

ORDINANCE NO. 3019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SRG ARCHIBALD, LLC, AND CRAIG DEVELOPMENT CORPORATION (FILE NO. PDA15-001), TO FACILITATE THE DEVELOPMENT OF APPROXIMATELY 3 MILLION SQUARE FEET OF INDUSTRIAL LAND USES, 1.1 MILLION SQUARE FEET OF COMMERCIAL LAND USES (INCLUDING UP TO 600 HOTEL ROOMS), AND UP TO 800 RESIDENTIAL UNITS, ON 257.7 ACRES OF LAND GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 10 FREEWAY, SOUTH OF FOURTH STREET, BETWEEN VINEYARD AND ARCHIBALD AVENUES, WITHIN THE MEREDITH INTERNATIONAL CENTRE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF (APNs: 0110-311-12, 15, 21, 24, 26, 28, 32, 33, 36, 37, 43 & 44; and 0110-321-05 & 25 through 29).

WHEREAS, California Government Code Section 65864 now provides, in pertinent part, as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval process of development projects can result in a waste of resources, escalate the cost of housing and other developments to the consumer, and discourage investment in and 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 costs of development.”

WHEREAS, California Government Code Section 65865 provides, in pertinent part, as follows:

“Any city ... may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article ...”

WHEREAS, California Government Code Section 65865.2. provides, in part, as follows:

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement ...”

WHEREAS, on the 4th day of April 1995, the City Council of the City of Ontario adopted Resolution No. 95-22 establishing procedures and requirements whereby the City of Ontario may consider Development Agreements; and

WHEREAS, on the 10th day of September 2002, the City Council of the City of Ontario adopted Resolution No. 2002-100 which revised the procedures and requirements whereby the City of Ontario may consider Development Agreements; and

WHEREAS, attached to this Ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Development Agreement between SRG Archibald, LLC (“SRG”), and Craig Development Corporation (“CDC”), and the City of Ontario (File No. PDA15-001), concerning those 258 acres of land within the Meredith International Centre Specific Plan, located north of Interstate 10, south of Fourth Street, east of Vineyard Avenue, and west of Archibald Avenue and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on the 19th day of March, 2015, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC15-023 recommending City Council certification of the Meredith International Centre Specific Plan Amendment EIR and Issued Resolution PC15-025 recommending approval of the Amendment to the Meredith International Centre Specific Plan (File No. PSP14-003); and

WHEREAS, on the 7th day of April, 2015, the City Council of the City of Ontario certified the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020); and

WHEREAS, on the 7th day of April, 2015, the City Council of the City of Ontario adopted Resolution No. 20015-025 approving the Amendment to the Meredith International Centre Specific Plan; and

WHEREAS, on the 7th day of May, 2015, the Planning Commission conducted a public hearing on the application and concluded said hearing on that date. After receiving all public testimony, the Planning Commission recommended approval of the Development Agreement to the City Council; and

WHEREAS, the environmental impacts of this project were reviewed in conjunction with the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020) that was certified by the City Council on April 7, 2015. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on the 19th day of May, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on May 19, 2015, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 257.7 acres of land within the Meredith International Centre Specific Plan, generally located north of Interstate 10, south of Fourth Street, east of Vineyard Avenue and west of Archibald Avenue and is vacant; and

b. The area to the north of the Project site, across Fourth Street, is characterized by a mix of commercial, low-medium and medium density residential, and business park development and is within the C1 (Shopping Center), R1.5 (Low-Medium Density Residential), R2 (Medium Density Residential), and M2 (Industrial Park) zoning districts, respectively. The area east of the Project site, across Cucamonga Creek, is within the OS (Open Space) zoning district and is used by the San Bernardino Flood Control District for storm water percolation. The area further east, across Archibald Avenue, is within the Urban Commercial land use district of the Ontario Festival Specific Plan and is developed with a commercial shopping center. The area south of the Project site is bordered by the Interstate 10 Freeway. The area beyond the freeway is within the C4 (Airport Service Commercial) zoning district and is developed with a mix of retail and office-commercial land uses. The area west of the Project site is characterized by a mix of single-family and multiple-family residential uses and commercial land uses. Additionally, the area consists of a mix of zoning districts, including R1 (Single-Family Residential), R2 (Medium Density Residential), and C3 (Commercial Service); and

c. The Development Agreement establishes parameters for the development of the Meredith International Specific Plan projects. The Development Agreement also grants SRG and CDC the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy plan (General Plan), design guidelines and development standards for the Meredith International Centre Specific Plan; and

d. The Development Agreement focuses on 238 acres, consisting of Tentative Parcel Map 19612, which subdivides the property into 22 lots within the Meredith International Centre Specific Plan; and

e. The Development Agreement will provide for development of up to 3 million square feet of industrial land uses, up to 600 hotel rooms, up to 1.14 million square feet of commercial land uses, and up to 800 residential units at a density of 25 dwellings per acre within the Meredith International Specific Plan; and

f. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

g. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

h. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in the Meredith International Centre Specific Plan Amendment EIR certified by the City Council on March 19, 2015.

SECTION 2. Based upon the findings and conclusions set forth in Sections 1 above, the City Council hereby approves the Project.

SECTION 3. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

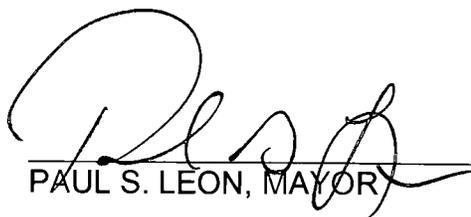
SECTION 4. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of June 2015.


PAUL S. LEON, MAYOR

ATTEST:


MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

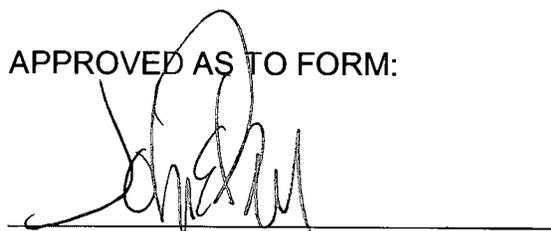

BEST BEST & KRIEGER LLP
CITY ATTORNEY

Exhibit A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Ontario
303 East "B" Street
Ontario California, California 91764
Attn: City Clerk

Exempt from Fees Per Gov. Code § 6301

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation;

**Craig Development Corporation,
a California corporation;**

and

**SRG Archibald, LLC,
a Delaware limited liability company**

June 2, 2015

San Bernardino County, California

Exhibit A**DEVELOPMENT AGREEMENT NO. PDA15-001**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the 2nd day of June, 2015 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"); Craig Development Corporation, a California Corporation (hereinafter "CDC"); and SRG Archibald LLC, a Delaware limited liability company (hereinafter "SRG");

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, CDC and SRG have requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, the property that is the subject of this Agreement consists of approximately 250 acres located within the CITY generally bounded by Vineyard Avenue, 4th Street, Interstate 10, and Archibald Avenue (the "Property"); and

WHEREAS, the Property is currently owned by CDC and located within the CITY's Meredith International Centre Specific Plan Area; and

WHEREAS, pursuant to that certain Agreement for Purchase and Sale of Real Estate and Joint Escrow Instructions for the Meredith International Centre, CDC has agreed to sell a portion of the Property to SRG and retain the balance of the Property for itself (the portion of the Property to be owned by SRG is hereinafter referred to as the "SRG Property" and the portion of the Property to be retained by CDC is hereinafter referred to as the "CDC Property"); and

WHEREAS, SRG on behalf of itself and CDC submitted an application to the CITY to develop the Property with a mix of industrial, commercial, and residential land uses with up to 4,150,000 million square feet of floor area (the "Project"); and

WHEREAS, under the Project, the SRG Property will be developed with up to 3,007,000 square feet of general/light industrial, warehouse/distribution and/or light manufacturing floor area (the "SRG Development") and the CDC Property will be developed with up to 1,143,000 square feet of non-residential and residential uses, including 600 hotel rooms, and in addition to such square footage up to 800 multi-family residential units (the "CDC Development"); and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Final Environmental Impact Report was certified by the City Council of the City of Ontario on April 7, 2015 (State Clearinghouse No. 2014051020) (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the Project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's General Plan and the Meredith International Center Specific Plan, as amended; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, CDC and SRG have incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, CDC and SRG have incurred and will in the future incur substantial costs in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "CDC Development" means the improvement of the CDC Property with 1,143,000 square feet of non-residential and residential uses, including 600 hotel rooms, and in addition to such square footage up to 800 multi-family residential units.

1.1.4 "CDC Property" means the portion of the Property to be retained by CDC after the sale of the remainder of the Property to SRG. The CDC Property is described in Exhibit "A-1" and shown on Exhibit "B-1."

1.1.5 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.6 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

- (a) specific plans and specific plan amendments;
- (b) tentative and final subdivision and parcel maps;
- (c) development plan review;
- (d) conditional use permits (including model home use permits), public use permits and plot plans;
- (e) related zoning approvals; and
- (f) grading and building permits.

1.1.7 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the

payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.8 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, “Development Impact Fee” shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

1.1.9 “Development Plan” means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.10 “Effective Date” means the date that the ordinance approving this Agreement goes into effect.

1.1.11 “Existing Development Approvals” means all Development Approvals approved or issued on or prior to the Effective Date, Existing Development Approvals includes the Approvals incorporated herein as Exhibit “C” and all other Approvals which are a matter of public record on the Effective Date.

1.1.12 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.13 “General Plan” means the General Plan adopted on January 27, 2010, by City Council Resolution No. 10-006.

1.1.14 “Improvement” or “Improvements” means those public improvements required to support the development of the Project and as required by conditions of approval for Parcel Map No. 19612, or a phase of the Project.

1.1.15 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property; or
- (e) the exercise of the power of eminent domain.

1.1.16 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.17 “OWNER” refers to CDC and SRG and their permitted successor(s) in interest. Specifically, as to the CDC Property, OWNER refers to CDC and its permitted successor(s) in interest. As to the SRG Property, OWNER refers to SRG and its permitted successor(s) in interest.

1.1.18 “Project” means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement. The Project is comprised of the CDC Development on the CDC Property and the SRG Development on the SRG Property.

1.1.19 “Property” means the real property described on Exhibit “A” and shown on Exhibit “B” to this Agreement. The Property is comprised of the CDC Property and the SRG Property.

1.1.20 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.21 "Specific Plan" means that certain specific plan approved, as amended, by the City Council on April 7, 2015, titled "Meredith International Center Specific Plan."

1.1.22 "SRG Development" means the improvement of the SRG Property with 3,007,000 square feet of general light industrial, manufacturing, and warehouse/distribution floor area.

1.1.23 "SRG Property" means that portion of the Property to be sold to SRG by CDC. The SRG Property is described in Exhibit "A-2" and shown on Exhibit "B-2."

1.1.24 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.25 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" – Existing Land Use Regulations

Exhibit "E" – Required Infrastructure Improvements

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign its portion of the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the OWNER's portion of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge (consisting of reasonable and customary City staff/attorney hourly billing rates) to cover the CITY's review and consideration of such sale, transfer or assignment; provided, to the extent that this Agreement is executed prior to the consummation of that certain Agreement for Purchase and Sale of Real Estate and Joint Escrow Instructions for the Meredith International Centre entered into by and between SRG and CDC (referred to first hereinabove), the conveyance and transfer from CDC to SRG or affiliate, as contemplated thereby, is expressly excluded from the foregoing requirements and for all purposes of this Section 2.4.1 shall not constitute a default.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment. The City Manager's approval of any proposed sale, transfer or assignment shall not be unreasonably withheld or delayed and such a decision by the City Manager shall be rendered within fifteen (15) business days of written request.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring OWNER is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) The transferring OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) The transferring OWNER is not then in default under this Agreement.

(c) The transferring OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by the transferring OWNER, to secure performance of its obligations hereunder.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of the transferring OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred by the transferring OWNER (the "Retained Property").

(b) The OWNER of the Retained Property shall be liable for the performance of all obligations with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

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

(b) A temporary certificate of occupancy or a certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign obligations and rights under this Development Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a Partial Assignment and Assumption of Development Agreement in a form substantially the same as in the attached Exhibit "F" attached hereto, and incorporated herein. Any such completed and executed Partial Assignment and Assumption of Development Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of the Development Agreement. Within thirty (30) days following such submittal, CITY shall review, and if the above conditions are satisfied shall approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Development Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Any party or its successor(s) in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the relevant parties (e.g., CITY and CDC and/or SRG) or their successor(s) in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. If the amendment or cancellation only involves CDC or SRG and/or its successor(s) in interest, the Agreement shall remain in full force and effect as to the uninvolved party. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for development on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below.

All notices shall be addressed as follows:

If to CITY:

Al C. Boling, City Manager
City of Ontario
303 East "B" Street
Ontario California, California 91764

with a copy to:

John Brown, City Attorney
Best Best & Krieger
2855 East Guasti Road, Suite 400
Ontario CA 91761

If to CDC:

Craig Meredith
c/o Craig Development Corporation
P.O. Box 1968
Newport Beach, CA 92659

with a copy to:

Dwight J. Griffith
Remer, DiVincenzo & Griffith
2121 E. Coast Highway, Ste. 280
Corona del Mar, CA 92625

If to SRG:

Peter Rooney, Vice President,
SRG Archibald, LLC
c/o Sares Regis Group
8802 Bardeen Avenue
Irvine, CA 92612

with a copy to:

John A. Ramirez
Rutan & Tucker, LLP
611 Anton Blvd.
Suite 1400
Costa Mesa, CA 92626
Phone: (714) 662-4610
Fax: (714) 546-9035

(c) Any party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors, which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment. Projected dates for the completion of infrastructure and buildings are estimates and are subject to change at OWNER's sole and absolute discretion. However, public infrastructure required by conditions of approval for Development Approvals for Parcel Map 19612 shall be constructed in sequences, as set forth in Exhibit "E" of this Agreement, and the City may withhold Project approvals (including grading permits, building permits or certificates of occupancy), should such public infrastructure not be completed in connection to the requisite sequences as so required.

3.4 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.5 Reservations of Authority.

3.5.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local

amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition dangerous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;

(f) Regulations that may conflict but to which the OWNER consents.

3.5.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.5.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.5.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.5.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.6 Public Infrastructure and Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER

shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should, it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property").

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permits.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) CDC shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected residential population to be added by the permanent private improvements upon CDC Property without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners association. If the CDC Development does not so provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, CDC shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first building permit issued to CDC. CDC shall also pay, without credit or offset, the Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees).

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the infrastructure construction within the Property shall be as described in Exhibit "E". SRG shall be responsible for the timely design, construction and completion of all public infrastructure required in the conditions of approval for Parcel Map No. 19612, which is generally described in Exhibit "E". SRG and CDC shall design, construct and complete associated public infrastructure required by the Development Approvals, for specific building(s) in a particular Project Area prior to, and as a condition precedent to, CITY's issuance of a certificate of occupancy for the building(s) in the Project. Nothing herein shall preclude CITY from issuing a temporary certificate of occupancy (or certificate of occupancy as appropriate) for any building prior to completion of the associated improvements. Further, by separate agreement as to which CITY is not a party and need not be concerned, SRG and CDC shall share the cost of common improvements including bridges, multi-use trail(s), and all off-site improvements.

4.3.2 Construction of DIF Program Infrastructure. To the extent SRG and CDC are required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and SRG. Limitation on the use of DIF Credit issued to SRG to offset SRG's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and SRG. CITY and SRG agree that the Fee Credit Agreement between CITY and SRG shall comply with CITY's adopted policies applicable to such agreements.

4.4 Undergrounding of Overhead Utility Lines. OWNER shall be subject to all City requirements regarding undergrounding of all permanent utilities, including overhead utility lines owned or operated by Southern California Edison.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). At OWNER'S request, City shall cooperate with OWNERS to analyze/evaluate the formation of a Community Facilities District ("CFD") to finance public infrastructure. The City shall determine whether the formation is appropriate based on consistency with adopted CFD goals and policies and the analysis/evaluation conducted.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Recommendation of the Planning staff;
- (2) Affirmative vote of at least four (4) members of the Planning Commission; or
- (3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for

the period under review, reasonably complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has reasonably complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not reasonably complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall, after having complied with the procedures in Section 8.4 and having failed to achieve resolution of the matter, give notice to the property OWNER of its intention so to do.

The notice shall contain:

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and
- (c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate reasonable good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not reasonably complied in good faith with the terms and conditions of the Agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The City Council's action under this section as to either CDC or SRG (or

one of its successor(s) in interest) shall not affect the validity or effectiveness of this Agreement as to other party (or one of its successor(s) in interest).

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in reasonable compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor(s) in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for non-monetary remedies, including the remedy of specific performance and judicial review as provided for in Section 6, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Section 6 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to reasonably comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be reasonably cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default. Any action by the CITY as to either CDC or SRG (or one of its successor(s) in interest) individually under this section shall not affect the validity or effectiveness of this Agreement as between CITY and the other party.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that

such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its General Plan, as such General Plan exists as of the Effective Date, and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. SRG shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or any Existing Land Use Approval. CITY shall promptly notify SRG of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify SRG of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, SRG shall not thereafter be responsible to defend, indemnify, or hold harmless CITY as set forth in the first sentence of this paragraph. CITY may, in its discretion, participate in the defense of any such claim, action or proceeding. With respect to Subsequent Development Approvals, (i) SRG shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul any Subsequent Development Approval related to the SRG Development and (ii) CDC shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul any Subsequent Development Approval related to the CDC Development. To the extent any claim, action or proceeding involves one or more Subsequent Development Approval related to both the SRG Development and the CDC Development, SRG and CDC shall apportion among themselves the financial responsibility for their indemnification and defense of the CITY, but shall otherwise be jointly and severally liable for such indemnification and defense.

9.3 Indemnity.

(a) In addition to the provisions of 9.2 above, SRG shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of SRG with respect to SRG actions or obligations under this Agreement, including those of SRG's officers, agents, employees, subcontractors and independent contractors, for property damage,

bodily injury, or death (SRG's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from SRG's activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the active negligence or willful misconduct of CITY. SRG shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may, in its discretion, participate in the defense of any such legal action.

(b) In addition to the provisions of 9.2 above, CDC shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of CDC with respect to CDC actions or obligations under this Agreement, including CDC's officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (CDC's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from CDC's activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the active negligence or willful misconduct of CITY. CDC shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

(c) To the extent any claim, action or proceeding involves a claim of liability based or asserted upon any act or omission of both SRG and CDC (or their respective officers, agents, employees, subcontractors or independent contractors), SRG and CDC shall apportion among themselves the financial responsibility for their indemnification and defense of the CITY, but shall otherwise be jointly and severally liable for such indemnification and defense.

9.4 Environment Assurances.

(a) SRG shall indemnify, defend, and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of SRG, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the SRG Property, including, but not limited to, soil and groundwater conditions, save and except claims for damages arising through the active negligence or willful misconduct of CITY. SRG shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

(b) CDC shall indemnify, defend, and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of CDC, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the CDC Property, including, but not limited to, soil and groundwater conditions, save and except claims for damages arising through the active negligence or willful misconduct of CITY. CDC shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

(c) To the extent any claim, action or proceeding involves a claim of any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about both the SRG Property and the CDC Property, SRG and CDC shall apportion among themselves the financial responsibility for their indemnification and defense of the CITY, but shall otherwise be jointly and severally liable for such indemnification and defense.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION. The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the portion of the Property owned by Owner or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to that portion of the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successor(s) in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 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. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the CDC Property or the SRG Property is owned, in whole or in part, by more than one owner, all obligations of such owners as to those properties under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

11.11 Force Majeure. No party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by a party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successor(s) in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of a portion of the Property: (a) is for the benefit of and is a burden upon that portion of the Property; (b) runs with that portion of the Property; and, (c) is binding upon each party and each successor in interest during ownership of that portion of the Property.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Agreement, each party shall be responsible to bear its own attorney's fees and legal costs.

11.16 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.17 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that no party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.18 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of a party at any time, the other party or parties, as the case may be, shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.19 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.20 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. .

11.21 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party or parties, as the case may be, shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs reasonably incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

11.22 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to

execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and, represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

“CDC”

Craig Development Corporation, a California corporation

By: _____
Name: Craig Meredith
Its: President

Date: _____

“SRG”

SRG Archibald, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

Date: _____

“CITY”

CITY OF ONTARIO

By: _____
Al C. Boling
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

**EXHIBIT "A"
TO DEVELOPMENT AGREEMENT**

Legal Description of Property

PARCEL MAP NO. 19612 In the City of Ontario, County of San Bernardino, State of California. Being a subdivision of portions of Lot 1 and Lot 2, Block 22, Tract No. 2244 in the City of Ontario, County of San Bernardino, State of California as per plat recorded in book 35 of maps, pages 50 through 56, Inclusive, records of San Bernardino County, California.

Exhibit "A-1"
To Development Agreement

Description of CDC Property

Lots 8 through 22 of Parcel Map 19612 in the City of Ontario, County of San Bernardino, State of California.

Exhibit "A-2"
To Development Agreement

Description of SRG Property

Lots 1 through 7 of Parcel Map 19612 in the City of Ontario, County of San Bernardino, State of California.

EXHIBIT "B-1" TO DEVELOPMENT AGREEMENT

Map showing CDC Property and its location

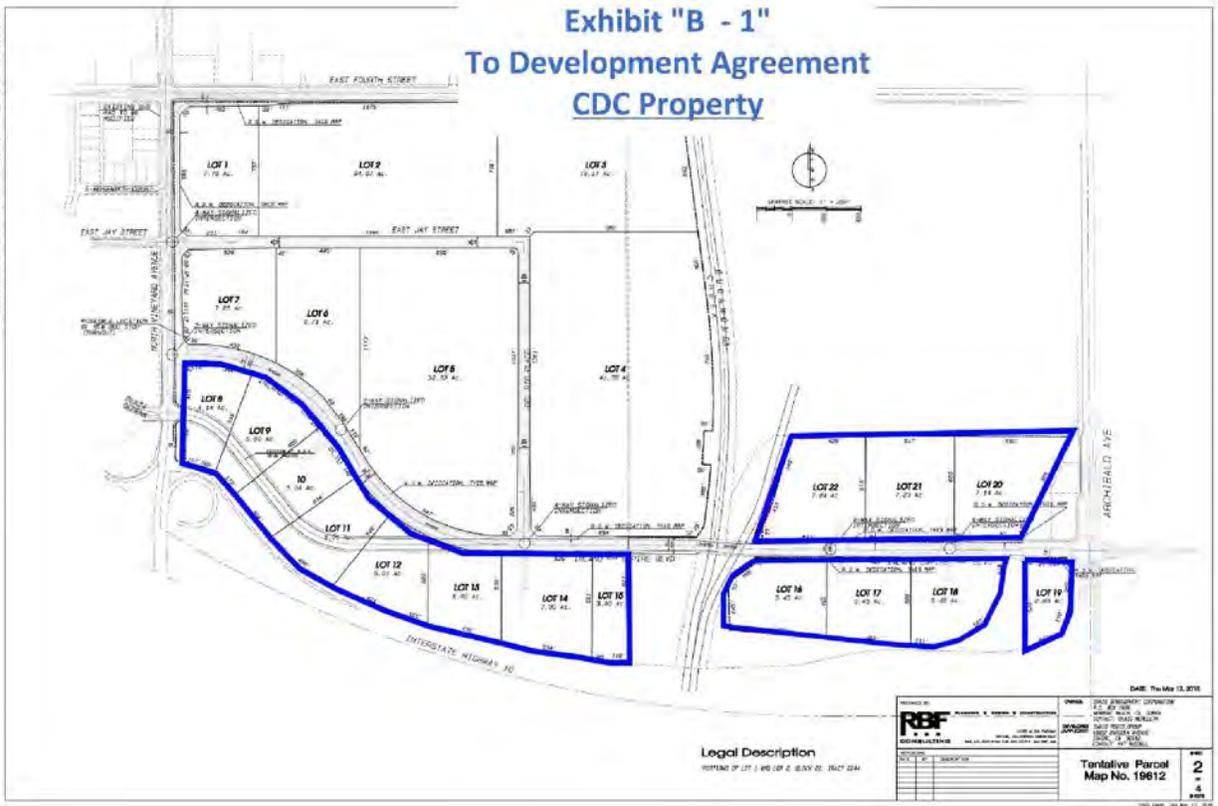


Exhibit A

**EXHIBIT "C"
TO DEVELOPMENT AGREEMENT**

Existing Development Approvals

1. General Plan Amendment (File No. PGPA13-005)
2. Meredith International Centre Specific Plan Amendment (File No. PSPA14-003)
3. Project Environmental Impact Report (SCH#2014051020)
4. Tentative Parcel Map (File No. PMTT14-028 (PM 19612))
5. Development Plan (File No. PDEV14-055)

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are attached by reference only:

1. City of Ontario General Plan
2. City of Ontario Municipal Code
3. City of Ontario Design, Improvement and Construction Standards and Specifications
4. The Meredith International Centre Specific Plan
5. Planning Commission Resolution No. PC15-023 recommending the City Council certification of the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH# 2014051020) prepared for File Nos. PGPA13-005 and PSPA14-003.
6. Planning Commission Resolution No. PC15-024 recommending the City Council approve File No. PGPA13-005, a General Plan Amendment to revise the Land Use Element of the Policy Plan component of The Ontario Plan.
7. Planning Commission Resolution No. PC15-025 recommending the City Council approve File No. PSPA14-003, which modifies the Meredith International Centre Specific Plan.
8. Planning Commission Resolution No. PC15-026 approving File No. PMTT14-028, a Tentative Parcel Map subdividing 238.5 acres into 22 lots.

Exhibit A**EXHIBIT "E"
TO DEVELOPMENT AGREEMENT****Required Infrastructure Improvements**

The project infrastructure will be constructed in a single phase with the understanding that certain improvements may be delayed due to regulatory approval requirements, (i.e. Caltrans, USACOE, SBFCO, Cal DF&W, etc.) or acquisition of required street improvement right-of-way from 3rd parties. Generally, the construction management of the improvements for all Planning Areas shall be the responsibility of SRG including acquiring requisite bonds required by CITY. SRG and CDC shall have a separate agreement that describes the cost sharing arrangement between the parties. SRG and/or its successor(s) in interest will manage the construction of all the improvements shown below on behalf of SRG, CDC and/or its successor(s) in interest. Comment - There are no deferred improvements.

Anticipated Sequencing of Offsite work and engineering plan set submittals, based upon the engineering drawings prepared by RBF dated _____ is as follows:

- Sequence 1
 - Inland Empire Boulevard-East segment (between Archibald Avenue and Del Rio Place) including traffic signal at Del Rio Place but excluding IEB/Archibald intersection improvements.
 - Del Rio Place (with closure at future Jay Street)
 - Parkway improvements at Inland Empire Boulevard between Cucamonga Channel and Del Rio Place (north side)
 - Related utilities for this segment, including the recycled water main and sewer siphon crossing the flood control channel in Inland Empire Boulevard

- Sequence 2
 - Reconfigure Inland Empire Boulevard-West segment, including traffic signal at Vineyard Avenue
 - Vineyard Avenue entire segment between CalTrans north boundary to north of 4th Street, including traffic signal at Jay Street, Inland Empire Boulevard and signal modifications at 4th Street
 - Jay Street including connection to Del Rio Place
 - Parkway improvements along Inland Empire Boulevard between Del Rio Place and Vineyard Avenue (north side)
 - Trail signal at Inland Empire Boulevard (bike and pedestrian crossing)
 - Bridge widening of both bridges on Inland Empire Boulevard
 - Related utilities for this segment

- Sequence 3

- 4th Street improvements, including parkway (south side) and median
- Traffic signal at Hellman Avenue and 4th Street

- Eastbound right-turn lane at Inland Empire Boulevard/Archibald Avenue
- Northbound left-turn lane modifications at Inland Empire Boulevard/Archibald Avenue intersection
- Inland Empire Boulevard/Archibald Avenue traffic signal modification related to items above.
- Related utilities for this segment
- Sidewalk improvements at bridge on 4th Street (north and south side as necessary)

The City shall allow the occupancy of completed building(s) at the time that completed portions of street, utilities and life safety improvements necessary for the operation of such building(s) are substantially complete, as determined by the City Engineer.

Utilities required for each building occupancy include: potable water connections for domestic water uses; adequate fire service connections to the potable water system to meet Fire Department requirements; an active connection to the existing recycled water system to serve all non-domestic and irrigation uses; and, a connection to the sanitary system with sufficient improvements either connected to temporary forced main (if available capacity) or ultimate sewer improvements within adjacent streets.

Undeveloped portions of land (PA 2, 3 & 4) to be developed by CDC or their assigned successors shall be permitted to delay traffic signals, frontage driveways, sidewalks, parkway and median improvements until the property is planned and developed.

Erosion control will be installed at undeveloped property as required to meet regulatory requirements. The above sequencing is subject to the receipt of applicable regulatory approvals.

DEVELOPMENT IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT FOR FACILITY CONSTRUCTION BY AND BETWEEN THE CITY OF ONTARIO AND

This DEVELOPMENT IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT (this "Fee Credit Agreement"), entered into this _____ day of _____, 2015, between the CITY OF ONTARIO, a California municipal corporation, hereinafter referred to as the "City," and SRG Archibald, LLC, a Delaware limited liability company _____ hereinafter referred to as the "Developer."

RECITALS

A. Developer is the owner and developer of property located within the City, which property has received development approvals from the City, including an amendment to the Meredith International Center ("Specific Plan"). A legal description of the property is attached as Exhibit 1 (the "Property"). A map of the Property is attached as Exhibit 2.

B. As a condition of the development approvals for the Property, including the Specific Plan amendment, the Developer is required to construct those public improvements identified on Exhibit 3, consisting of certain master planned public infrastructure and Improvements (hereinafter referred to as the "Improvements"). The estimated costs for the design and construction of the Improvements are set forth in Exhibit 4.

C. On July 1, 2003, City Ordinance No. Ordinance No. 2779 was adopted establishing certain development impact fees ("DIF Fees") to be paid as a condition to the issuance of certain entitlements within the City. Section 7 of Ordinance 2779 authorizes the City Manager, when he or she determines that the public interest would be served by such an agreement, to execute agreements on behalf of the City with applicants in order to provide a credit to the applicant against certain DIF Fees in exchange for the applicant's construction and dedication of public improvements, upon reasonable terms and conditions as may be determined on a case by case basis.

D. City, Developer and Craig Development Corporation, a California Corporation ("CDC") have previously entered into a statutory development agreement, pursuant to Section 65864, et seq., of the Government Code, ("Development Agreement") and such Development Agreement requires Developer to design and construct the Improvements identified in Exhibit 3 and such improvements are included in the City's Development Impact Fee ("DIF") Program as a project, or a portion of a project.

E. City and Developer have agreed that the costs to design and construct the Improvements shall be eligible for DIF Credit in accordance with the City's DIF Credit and Reimbursement policies as contained in the City's DIF Program and Resolution No. 2011-011.

F. By separate agreement, Developer and CDC have agreed to the sharing of the DIF Credits and DIF Reimbursements, as defined within and provided for herein below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual promises contained herein, it is agreed as follows:

1. Definitions. For purposes of this Agreement, the terms below shall be defined as follows:

“Acceptable Title” means title to land or an interest therein required for the operation of an Improvement, in form acceptable to the City Manager, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the City Manager as not materially interfering with the actual or intended use of the land or interest therein required for the operation of an Improvement. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute “Acceptable Title.”

“Acceptance Date” means the earlier of (i) date the City Manager or his designee takes final action, in writing, to accept dedication or transfer of an Improvement or (ii) the date determined pursuant to Section 3 below.

“Bid Documents” means all designs, bid documents, construction plans and specifications, system layout drawings and other construction documents and permits relating to an Improvement.

“Certificate of DIF Credit” means a City certificate for the issuance of DIF Credit to Developer in the form attached hereto as Exhibit 5.

“Certificate of DIF Reimbursement” means a City certificate for the issuance of DIF Reimbursement in the form attached hereto as Exhibit 7.

“City DIF Program and Policies” means Ordinance Nos. 2779 and 2780 and Resolution Nos. 2003-39 and 2011-011, as may be amended from time to time.

“City Manager” means the City Manager of the City or his or her designee.

“City Engineer” means the City’s City Engineer or his or her designee.

“Completed” and “Completion” with respect to an Improvement means that such Improvement has been completed in accordance with its Bid Documents, including any final “punch list” items, as approved in writing by the City Engineer, which approval shall not be unreasonably withheld and that such Improvement is Usable. Notwithstanding the foregoing, if an Improvement which Developer is obligated to construct pursuant to the applicable conditions of approval for Parcel Map 19612 for a

portion of the Property is only a portion of a larger work of improvement, then a determination of “Completed” or “Completion” with respect to that Improvement shall be made only as to that Improvement and not with respect to the larger work of improvement of which it is a portion.

“Credit Request” means a document, substantially in the form of Exhibit 6, to be used by Developer in requesting DIF Credits and DIF Reimbursements with respect to one or more Improvements.

“Developer Contract” means a contract between the Developer and a qualified contractor awarded for the construction of the Improvements at the direction of Developer.

“DIF” means the development impact fees imposed on the Planning Areas as defined within the Development Agreement, any subsequent City ordinances and resolutions lawfully adopted by the City Council to update or modify such development impact fees.

“DIF Credit” means credits earned against the payment of DIFs pursuant to this Agreement.

“DIF Obligation” means the amount of Developer’s total obligation for Development Impact Fees in either the Regional or Local Adjacent portion of a DIF category for the Property.

“DIF Program” means the Development Impact Fee Program and the capital improvement projects and public infrastructure identified in the Development Impact Fee Program, adopted and amended by the City from time to time.

“DIF Reimbursement” means reimbursements earned pursuant to this Agreement to be paid from future DIF; provided however that nothing contained in this Agreement shall be construed as an obligation or appropriation of general fund monies by the City.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Eligible Cost” means the substantiated cost of an Improvement to be used in calculating DIF Credit amounts or DIF Reimbursement amounts, which costs may include: (i) the costs for the construction (including grading) of such Improvement, (ii) costs directly related to the construction and/or acquisition of the Improvement, such as costs of payment, performance and/or maintenance bonds, the professional costs of material testing, and insurance costs (including costs of any title insurance required); (iii) the cost of acquiring any real property or interest therein in order to construct or operate the Improvement, (iv) the costs incurred in preparing Bid Documents and the related costs of geotechnical and environmental evaluations of the Improvement, (v) the fees paid to governmental agencies for, and all other costs incurred in connection with, obtaining permits, licenses or other governmental approvals for such Improvement, (vi)

costs of construction and project management, administration and supervision (but only up to five percent (5%) of the costs described in clause (i) above) incurred for the construction of such Improvement, (vii) professional costs associated with such Improvement, such as design, engineering, accounting, inspection, construction staking, and similar professional services including legal services related to the review of construction contracts. The maximum amount of Eligible Costs described in clauses (iv) through (vii) shall be limited to a total of fifteen percent (15%) of the costs described in clause (i).

“Improvement” means a public improvement required to support the development of the Property as described in Exhibit 3 to the extent required by the applicable conditions of approval for Parcel Map 19612.

“Program Cost” or “DIF Program Cost” means the estimated cost of an Improvement identified in the “Nexus Study” referenced in City Resolution No. 2003-039 as it may be modified, supplemented or superseded from time to time. The Program Cost to be applied shall be the Program Cost in effect at the time the Improvement is completed.

“Usable” shall mean that, with respect to any particular Improvement, the Improvement is actually usable for its intended purposes, and includes, for water Improvements connection to the applicable water supply, for sewer Improvements connection to an applicable disposal system, and for recycled water Improvements connection to a treated water supply and distribution system. Notwithstanding the foregoing, if an Improvement which Developer is obligated to construct pursuant to the applicable conditions of approval for Parcel Map 19612 for a portion of the Property is only a portion of a larger work of improvement, then a determination of whether that Improvement is “Usable” shall be made only with respect to that Improvement and not with respect to the larger work of improvement of which it is a portion.

2. Construction and Funding of Improvements by Developer.

2.1 Construction of Improvements by Developer. Upon commencement of the Improvement(s), Developer agrees to proceed expeditiously with the construction of the Improvement(s) under the terms herein. For the purposes of this Agreement, commencement of the Improvements shall mean when Developer receives the first permit from City for grading of the Property. If Developer is unable or unwilling to proceed with the construction of the Improvement(s) for any reason, and subject to the provisions in Section 17 below, Developer shall be considered to be in default of this Agreement. City and Developer agree that Developer shall award, or cause to be awarded, all contracts for the construction of the Improvements and that this Agreement is necessary to assure the timely and satisfactory completion of such Improvements and that compliance with the Public Contract Code with respect to such Improvements would not produce an advantage to the City. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing

commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall not be relieved of its obligation to construct the Improvements and cause title to the Improvements to be conveyed to the City even if the DIF Credit and DIF Reimbursement Amounts are less than the actual cost of the Improvements.

3. Inspection and Acceptance of Completed Improvement by City. City shall make or shall cause to be made periodic site inspections of Developer's construction work. The Acceptance Date for each Improvement constructed by Developer shall occur not later than twenty (20) Days following the last to occur of the following:

(i) the City Engineer's determination the Improvement is Complete;

(ii) the City Manager's determination that Acceptable Title with respect to the Improvement is available for acceptance;

(iii) Developer's provision of one (1) set of "as-built" or record drawings or plans for the Improvement, certified and reflecting the condition of the Improvement as constructed; and

(iv) Developer's provision of such evidence or proof as the City Manager shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Improvement have been paid and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Alternatively, rather than await the expiration of the time for the recording of claims of liens, Developer may elect to provide a title insurance policy or other security acceptable to the City Manager guaranteeing that no such claims of liens will be recorded or become a lien upon any of the real property required for the Improvement.

4. Conveyance of Acceptable Title to City. Acceptable Title to all property on, in or over which, the Improvement will be located, shall, prior to and as a condition precedent to the City's acceptance of any Improvement, be conveyed to City by way of an irrevocable offer of dedication of such property in a recorded instrument, and such conveyance of interest has been approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such Improvement. Developer agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of Acceptable Title shall be evidenced by recordation of the acceptance thereof by the City Manager or his designee.

5. Maintenance and Warranties to be provided to City. Developer shall maintain the Improvement in good and safe condition until the Acceptance Date of the Improvement. Prior to the Acceptance Date, Developer shall, at its sole cost and expense, be responsible for performing any required maintenance on the Improvement. On or before the Acceptance Date of the Improvement, Developer shall assign to the

City all of Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Improvement. After the Acceptance Date, City shall be solely responsible for maintenance of the Improvement. With respect to the Improvement, Developer shall warrant that the Improvement is free from defects in materials and construction defects (and shall correct or cause to be corrected any such defects at Developer's expense) for a period of one year from the Acceptance Date thereof (the "Warranty Period") and Developer shall provide a bond reasonably acceptable in form and substance to the City for such period and such purpose to insure that such defects that appear within said period will be repaired, replaced or corrected by Developer, at its own cost and expense, to the reasonable satisfaction of the City Manager. During the Warranty Period, Developer shall continue to repair, replace or correct any such defects within thirty (30) Days after written notice thereof by the City Manager to Developer, and shall complete such repairs, replacement or correction as soon as practicable. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Improvement shall be delivered to the City Manager, in writing, as part of the transfer of title.

6. Issuance of DIF Credit to Developer. Developer (or its successor and/or assignee) shall receive DIF Credits based upon the verified Eligible Costs of the Improvement (or accepted portion of the Improvement). Issued DIF Credits shall specify the DIF Credit infrastructure category and whether the DIF Credit is for construction of a Regional or Local Adjacent DIF Program Improvement.

7. Limitations on the Issuance of DIF Credit to Developer upon Completion of an Improvement. The amount of DIF Credit to be issued by City shall be limited to the amount of the DIF Program Costs for the Improvement (or accepted portion of the Improvement). The DIF Program Costs identified in the City's DIF Program shall be subject to change, from time to time, as part of the continuing update of the City's DIF Program. The DIF Program Costs for the Improvement (or accepted portion of the Improvement) shall be those in effect at the time the Improvement is Completed and accepted by the City.

8. Limitations on the Total Amount of DIF Credit to be Issued to Developer for a Category of DIF Infrastructure. The total amount of DIF Credit to be issued to Developer for completion of all Improvements within the Regional or Local Adjacent portion of a DIF Infrastructure Category shall be limited to the Developer's total respective Regional or Local Adjacent DIF Obligation within that DIF Infrastructure Category.

9. Issuance of a DIF Credit Certificate. When an Improvement is Complete, Developer shall submit a DIF Credit Request to City with all supporting documentation evidencing the total actual Eligible Costs of the Improvement at the time of submittal. The City Manager shall determine the completeness of the DIF Credit Request and notify Developer of whether the DIF Credit Request is considered complete or if additional information is needed from Developer. Once the DIF Credit Request is consider complete, the City Manager shall use his or her best efforts to determine the

total actual Eligible Costs of the Improvements and provide Developer (or its successor and/or assignee) with a Certificate of DIF Credit within twenty (20) Days following receipt of the completed DIF Credit Request.

10. DIF Reimbursements. Developer (or its successor and/or assignee) shall only be eligible to receive DIF Reimbursement when Developer's total verified Eligible Costs for all DIF Program Improvements within the Regional or Local Adjacent DIF category exceed Developer's total DIF Obligation for the Regional or Local Adjacent portion of such DIF category.

If any amount of DIF Reimbursement is issued, the amount and nature of the DIF Reimbursement shall be evidenced by a Certificate of DIF Reimbursement in the form set forth in Exhibit 7. The Certificate of DIF Reimbursement that is issued by City shall specify that the DIF Reimbursement shall only apply to the Regional or Local Adjacent portion of the respective DIF category of the completed Improvement(s). Prior to issuance of a Certificate of DIF Reimbursement, the City Manager shall review and approve the total amount of the actual Eligible Costs of the completed and accepted Improvement(s). Any DIF Reimbursement amount paid to Developer is to be paid solely from the DIF Fees collected by the City and designated for the cost of construction of master planned DIF Program improvements, and the City shall not be obligated to pay the reimbursement amount except from DIF amounts collected and held by the City.

11. DIF Program Modifications. The estimated cost in the City's DIF Program for DIF Improvements (or defined portions of DIF Improvements) as listed in Exhibit 4 and Developer's total DIF Obligation amount may be modified from time to time based on modifications to the City's DIF Program.

12. Terms of Reimbursement.

12.1 Reimbursement Procedure. City shall reimburse to Developer (or its successor and/or assignee) the DIF Reimbursement amount (without interest) from the payment of DIF from development in the Meredith International Center area that benefits from Developer's constructed DIF Program Improvements and only from the DIF collected within the Regional or Local Adjacent portion of the category for which the Certificate of DIF Reimbursement is issued. No DIF Reimbursement shall be available from DIF payments made by any development that does not benefit from Developer's constructed DIF Program Improvements or from DIF payments received for other DIF categories.

12.2 Review and Determination of Availability of Funds. On the first July 1st that is at least one year after the Effective Date of this Agreement, City shall conduct a review to determine the availability of funds, if any, for reimbursement. The City will perform a review of the amount of DIF that have been received for the applicable Regional or Local Adjacent portion of the DIF category. The City's review will determine if DIF has been received from other developments that are also served by the Improvement(s) for which the DIF Reimbursement was issued. Reimbursements will be made to the Developer by the City if DIF has been received from other developments

that are also served by the Improvement(s). No interest will be credited on any outstanding DIF Reimbursement amounts. Thereafter, on each July 1st and upon written request from Developer, City shall conduct a review to determine the availability of funds, if any, for reimbursement. Such funds shall be determined to be available for reimbursement to Developer only after the satisfaction of any pre-existing City Reimbursement obligations. The Developer is entitled to receive reimbursement for a period not to exceed ten (10) years from the date of Completion of all of the Improvements identified in Exhibit 3, up to the total DIF Reimbursement amount.

12.3 Requirement for DIF Program Reserves. City and Developer agree and acknowledge that in the Regional DIF category of "Sewer Collection Facilities" a reserve has been established based on the requirement to repay the Inland Empire Utility Agency (I.E.U.A.) for capacity in the Eastern Trunk Sewer and no DIF Reimbursement shall be available from DIF payments until the City's obligations to repay I.E.U.A. have been met.

12.4 Order of Priority for Reimbursement. When it is determined by the City, that funds are available for reimbursement, the priority for reimbursement shall be based upon the date of issuance of the Certificate of DIF Reimbursement with the Certificate of DIF Reimbursement with the earliest date of issuance being reimbursed first.

13. Assignment of DIF Credits and Reimbursements. Developer shall have the right to transfer or assign DIF Credit and DIF Reimbursements provided for herein, to any person, partnership, limited liability company, joint venture, firm or corporation; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property; provided, in concert with the conveyance and transfers contemplated as from Craig Development Corp., a California corporation ("CDC") to Developer under the terms of that certain Agreement for Purchase and Sale of Real Estate and Joint Escrow Instructions for the Meredith International Centre ("PSA") entered into by and between Developer and CDC (as referred to within the corresponding Development Agreement), Developer may freely assign and transfer to CDC, in whole or in part, the right of Developer to receive DIF Credits and/or DIF Reimbursements conditioned only upon Developer providing City with the notice required under Section 13(b)(i) below.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Developer (i) shall notify the City Manager, in writing, of such sale, transfer or assignment and (ii) shall provide the City with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of Developer with

respect to the portion of the Property so sold, transferred or assigned; provided, the conveyance and transfers of real property contemplated as from CDC to Developer, under the terms of the PSA, are expressly excluded from the foregoing requirements of this Section 13(b)(i) and (ii) and in all events shall not be deemed to constitute a default under the terms hereof; and, provided further the assignment to CDC by Developer of its right to receive DIF Credits and/or DIG Reimbursements, is expressly excluded from the foregoing requirement of this Section 13(b)(ii).

(c) Except as expressly excluded above pertaining to conveyances and assignments as between Developer and CDC, and except as otherwise provided in Section 13(d) and in Section 26 hereof, any sale, transfer or assignment of any right or interest under this Agreement not made in strict compliance with the foregoing conditions shall constitute a default by Developer and City shall have no further obligations with regard to acceptance of Certificates of DIF Credit or DIF Reimbursement issued to Developer.

(d) If Developer transfers or assigns the right to receive DIF Credit and/or DIF Reimbursements to a successor(s) in interest with respect to all or a part of the Property (a "Successor Developer") in accordance with this Section 13 and the Successor Developer obtains DIF Credit and/or DIF Reimbursements pursuant to this Agreement, then

(i) such Successor Developer shall have the right to sell, transfer or assign to Developer, and Developer shall have the right to acquire from such Successor Developer, all or a portion of such DIF Credit and/or DIF Reimbursements by complying only with Section 13(b)(i) above, and

(ii) Developer shall have the right to sell, transfer or assign all or a portion of such DIF Credit and/or DIF Reimbursements to other Successor Developers who acquire other portions of the Property by complying only with:

(A) Sections 13(b) and 13(c) above, if the sale, transfer or assignment of such DIF Credit and/or DIF Reimbursements occurs concurrently with the conveyance of another portion of the Property to the other Successor Developer, or

(B) Section 13(b)(i) above, if the sale, transfer or assignment of such DIF Credit and/or DIF Reimbursements occurs after the conveyance of another portion of the Property to the other Successor Developer and the other Successor Developer complied with Sections 13(b) and 13(c) at the time of such conveyance.

14. Additional Documents/Actions. The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this Agreement.

15. Integration. This Agreement reflects the complete understanding of the parties with respect to the subject matter hereof. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement.

16. Prevailing Wages. Developer is aware of the requirements of California Labor Code Section 1720, et seq. (as amended by Stats 2001 ch. 938 § 2 (S.B. 975)), and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., (collectively, the "Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. The Bid Documents and each Developer's Contract shall require all contractors for the construction of Improvements to pay prevailing wages in accordance with the applicable provisions of the Labor Code. Developer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Developer's principal place of business and at the project site. Developer shall defend, indemnify and hold the City, its officials, officers, employees, agents, contractors and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

17. Default and Force Majeure.

(a) Default. Failure or delay by Developer or City to perform any of its obligations under this Agreement constitutes a default by such party under this Agreement. The party alleged to be in default shall have thirty (30) days after the date of the written notice by the other party to commence to cure such default. The party alleged to be in default shall diligently pursue such cure to completion within a reasonable timeframe as established in the written notice provided by the party asserting the default. If the party alleged to be in default has not cured its default within the cure period set forth therein, the defaulting party shall be deemed in breach. Any failure or delay in giving such notice or in asserting any rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive the party not in default of its rights to institute and maintain any actions or proceeding which it may deem necessary to protect, assert or enforce any of its rights or remedies. If any default by Developer is not cured within the time period provided by the City, City shall be entitled to terminate this Agreement in its entirety and thereafter, the City shall be under no obligation to perform any of City's obligations hereunder, including, but not limited to, the issuance of DIF Credits and DIF Reimbursements that Developer may claim.

(b) Force Majeure. Notwithstanding the provisions contained in the foregoing paragraph, performance by either party hereunder shall not be deemed to be in default where delay or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party, unusually severe weather, reasonably unforeseeable property conditions, acts of the other party, acts or failure to act, of the other party or any other public or governmental agency or entity, or

any causes beyond the control or without the failure of the party claiming an extension of time to perform. An extension of time for any such cause (an "Excusable Delay") shall be for the time period of the delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause or from the date of the notice if provided after such thirty (30) day period. Notwithstanding the foregoing, none of the foregoing events shall constitute an Excusable Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming an Excusable Delay shall make a good faith effort to deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by City and Developer. The Parties hereto expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, are not force majeure events and do not provide any Party with grounds for asserting the existence of a delay in the performance of any covenant or undertaking that may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such Party of its obligations under this Agreement. Without limiting the nature of the foregoing, the parties agree that the inability of Developer to obtain a satisfactory commitment from a construction lender for the improvement of the Property or to satisfy any other condition of this Agreement relating to the development of the Property shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a delay under this Section 17.

18. Licenses and Permits. The Developer shall secure (or shall cause to be secured) any and all permits that may be required by the City or any other governmental agency affected by the construction of the Improvements. The Developer shall be responsible for paying all applicable fees and charges to the City to obtain any land use entitlements and permits that are necessary to construct the Improvements.

19. Indemnification. The Developer agrees to protect, indemnify, defend and hold the City, and its respective officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorney's fees, and court costs (collectively "Damages") that the City, or its respective officers, employees and agents, or any combination thereof, may suffer or that may be sought against or recovered or obtained from the City, or its respective officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of (a) the acquisition, construction, or installation of the Improvements; (b) the untruth or inaccuracy of any representation or warranty made by the Developer in this Agreement or in any certifications delivered by

the Developer hereunder; or (c) any act or omission of the Developer or any of its subcontractors, or their respective officers, employees or agents, in connection with the Improvements. If the Developer fails to do so, the City shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including any reasonable attorneys' fees or court costs, to and recover the same from the Developer. Notwithstanding the foregoing, neither the City nor its respective officers, employees, or agents shall be indemnified, defended or held harmless against such Damages to the extent that such Damages have been caused by their active negligence or willful misconduct. The parties acknowledge and agree that the Developer shall be released from the indemnity, defense and hold harmless obligations set forth herein upon the acceptance of the Improvements by the City and completion of the Warranty Period for such Improvements.

20. Developer as a Private Developer. In performing under this Agreement, it is mutually understood that the Developer is acting as a private developer, and not as an agent of the City. The City shall have no responsibility for payment to any contractor, subcontractor or supplier of the Developer. Accordingly, this Agreement does not constitute a debt or liability of the City. The City shall not be obligated to advance any of its own funds or any other costs incurred in connection with the Project. No member, official or employee of the City shall be personally liable to the Developer, or any successor(s) in interest, in the event of any default or breach by the City or for any amount that may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

21. Other Obligations. Nothing contained herein shall be construed as affecting the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the City's rights and obligations, under this Agreement; provided, however, that the Developer shall use its reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the design, acquisition, construction and installation of the Improvements.

22. Binding on Successors and Assigns. Except as set forth in Section 13 or Section 26 hereof, neither this Agreement nor the duties and obligations of the Developer hereunder may be assigned to any person or legal entity other than an affiliate of the Developer with the written consent of the City Manager, which consent shall not be unreasonably withheld or delayed. City Manager shall provide written consent within fifteen (15) business days of the submission of such a request. Neither this Agreement nor the duties and obligations of the City hereunder may be assigned to any person or legal entity, without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted and accepted assigns, and successor(s) in interest of the parties hereto.

23. Amendments. This Agreement can only be amended by an instrument in writing executed and delivered by the City and the Developer.

24. Waivers. No waiver of, or consent with respect to, any provision of this Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

25. No Third Party Beneficiaries. No person or entity, other than the City, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

26. Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Developer, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. Developer shall have the right to encumber and assign its rights and interests hereunder to the lenders providing such financing as security for such financing without the consent of the City and without complying with Section 13 hereof. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. A mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value, unless otherwise required by law.

(b) The mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the mortgagee within ten (10) days following the sending of the notice of default to Developer. The mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any mortgagee in possession shall be subject to the provisions of Section 13 of this Agreement.

27. Notices. Any written notice, statement, demand, consent approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

Developer:

with a copy to:

John A. Ramirez
Rutan & Tucker, LLP
611 Anton Blvd.
Suite 1400
Costa Mesa, CA 92626
Phone: (714) 662-4610
Fax: (714) 546-9035

City:

City of Ontario
Attn: City Manager
303 East "B" Street
Ontario, CA 91764
Facsimile: (909) 395-2189

with a copy to:

John Brown, City Attorney
Best Best & Krieger
2855 East Guasti Road, Suite 400
Ontario CA, 91761

Craig Meredith
c/o Craig Development Corporation
P.O. Box 1968
Newport Beach, CA 92659

with copy to:

Dwight J. Griffith
Remer, DiVincenzo & Griffith
2121 E. Coast Highway, Ste. 280
Corona del Mar, CA 92625

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, or telecopy, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

28. Jurisdiction and Venue. City and the Developer (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement shall be brought in state or local court in the County of San Bernardino or in the Courts of the United States of America in the district in which the City is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the City and the Developer agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

29. Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Agreement, the prevailing party in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

30. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

31. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

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

33. Incorporation by Reference. The following Exhibits attached hereto and the Recitals of this Agreement are hereby incorporated by reference as though fully set forth herein:

Exhibit 1 — Legal Description of Property

Exhibit 2 — Map of Property

Exhibit 3 — Description of Improvements

Exhibit 4 — Estimated Costs of Improvements

Exhibit 5 — Certificate of DIF Credit

Exhibit 6 — DIF Credit Request

Exhibit 7 — Certificate of DIF Reimbursement

[Signatures On Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below.

“CITY”

CITY OF ONTARIO, a California municipal corporation

Dated: _____, 2014

By: _____
Al C. Boling, City Manager

ATTEST:

By: _____
Mary E. Wirtes, City Clerk

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

By: _____
City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below.

“Developer”

_____, a _____

By: _____

Name: _____

Its: _____

Dated: _____

Exhibit A

Exhibit "1"

To Development Impact Fee Credit and Reimbursement Agreement

Legal Description of Property

PARCEL MAP NO. 19612 In the City of Ontario, County of San Bernardino, State of California. Being a subdivision of portions of Lot 1 and Lot 2, Block 22, Tract No. 2244 in the City of Ontario, County of San Bernardino, State of California as per plat recorded in book 35 of maps, pages 50 through 56, Inclusive, records of San Bernardino County, California.

Exhibit A

Exhibit "2"

Map of Property

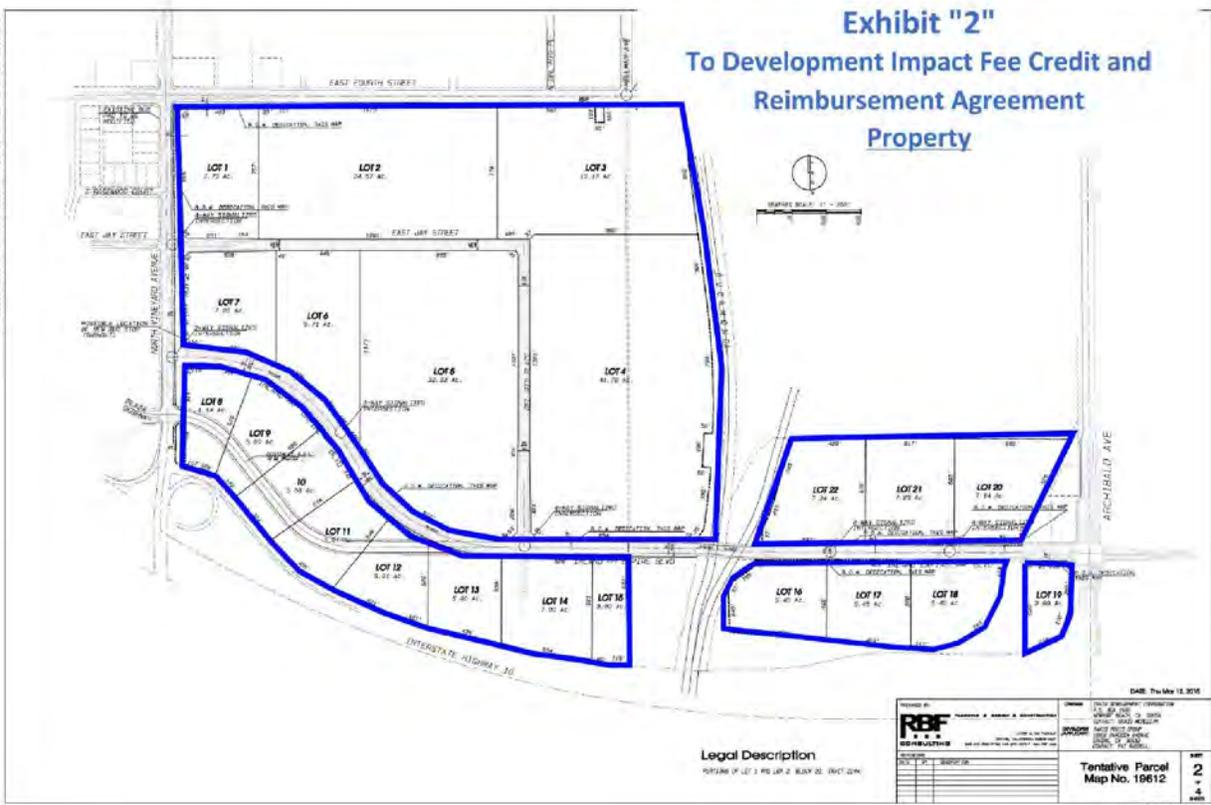


Exhibit A

Exhibit "3"

To Development Impact Fee Credit and Reimbursement Agreement

Description of Improvements

The referenced exhibits from the Meredith International Centre Specific Plan Amendment (adopted by City Council Resolution No. 2015-025) are a general description of the improvements:

1. Figure 3-1, Conceptual Vehicular and Mobility Plan
2. Figure 4-1, Domestic Water Infrastructure Plan
3. Figure 4-2, Recycled Water Infrastructure Plan
4. Figure 4-3, Sanitary Sewer Infrastructure Plan
5. Figure 4-4, Storm Drain Infrastructure Plan
6. Figure 4-5, Dry Utility Infrastructure Plan

Exhibit A

Exhibit "4"

To Development Impact Fee Credit and Reimbursement Agreement

Estimated Costs of Improvements

The estimated costs of improvements is \$21,542,761.79 as detailed on the Project Cost Estimate dated March 13, 2015, on file with the City of Ontario engineering Department.

Exhibit A

Exhibit 5

FORM OF CERTIFICATE OF REGIONAL OR LOCAL ADJACENT DIF CREDIT

Pursuant to Section 6 of the Development Impact Fee Credit and Reimbursement Agreement for Facility Construction by and between the City of Ontario and SRG Archibald, LLC, dated _____, 2015, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Fee Credit Agreement", the City of Ontario hereby certifies that Developer is entitled to the following amount and nature of DIF Credits:

Amount of Credit: \$ _____

Infrastructure Category of DIF: _____

Local Adjacent or Regional Category of DIF: _____

Al C. Boling, City Manager

Dated: _____

Exhibit A

Exhibit 6

FORM OF DIF CREDIT REQUEST

The undersigned (the "Developer"), hereby requests DIF Credits in the DIF categories and amounts specified in Attachment 1 hereto. In connection with this Credit Request, the undersigned hereby represents and warrants to the City as follows:

- 1. He (she) is a duly authorized officer or representative of the Developer, qualified to execute this Credit Request on behalf of the Developer and is knowledgeable as to the matters set forth herein.
- 2. Any costs of the Improvements for which credit is requested hereby are Eligible Costs (as defined in the Fee Credit Agreement) and have not been inflated in any respect. The Eligible Costs for which credit is requested have not been the subject of any prior credit request submitted to the City.
- 3. Supporting documentation (such as the applicable Developer Contract, third party invoices, lien releases and cancelled checks or other evidence of payment) is attached with respect to each cost for which credit is requested.
- 4. The Improvement for which credit is requested was constructed in accordance with the requirements of the Fee Credit Agreement.
- 5. Please issue a Certificate of DIF Credit to the Developer in the amount requested.

I declare under penalty of perjury that the above representations and warranties are true and connect.

DEVELOPER:

CITY:
Credit Request Approved

By: _____
Authorized Representative of
Developer

Al C. Boling, City Manager

Date: _____

Date: _____

Exhibit A

ATTACHMENT 1

SUMMARY OF IMPROVEMENTS AND REQUESTED DIF CREDITS

Improvement Imposed as Condition of Approval Requested	Eligible Costs/Contract Amount	DIF	Credit
--	--------------------------------	-----	--------

[List here all Improvements for
which credit is requested, and attach support documentation]

Exhibit A

Exhibit 7

FORM OF CERTIFICATE OF DIF REIMBURSEMENT

Pursuant to Section 6 of the Development Impact Fee Credit and Reimbursement Agreement for Facility Construction by and between the City of Ontario and _____ LLC dated _____, 2014 the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Fee Credit Agreement", the City of Ontario hereby certifies that Developer is entitled to the following amount and nature of DIF Reimbursement for the costs of building certain infrastructure that was imposed as a condition of approval:

Amount of Reimbursement: \$ _____

Infrastructure Category of DIF: _____

Local Adjacent or Regional Category of DIF: _____

Al C. Boling, City Manager

Dated: _____