or litigation (including appeals) relating to the Project or the Project Approvals, including this Agreement, has been filed and is pending in a court of competent jurisdiction.

6.3 Enforced Delay; Extension Of Time Of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs (such as the Annual Review)); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs), after Property Owner has notified the City that delay within the scope of this Sec. 6.3 is occurring and the City has had 60 days' notice of such delay as provided below restrictions imposed or mandated by other controlling governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions affecting or regarding the Project; or similar bases for excused performance which is not within the reasonable control of the party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Property Owner or transferee of any assigned rights and obligations hereunder or, if not dismissed within ninety (90) days, by any third parties against Property Owner or any such transferee. If written notice of such delay is given to either party within sixty (60) days of the commencement of such delay, an extension of time for such cause will be granted in writing from a period of sixty days following such notice through the period of the enforced delay, or longer as may be mutually agreed upon.

6.4 Dispute Resolution.

6.4.1 Dispute Resolution Proceedings. The parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; or (b) any other manner of dispute resolution which is mutually agreed upon by the parties.

6.4.2 Arbitration. Any dispute between the parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Los Angeles County Superior Court or Appellate Justice of the Second District Court of Appeal or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the parties.

6.4.3 Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in Code of Civil Procedure Sections 1280 et seq., or under such other procedures as are agreeable to both parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

6.4.4 Extension Of Term. The Term of this Agreement as set forth in Section 6.2 shall automatically be extended for the period of time in which the parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

6.5 Legal Action. Subject to the limitations on remedies imposed by this Agreement, either Party may, in addition to any other rights or remedies, institute legal action in any court of competent jurisdiction, to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto. Notwithstanding the above, the City's right to seek specific performance shall be specifically limited to compelling Property Owner to complete, demolish or make safe any particular improvement(s) on public lands which is required as a Mitigation Measure. Additionally, the City's right to seek specific performance shall be specifically limited by Section 3.1.1. Property Owner shall have no liability (other than the potential termination of this Agreement) if the contemplated development fails to occur.

6.6 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

6.7 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the parties to this Agreement in accordance with Government Code Section 65868 and Chapter 19.148 of the Duarte Development Code. Any amendment to this Agreement which relates to the Term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent discretionary action or any conditions or covenants relating to the use of the Property, which are not provided for under the Project Approvals or Applicable Rules, shall require notice and public hearing before the parties may execute an amendment thereto.

6.8 Assignment. The Property, as well as the rights and obligations of Property Owner under this Agreement, may be transferred or assigned in whole or in part by Property Owner without the consent of the City, except as set forth in Sections 6.9.1 and 6.9.2 below. Upon such assignment the assignor shall be released from the obligations so assigned.

6.8.1 Conditions for Assignment. No such assignment shall be valid until and unless the following occur:

6.8.1.1. Written Notice of Assignment Required. Property Owner, or any successor transferor, gives prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identity of the assignee or transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Upon request by Property Owner, City shall provide written acknowledgement of such assignment in the form reasonably requested by Property Owner. Any failure by Property Owner or any successor transferor to provide the notice shall be curable in accordance with the provisions of Section 5.1.

6.8.1.2. Automatic Assumption of Obligations. Unless otherwise stated elsewhere in this Agreement to the contrary, a Transferee of Development Agreement Property expressly and unconditionally assumes all of the rights and obligations of this Agreement transferred or assigned by Property Owner and which are expressly set forth in the applicable Assignment Agreement.

6.8.1.3. As stated in Section 3.1.1. above, nothing herein shall be interpreted as obligating Property Owner or Assignee to initiate or complete development of the Project or any portion thereof within any period of time or at all, or interpreted to prohibit Property Owner or Assignee from seeking any necessary land use approvals for any different land use project on the Property.

6.8.2 Liability Upon Assignment. Unless otherwise stated elsewhere in this Agreement to the contrary, each Transferee of any portion of the Development Agreement Property shall be solely and only liable for performance of such Transferee's obligations applicable to its portion of the Development Agreement Property under this Agreement as specified in the applicable Assignment Agreement. Upon the assignment or transfer of any portion of the Development Agreement Property, the Transferee shall become solely and only liable for the performance of those assigned or transferred obligations and shall have the rights of a "Property Owner" under this Agreement; which such rights and obligations shall be set forth specifically in the Assignment Agreement, acknowledged by the transferring Property Owner, and the Transferee, as of the date of such transfer, assignment or conveyance of the applicable portion of the Development Agreement Property. The failure of any Transferee to perform the obligations assigned to it may result, at the City's option, in a declaration that this Agreement has been breached with regards to that specific Transferee, and may result in termination or modification of this Agreement after the Annual Review as set forth in Section 4 of this Agreement, as it relates to that Transferee's holding. This partial termination is severable from the entire Agreement, and shall not affect the remaining entirety of the Agreement.

6.9 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors to the Parties hereto.

6.10 Cooperation And Implementation.

6.10.1 Processing. Upon satisfactory completion by Property Owner of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the City shall commence and diligently process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. Property Owner shall, in a timely manner, provide the City with all documents, plans, fees and other information necessary for the City to carry out its processing obligations pursuant to this Agreement.

6.10.2 Other Governmental Permits. Property Owner shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Property Owner in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Property Owner, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.), or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Property Owner shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its own benefit on behalf of the City, or in its own name, the rights of the City or Property Owner thereunder or the duties and obligations of the parties thereto. Property Owner shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Property Owner has requested such agreement. Property Owner or Transferee, as the case may be, shall defend the City in any challenge by any person or entity to any agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Property Owner or Transferee, as the case may be, except where Property Owner or Transferee, as the case may be, has notified the City in writing, prior to the City entering into an agreement, that it does not desire for the City to execute an agreement.

6.10.3 Cooperation In The Event Of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending said action.

6.11 Relationship Of The Parties. It is understood and agreed by the parties hereto that the contractual relationship created between the parties hereunder is that Property Owner is an independent contractor and not an agent of the City. Further, the City and Property Owner hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Property Owner joint venturers or partners.

6.12 Hold Harmless and Insurance.

6.12.1 Hold Harmless. Property Owner hereby agrees to and shall indemnify, save, hold harmless and, if requested by the City, defend the City in any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that Property Owner shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or intentional acts on the part of the City. City agrees that it shall fully cooperate with Property Owner in the defense of any matter in which Property Owner is defending and/or holding the City harmless. City may make all reasonable decisions with respect to its representation in any legal proceeding.

6.13 Extension of Time for All Project Approvals.

6.13.1 Project Approvals. The duration of all Project Approvals shall automatically be extended for the Term of this Agreement, to the full extent permitted by law. .

6.14 Notices. Any notice or communication required hereunder between the City or Property Owner must be in writing, and shall be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the City:

Director of Community Development
City of Duarte
1600 Huntington Drive
Duarte, California 91010

with copies to:

David B. Cosgrove, Esq.
Duarte City Attorney
611 Anton Boulevard Suite 1400
Costa Mesa, Ca 92626

If to Property Owner:

City of Hope
Attention: Office of General Counsel
1500 East Duarte Road

with copies to

Latham & Watkins LLP
Attention: DJ Moore / Winston Stromberg

Duarte, California 91010

with a copy to Records Department
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071

6.15 Recordation. As provided in Government Code Section 65868.5 and Duarte Development Code Section 19.1480.060.B, a copy of this Agreement shall be recorded with the Registrar-Recorder of the County of Los Angeles within ten (10) days following the Effective Date. Property Owner shall provide the City Clerk with the fees for such recording prior to or at the time of such recording should the City Clerk record the Agreement.

6.16 Constructive Notice And Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

6.17 Successors And Assignees. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of all or any portion of the Property and their respective successors and assignees.

6.18 Severability. If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of either Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

6.19 Time Of The Essence. Time is of the essence for each provision of this Agreement of which time is an element.

6.20 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 and refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

6.21 No Third Party Beneficiaries. The only Parties to this Agreement are the City and Property Owner and their successors-in-interest. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

6.22 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein (or any such representations, understandings or ancillary covenants,

undertakings or agreements are integrated in this Agreement) and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

6.23 Legal Advice; Neutral Interpretation; Headings, Table Of Contents, and Index. Each Party acknowledges that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. The headings, table of contents, and index used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

6.24 Discretion to Encumber. This Agreement shall not prevent or limit Property Owner in any manner, at its sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvements. Notwithstanding the foregoing, City shall not be required to subordinate its interests in this Agreement to any lender or other party with whom Property Owner encumbers the Property.

6.25 Expedited Processing. Property Owner and the City agree to cooperate in the expedited processing of any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

6.26 Entitlement to Written Notice of Default. 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 the City, be entitled to receive from the City written notification of any default by Property Owner of the performance of Property Owner's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Property Owner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

6.27 Counterparts. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page, Table of Contents or Index, consists of 20 pages and five (5) Exhibits.

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

CITY OF DUARTE, a municipal corporation of the State of California

By: _____

John Fasana, Mayor

DATE:

APPROVED AS TO FORM:

By: _____

David B. Cosgrove, City Attorney

DATE:

ATTEST:
Marla Akana, City Clerk

By: _____

DATE:

CITY OF HOPE, a California nonprofit public benefit corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit A:

Mitigation Monitoring and Reporting Program

Exhibit B:

Project Description

Exhibit C:

Project Approvals

Exhibit D:

Legal Property Description

Exhibit E:

City of Hope Specific Plan