

ORDINANCE NO. 3024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-002) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO UPDATE CERTAIN INFRASTRUCTURE PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT (FILE NO. PDA10-002) FOR THE DEVELOPMENT OF UP TO 1,146 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL ON 178.66 ACRES OF LAND WITHIN PLANNING AREAS 9A, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE (ONTARIO RANCH ROAD), BETWEEN TURNER AVENUE AND HAVEN AVENUE AND MAKING FINDINGS IN SUPPORT THEREOF. (APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 AND 0218-201-45).

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.

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 Amendment to the Development Agreement between BrookCal Ontario, LLC, and the City of Ontario, File No. PDA15-002. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Amendment”; and

WHEREAS, on December 9, 2006, the City Council of the City of Ontario certified The Avenue Specific Plan EIR (SCH #2005071109); and

WHEREAS, on January 16, 2007, the City Council of the City of Ontario adopted Ordinance No. 2851 approving The Avenue Specific Plan; and

WHEREAS, on June 23, 2015, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted unanimously (7-0) to recommend approval of the Amendment to the Development Agreement to the City Council; and

WHEREAS, as the environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on July 21, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Amendment to the Development 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 July 21, 2015, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Amendment to the Development Agreement applies to 178.66 acres of land within (Tract Map 18922) Planning Areas 9A, 10A, 10B and 11 of The Avenue Specific Plan, generally located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue and is presently vacant; and

b. The properties to the north of the project site are located within Planning Area 9 of the West Haven Specific Plan and are currently vacant and mass graded. The properties to the south of the project site are located within Planning Areas 1- 6 and 9 of the Grand Park Specific Plan and are developed with dairy and agriculture uses. The properties to the east of the project site are located within Planning Areas 14, 15, and 19 of the Rich Haven Specific Plan and are developed with dairy and agriculture uses. The properties to the west of the project site are located within Planning Areas 6A, 8A, and 8B of The Avenue Specific Plan and are developed with dairy and agriculture uses; and

c. The Development Agreement and the Amendment to the Development Agreement establish parameters for the development of The Avenue projects. The Development Agreement also grants Brookcal Ontario, LLC, 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 Avenue Specific Plan; and

c. The Amendment to the Development Agreement consist of modifications to Sections 1.2 Exhibits, Section 3.7.6, and Sections 4.31, including Section 4.3.1.1 through 4.3.1.7 to the Development Agreement as follows:

Section 3.7.6 Recycled Water – Modifications to Phase 1 and Phase 2 of the Recycled Water Improvements to:

- Amended Phase 1 recycled water improvements to allow the construction of recycled water lines in either Ontario Ranch Road (Edison Avenue) or Schafer Avenue from Archibald Avenue to Haven Avenue to serve the Property or another point of connection acceptable to City to serve the Property.
- Allow for a “Well Use Agreement.” The Well Use Agreement will provide for the use of agricultural well water, in-lieu of recycled water, to serve up to the first 100 production units until the full completion of the Phase I recycled water improvements by owner, subject to the following conditions:

1. The processing of Well Use Agreement Amendment;
 2. A 30 day status report on the completion of permanent recycled water improvements;
 3. The requirement of a bond or deposit for operation and future abandonment of the agriculture well; and
 4. The completion of Phase 1 permanent recycled water improvements and the abandonment the agriculture well prior to issuance of 100th building permit.
- Amend Phase 2 of the recycled water requirements to divide improvements into “owner’s portion” of Phase 2 recycled water improvements and the “NMC portion” of Phase 2 recycled water improvements. The owner’s portion consists of recycled water line in Haven Avenue from Schaeffer Avenue north to the pressure reduction station at Chino Avenue and in Haven Avenue from Ontario Ranch Road south to south Project limits of Phase 4F (Old Edison Avenue) and subject to:
 1. Owner’s portion of Phase 2 recycled water design shall be completed by September 1, 2015;
 2. A deposit from NMC Builders will be required for Phase 2 prior September 1, 2018;
 3. Owner to initiate construction of owner’s portion of Phase 2 recycled water prior to September 1, 2018, and complete construction by September 1, 2019; and
 4. NMC Builders to initiate construction of Phase 2 recycled water improvements by September 1, 2018, and complete Phase 2 by September 1, 2019. If NMC Builders fail to construct Phase 2, then owner shall construct improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 Public Improvements - Phase 1 circulation is dependent on the completion of Ontario Ranch Road from Milliken Avenue to the project site. The City agrees to issue up to 50 building permits for production units prior to the completion of Ontario Ranch Road, subject to:

- Phase 1 completion of infrastructure improvements (water, sewer and storm drain);
- Owner agrees not to enter into any purchase/sales agreement and in no event shall escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to the Owner’s substantial completion of all required street improvements to Ontario Ranch Road as part of the Phase 1 improvements as shown on Exhibit F-R Phase 1; and
 - d. The Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

e. The Amendment to 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

f. The Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

g. The Amendment to the 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. The environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

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.

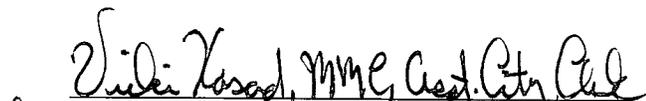
SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post 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 4th day of August 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

Space above this line for Recorder's Use Only

DEVELOPMENT AGREEMENT AMENDMENT

By and Between

City of Ontario, a California municipal corporation;

and

BrookCal Ontario, LLC,

a California limited liability company

August 4, 2015

San Bernardino County, California

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC**

This First Amendment (hereinafter "First Amendment") is entered into effective as of the 4th day of August 2015 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, a California limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement dated June 3, 2014 and recorded in San Bernardino County, California on August 20, 2014 as Instrument No. 2014-0303401 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Development Agreement"); and

WHEREAS, Section 2.5 of the Development Agreement specifies that the Development Agreement may be amended in whole or in part only in the manner provided for in Government Code Section 65868.1 and the procedure for adopting and entering into an amendment to the Development Agreement shall be the same as the procedure for adopting and entering into the Development Agreement; and

WHEREAS, CITY and the NMC Builders LLC have entered into an agreement that provides that the NMC Builders LLC shall complete the design of a portion of the Master Planned Recycled Water improvements referenced in the Development Agreement as Phase 2 Recycled Water Improvements by September 1, 2015, and the agreement between the CITY and NMC Builders LLC also provides that NMC Builders shall initiate and complete construction the Phase 2 Recycled Water Improvements prior to September 1, 2019 and therefore, CITY and OWNER have agreed to modify certain requirements related to OWNER's responsibility to design and construct the Phase 2 Recycled Water Improvements, and

WHEREAS, the Development Agreement reflects certain assumptions that the consortium of developers, organized as NMC Builders LLC would jointly-fund and construct certain major public infrastructure improvements, including a significant portion of the permanent water facilities, permanent recycled water facilities, major street sections and signalized street intersections that serve the Property and are required to be completed prior to the issuance of building permits for Production Units in Phase 1 and NMC Builders LLC has been delayed in completion of the construction of these permanent facilities and will likely not complete the construction of these permanent facilities prior to OWNER's need for CITY to issue building permits for Production Units for Phase 1; and

WHEREAS, OWNER has requested and CITY has agreed modify certain specified requirements for the completion of Phase 1 Improvements and that may include the use of interim facility connections for recycled water for the Project until the construction of permanent recycled water facilities have been completed by NMC Builders LLC; and

WHEREAS, OWNER has entered into a Subdivision Improvement Agreement to provide security for the funding and completion of the Phase 1, 2, 3, and 4-F improvements that are being constructed by OWNER; and

WHEREAS, OWNER has requested that CITY agree to temporarily defer requirements of the Development Agreement and Conditions of Approval for Tract 18922, including the requirements of the Subdivision Improvement Agreement requiring the completion of the construction certain Phase 1 Improvements; and

WHEREAS, CITY and NMC Builders LLC have entered into the New Model Colony Escrow Instructions and the related Escrow Account Control Agreement to provide CITY with sufficient security for the funding of the Phase I Improvements that are being constructed by NMC Builders LLC; and

WHEREAS, OWNER is requesting that CITY issue building permits for the construction of Model Units and Production Units and OWNER has not completed the construction of certain Phase I Improvements in compliance with the terms of the Development Agreement and Conditions of Approval of Tract 18922; and

WHEREAS, CITY and OWNER have agreed that CITY may issue building permits for the construction of Model Units and Production Units conditioned upon OWNER's completion or substantial completion of alternate Phase 1 improvements and compliance with other CITY requirements.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

A. Modifications to Section 1.1 – Definitions

The following definitions shall be added or amended in Section 1.1- Definitions as follows and the resulting defined terms shall be renumbered accordingly:

1.1.3 (new) "Completed" and "Completion" with respect to the Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements and the Phase 4-F Improvements means that such improvements have been completed in accordance with the approved plans, including any final "punch list" items, as approved in writing by the City Inspector such Improvements are Usable.

1.1.19 (new) "OWNER'S Portion of Phase 2 Recycled Water System Improvements" means the extension of master planned recycled water system improvements in Haven Avenue from Schaefer Avenue north to the Pressure Reduction Station at Chino Avenue and in Haven Avenue from Edison Avenue south to the south Project limits of Phase 4F.

1.1.20 (new) “Phase 1 Recycled Water Improvements” means the extension of the recycled water system to serve the Property as described in the attached Exhibit F-Phase 1-R.

1.1.24 (amended, formerly 1.1.21) “Phase 2 Recycled Water System Improvements” means the extension of master-planned recycled water system improvements in Riverside Drive and Haven Avenue as described in the Attached Exhibit E-R.

1.1.38 (new) “Substantially Completed” and “Substantial Completion” with respect to the Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements and Phase 4F Improvements means that such Improvements are substantially complete in accordance with the approved plans and are Usable, notwithstanding any final “punch list” items or nonessential items still required to be completed, unless such items are required for the safe operation of such Improvement, as approved in writing by the City inspector. For purposes of this definition, non-essential items with respect to street Improvements shall include the final asphalt cap and may include other non-essential items including parkway landscaping improvements and sidewalk construction.

1.1.39 (amended) “Usable” shall mean that, with respect to any particular Improvement, the Improvement is actually able to be used 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.

B. Modifications to Section 1.2 Exhibits. of the Development Agreement.

The following Exhibits shall be replaced by the following revised Exhibits:

Exhibit “E-R” — Infrastructure Improvements Exhibit (All Phases)

Exhibit “F-R-Phase 1” - Phase 1 Improvements Exhibit.

Exhibit “F-R-Phase 2” - Phase 2 Improvements Exhibit

Exhibit “F-R-Phase 3” - Phase 3 Improvements Exhibit

Exhibit “F-R-Phase 4/F” - Phase 4 Improvements Exhibit

C. Modifications to Section 3.7.6.

Section 3.7.6 shall be amended in its entirety to read as follows:

“3.7.6 (a) OWNER agrees that development of the Property shall require the design and construction of permanent master planned recycled water utility infrastructure as described in the revised Exhibit F-R-Phase 1 as the “Phase 1 Recycled Water Improvements,” consisting generally of the construction of permanent master planned recycled water utility infrastructure in either (i) Edison Avenue from Archibald Avenue to Haven Avenue to serve the Property, or (ii) Schaefer Avenue from Archibald Avenue to Haven Avenue to serve the Property as described in the revised Exhibit F-R-Phase 1 or,

(iii) another point of connection acceptable to CITY. If permanent master planned recycled water facilities required to be completed as part of the Phase 1 Recycled Water Improvements are not completed and operational by such time as OWNER is otherwise fully entitled to request Production Unit building permits, CITY shall issue up to a maximum number of one hundred (100) building permits in addition to building permits issued for the Model Units prior to completion of the Phase 1 Recycled Water Improvements. CITY's agreement to issue building permits for up to a maximum number of one hundred (100) Production Unit building permits prior to the completion of the Phase 1 Recycled Water Improvements by OWNER is conditioned upon OWNER's strict compliance with the following covenants and conditions precedent:

i. Following the first date of CITY's issuance of the first building permits for Production Units OWNER shall provide to CITY's City Engineer or his designee, on a periodic basis, not more than each 30 calendar days, a written status report for the completion of the Phase 1 Recycled Water Improvements. Such status report shall include, at a minimum, the information regarding the current status of the construction project and the projected completion date for the construction project.

ii. OWNER shall initiate and diligently pursue CITY approval of a standard amendment to the existing agreement between OWNER and CITY for use of agricultural well water, known as the "Well Use Agreement." The amendment to Well Use Agreement shall provide for the use of agricultural well water in-lieu of recycled water to serve the Property until the full completion of the Phase I Recycled Water Improvements by OWNER.

iii. OWNER shall cease use of agricultural well water in-lieu of recycled water to serve the Property and shall have completed a permanent connection to master planned recycled water facilities prior to, and as a condition precedent to CITY's issuance of any building permits for Production Units beyond the maximum number of one hundred (100) building permits, referenced above.

iv. OWNER shall also provide security, in the form of a Performance Bond, in a form acceptable to the City Engineer to ensure that OWNER shall continue to be responsible to operate and maintain OWNER's agricultural well facilities until permanent master planned recycled water facilities are completed and recycled water is available to serve the Property and that the permanent connection to recycled water is completed and the agricultural well facilities are properly abandoned. The amount of the Performance Bond shall be not less than Twenty-thousand dollars (\$20,000.00). Subject to the terms of Section 6 of the Development Agreement, if, at any time, OWNER fails to perform OWNER's responsibilities for the operation and maintenance of the agricultural well facilities, as required by CITY, OWNER agrees that CITY shall proceed to call, and require performance by, the issuer of the Performance Bond. CITY and OWNER acknowledge that the connection to Recycled Water facilities in Archibald Avenue are required to provide Recycled Water

service to the Project and others are responsible for the completion of the construction of Recycled Water facilities in Archibald Avenue. If such facilities are completed by others and Recycled Water facilities are available for connection of the OWNER's Phase I Recycled Water, OWNER shall complete the construction of the Phase I Recycled Water Improvements prior to September 1, 2015. If such facilities are completed by others and available for connection to serve the Project and OWNER has not completed the Phase 1 Recycled Water Improvements prior to September 1, 2015, OWNER shall be considered to have breached this First Amendment and OWNER agrees that CITY shall proceed to call and require performance by, the issuer of the Performance Bonds for the Project or CITY may complete the construction of the Phase I Recycled Water Improvements and access any funds held in Escrow for the construction of the Phase I Recycled Water Improvements. Additionally, CITY may, without liability, withhold future discretionary or ministerial permits and entitlements for OWNER's Project unless and until the Phase I Recycled Water Improvements are constructed, accepted by the City and operational. CITY shall release the security for the maintenance of the agricultural well facilities, in the form of the Performance Bond, upon completion of the permanent recycled water connection to the Property and the abandonment of the agricultural well facilities.

- (b.) OWNER also agrees that OWNER shall be responsible for the design and construction of permanent master planned recycled water utility infrastructure in Haven Avenue from Schaeffer Avenue north to the Pressure Reduction Station at Chino Avenue and in Haven Avenue from Edison Avenue south to south Project limits of Phase 4F as shown on the revised Exhibit E-R (and Exhibit Phase 2-R) and NMC Builders shall be responsible for the design and construction of an additional extension of master planned recycled water infrastructure in Riverside and Haven Avenues (collectively, the "Phase 2 Recycled Water Improvements") to serve the Project as described in the attached Exhibit E-R. OWNER shall complete the design of OWNER's portion of the Phase 2 Recycled Water Improvements prior to September 1, 2015. Prior to September 1, 2018, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the NMC Builders portion of the Phase 2 Recycled Water Improvements to be designed and constructed by NMC Builders. Prior to September 1, 2018 OWNER shall also initiate construction of OWNER's portion of the Phase 2 Recycled Water Improvements. If OWNER has not deposited such amount with NMC Builders, or if NMC Builders has not initiated construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements, prior to September 1, 2018, OWNER shall initiate and complete the design and construction of both OWNER's portion and the NMC Builders portion of the Phase 2 Recycled Water System Improvements no later than September 1, 2019. OWNER acknowledges and agrees that if OWNER or NMC Builders has not completed the design and construction of both portions of the Phase 2 Recycled Water System Improvements prior to September 1, 2019, then

CITY shall be entitled to withhold issuance of any further building permits for the Project unless and until the design and construction of both portions of the Phase 2 Recycled Water System Improvements are completed. If NMC Builders or others have completed the design and completed construction of the required Phase 2 Recycled Water System Improvements prior to September 1, 2019 then OWNER shall not be required to construct such improvements and OWNER shall not be eligible to receive the special reimbursement described in Section 4.3.3.1.”

D. Modifications to Section 4.3 Timely Construction of Public Improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 shall be amended as follows:

“4.3.1 Timely Construction of Public Infrastructure. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each Phase of the Project as shown on the attached Exhibits for each Phase of the Project. OWNER shall also be responsible for compliance with any and all other tract map conditions. Unless otherwise specified in this Amendment, the Subdivision Agreement or the Tract Map conditions, all other required improvements and all other conditions or requirements of “A” Tract Map 18922 shall be completed and operational prior to, and as a condition precedent to, CITY’s granting of a building permit for Phase 1 Units as shown on Exhibit F-R- Phase 1. Additionally, unless otherwise specified in a Subdivision Agreement or Tract Map conditions, all other required improvements and all other conditions for each “B” Tract Map in the Phase 1 area of Exhibit F-R- Phase 1 shall be completed (or substantially completed in the case of street improvements) and operational prior to, and as a condition precedent to, OWNER requesting and CITY’s granting of any building permit for any Production Unit within each such “B” Tract Map. When OWNER is required to complete only the design of a required improvement as a condition of a phased tract map, the design of such required improvement shall be deemed completed when the design plans have been submitted by OWNER and approved by CITY.

4.3.1.1 OWNER shall design, or design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure required for Phase 1 of the Project as shown on Exhibit F-R Phase 1 prior to, and as a condition precedent to, CITY’s issuance of the first building permit for any Production Unit for the Property. Notwithstanding the above, CITY and OWNER have agreed that if certain street improvements to Edison Avenue as shown on Exhibit F-R-Phase 1 are not substantially complete prior to OWNER’s application to CITY for issuance of building permits for Production Units in Phase 1, CITY shall issue up to fifty (50) Production Unit building permits for Production Units in Phase 1. CITY’s agreement to issue building permits for up to a maximum number of fifty (50) building permits prior to the substantial completion of the street improvements to Edison Avenue by OWNER, or others, is conditioned upon OWNER’s strict compliance with the following covenants and conditions precedent:

i. OWNER shall have completed (or substantially completed in the case of street improvements) other Phase 1 Improvements as shown on Exhibit F-R- Phase 1, including the connection of all Model Units to permanent master planned facilities for water, sewer, and storm drainage.

ii. OWNER shall have completed the Phase 1 Recycled Water improvements to provide the permanent connection to permanent master planned recycled water facilities or OWNER shall be in strict compliance with the requirements of Section 3.7.6.1 i, iii and iv, above.

iii. Owner may engage in marketing activities relating to building permits for the construction of Production Units on individual lots within Phase 1, however, OWNER covenants and agrees that that OWNER shall not enter into any purchase /sales agreements and in no event shall any escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to OWNER's substantial completion of all street improvements to Edison Avenue required as part of the Phase 1 Improvements as shown on Exhibit F-R Phase 1.

4.3.1.2 OWNER shall complete the design and initiate construction of OWNER's Portion of the Phase 2 Recycled Water System Improvements as shown on Exhibit F-R – Phase 2, prior to September 1, 2018. If NMC Builders has not completed the design and initiated construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements prior to September 1, 2018 OWNER shall complete the design and initiate construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements.

4.3.1.3 OWNER shall complete construction of OWNER's Portion of the Phase 2 Recycled Water System Improvements as shown on the Exhibit F-R-Phase 2 consisting of the extension of the master planned Recycled Water improvements in Haven Avenue from Schaefer Avenue north to the pressure reducing station at Chino Avenue and in Haven Avenue from Edison Avenue south to the south project limits of Phase 4F, prior to September 1, 2019 and if OWNER has initiated construction of the NMC Builders portion of the Phase 2 Recycled Water Improvements OWNER shall complete the construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements by September 1, 2019. OWNER acknowledges and agrees that if OWNER or NMC Builders has not completed the design and construction of both portions of the Phase 2 Recycled Water System Improvements prior to September 1, 2019, then CITY shall be entitled to withhold issuance of any further building permits for the Project unless and until the design and construction of both portions of the Phase 2 Recycled Water System Improvements are completed.

4.3.1.4 (Retained without modification)

4.3.1.5 OWNER shall design, or design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure in the Phase 2 area as shown in Exhibit F-R-Phase 2 prior to, and as a condition precedent to, CITY's issuance of any building permits for any Phase 2 Units.

Unless otherwise specified in this Amendment, the Subdivision Agreement or Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-2 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for any Phase 2 Units. Additionally, unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 2 area of Exhibit F-R-Phase 2 shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

4.3.1.6 OWNER shall design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure required in the Phase 3 area as shown in Exhibit F-Phase 3, prior to and as a condition precedent to, CITY's issuance of any building permits for any Phase 3 Units. Unless otherwise specified in this Amendment, the Subdivision Agreement or the Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-3 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of any building permits for Phase 3 Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 3 area of Exhibit F-R Phase 3 shall be completed and operational prior to, and as a conditions precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

4.3.1.7 OWNER shall design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure required in the Phase 4 area as shown in Exhibit F-Phase 4/F, prior to and as a condition precedent to, CITY's issuance of any building permits for any Phase 4 Units, including any commercial retail units. Unless otherwise specified in this Amendment, the Subdivision Agreement or the Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-4 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of any building permits for Phase 4 Units, including any commercial retail units. Additionally, unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 4 area of Exhibit F-R-Phase 4F shall be completed and operational prior to, and as a conditions precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

- E. Modification to Section 4.3.1 - Completion of Phase 1 Improvements Section 4.3.1.1 shall also be modified to add the following Sections:

4.3.1.1.1 CITY agrees to issue building permits for Production Units in Phase 1, in addition to building permits issued for the Model Units, prior to the required completion of all of the water improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's

agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's completion of the water improvements as shown on the revised and modified Exhibit F-R-Phase 1. OWNER agrees that the water improvements in the revised and modified Exhibit F-R- Phase 1 shall include either the construction and completion of water improvements to serve the Phase 1 area including master planned water improvements in Edison Avenue from Archibald Avenue to Turner Avenue or the master planned water improvements in Edison Avenue from Haven Avenue to Milliken Avenue or an alternate point of connection as acceptable to CITY. OWNER also agrees that the revised Phase 1 water improvements shall include the construction and completion of water improvements in Turner Avenue from Edison Avenue to Schaefer Avenue and in Schaefer Avenue to Haven Avenue to provide two connection permanent connection points to the master planned water system as shown on Exhibit F-R- Phase 1. CITY agrees that the master planned water improvements in Haven Avenue from Edison Avenue to Schaefer Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R- Phase 2.

4.3.1.1.2 CITY agrees to issue building permits for Production Units in Phase 1 in addition to building permits issued for Model Units, prior to the required completion of all of the Phase 1 Recycled Water Improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's completion of the Phase 1 Recycled Water improvements as shown on the revised and modified Exhibit F-R-Phase 1. OWNER agrees that the recycled water improvements in the revised and modified Exhibit F-R-Phase 1 shall include the construction and completion of recycled water improvements to serve the Phase 1 area including either master planned water improvements in Schaefer Avenue from Archibald Avenue to Turner Avenue or master planned recycled water improvements in Edison Avenue from Archibald Avenue to Turner Avenue to the extent that such recycled water improvements have not been constructed and completed by NMC Builders or others. OWNER also agrees that the revised recycle water improvements shall include the construction and completion of all recycled water improvements as shown on Exhibit F-R- Phase 1. CITY agrees that the master planned recycled water improvements in Haven Avenue from Edison Avenue to Schaefer Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R- Phase 2.

4.3.1.1.3 CITY agrees to issue building permits for Production Units in Phase 1 in addition to building permits issued for Model Units, prior to the required completion of all of the Phase 1 sewer improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's completion of the Phase 1 sewer

improvements as shown on the revised and modified Exhibit F-R –Phase 1. OWNER agrees that the sewer improvements in the revised and modified Exhibit F-R–Phase 1 shall include the construction and completion of sewer improvements to serve the Phase 1 area including master planned sewer improvements in Edison Avenue from Archibald Avenue to Turner Avenue and all other sewer improvements as shown on Exhibit F-R- Phase 1. CITY agrees that the master planned sewer improvements in Haven Avenue from Schaefer Avenue to Edison Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R-Phase 2.

4.3.1.1.4 CITY’s agreement to continue to issue building permits for the Production Units in Phase 1 is also conditioned upon OWNER’s strict compliance with the following covenants and conditions precedent:

- i. After CITY’s issuance of the first building permit for either Model Units or Production Units for the Project, OWNER shall provide to CITY’s City Engineer or his designee, on a periodic basis, not more than each 30 calendar days, a written status report for the completion of the all water, sewer and storm drain improvements as shown on the revised and modified Exhibit F-R-Phase 1. Such status report shall include, at a minimum, the information regarding the current status of all construction projects and the projected completion date for the construction projects.
- ii. After CITY’s issuance of the first building permit for either Model Units or Production Units for the Project, OWNER shall provide to CITY’s City Engineer or his designee, on a periodic basis, not more than each 30 calendar days, a written report that provides the projected date for OWNER’s request to CITY for the release of the utilities and occupancy of the first Production Unit for the Project.

4.3.1.1.5 CITY agrees to issue building permits for Production Units in Phase 1 in addition to building permits issued for Model Units, prior to the required completion of all of the Phase 1 street and circulation system improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY’s agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER’s substantial completion of the street and circulation system improvements as shown on the revised and modified Exhibit F-R –Phase 1. OWNER agrees that the street and circulation system improvements in the revised and modified Exhibit F-R – Phase 1 shall include the construction and substantial completion of street and circulation system improvements to serve the Phase 1 area including street and circulation system improvements for a portion of Edison Avenue and Turner Avenue as shown on the revised and modified Exhibit F-R- Phase 1. CITY agrees that the street and circulation system improvements for Haven Avenue from Edison Avenue to Schaefer Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R-

Phase 2. OWNER also agrees that OWNER shall be responsible for the construction of street and circulation system improvements to serve the Property as shown in the revised and modified Exhibit F-R-Phase 1 and no building permit for Production Units in Phase 1 shall be issued by CITY for the Project prior to the completion of the street and circulation system improvements for the Project. Notwithstanding the above, CITY and OWNER have agreed that if certain street improvements to Edison Avenue as shown on Exhibit F-R-Phase 1 are not substantially complete prior to OWNER's application to CITY for issuance of building permits for Production Units in Phase 1, CITY shall issue up to fifty (50) building permits for Production Units in Phase 1. CITY's agreement to issue building permits for up to a maximum number of fifty (50) Production Unit building permits prior to the substantial completion of the street improvements to Edison Avenue by OWNER, or others, is conditioned upon OWNER's strict compliance with the following covenants and conditions precedent:

- i. OWNER shall have completed (or substantially completed in the case of street improvements) other Phase 1 Improvements as shown on Exhibit F-R-Phase 1, including the connection of all Model Units to permanent master planned facilities for water, sewer, and storm drainage.
- ii. OWNER shall have completed the Phase 1 Recycled Water improvements to provide the permanent connection to permanent master planned recycled water facilities or OWNER shall be in strict compliance with the requirements of Section 3.7.6.1 i, ii, iii and iv, above.
- iii. Owner may engage in marketing and sales activities relating to building permits for the construction of Production Units on individual lots within Phase 1, however, OWNER covenants and agrees that that OWNER shall not enter into any purchase or sales agreements and in no event shall any escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to OWNER's substantial completion of all street improvements to Edison Avenue required as part of the Phase 1 Improvements as shown on Exhibit F-R Phase 1.

4.3.1.1.6 OWNER and CITY agree that the remaining funds deposited by NMC Builders LLC into the Escrow Account, the "NMC Deposit" to fund, among other things, OWNER's Phase 1 Improvements may not be sufficient to complete the design and construction of OWNER's required improvements. OWNER shall perform all other requirements of the Tract Map conditions for Tract Map 18922 and any other requirements of any Subdivision Agreements, including the provision of performance bonds, as required by CITY. Additionally, if OWNER fails to initiate and/or make reasonable progress or complete construction of the Phase I Improvements as required herein, OWNER shall be considered to be in default of the Development Agreement, and CITY shall have no obligations thereafter to authorize the release of utilities or approve any further certificates of occupancy for Production Units or issue additional building permits."

F. Modification to Section 4.3.3.1 – City Reimbursement for the NMC Portion of the Phase 2 Recycled Water Improvements.

Section 4.3.3.1 shall be amended as follows:

“4.3.3.1 CITY Reimbursement for the NMC Portion of the Phase 2 Recycled Water System Improvements. If OWNER is required to design and construct the NMC Builders portion of the Phase 2 Recycled Water System Improvements, CITY agrees that the provisions of the DIF Credit and Reimbursement Agreement referenced above shall also include a requirement for a special reimbursement from CITY to OWNER upon completion and acceptance by CITY of the NMC Builders portion of the Phase 2 Recycled Water System Improvements. The amount of the reimbursement shall be forty-four percent (44%) of the eligible design and construction costs for the segment of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time the estimated eligible costs for the design and construction of this segment of the NMC Builders portion of the Phase 2 Recycled Water System Improvements is one million, eight hundred thousand dollars (\$1,800,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the NMC Builders portion improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY’s DIF Program for the improvements, whichever is less.”

G. All remaining Sections of the Development Agreement and the remaining Exhibits thereto, shall not be affected by this First Amendment.

H. 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 First Amendment to the Development Agreement.

I. Defined Terms/Other Provisions. Unless otherwise defined herein, capitalized terms contained in this First Amendment shall have the meanings ascribed to them in the Development Agreement. Except as expressly amended herein, all provisions of the Development Agreement, as supplemented, restated and amended, shall remain.

J. Integration. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Development Agreement, this First Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement as amended. This First Amendment shall be recorded against the Property within 30 calendar days

K. Indemnification. OWNER hereby agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, agents, contractors and volunteers from and against any and all claims, suits or proceedings arising from or related to CITY’s entering into, or carrying out, this First Amendment. This indemnification includes the payment of all penalties, fines, judgments, awards, decrees, attorney’s fees and related costs or expenses incurred by the CITY.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date the ordinance adopting this First Amendment becomes effective ("Effective Date").

**SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

BROOKCAL ONTARIO LLC
"OWNER"
Brookcal Ontario LLC, a California limited liability company

By: _____
Name:
Title: Authorized Representative
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

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

Real Property in the City of Ontario, County of San Bernardino, State of California, described as follows:

APN: 0218-201-42-0-000

Parcel 1 of Parcel Map No. 5022, in the County of San Bernardino, State of California, as per plat recorded in Book 47 of Parcel Maps, Pages 87 and 88, records of said County.

APN: 0218-201-43-0-000

Parcel 2 of Parcel Map No. 5022, in the County of San Bernardino, State of California, as per plat recorded in Book 47 of Parcel Maps, Pages 87 and 88, records of said County.

APN: 0218-201-39-0-000

Parcel 2 of Parcel Map No. 2764, in the County of San Bernardino, State of California, as per plat recorded in Book 24 of Parcel Maps, Pages 44 and 45, records of said County.

APN: Portion of 0218-201-05-0-000

The east $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 14, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, according to the official plat thereof.

APN: Portion of 0218-201-05-0-000

The west $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 14, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, according to the official plat thereof.

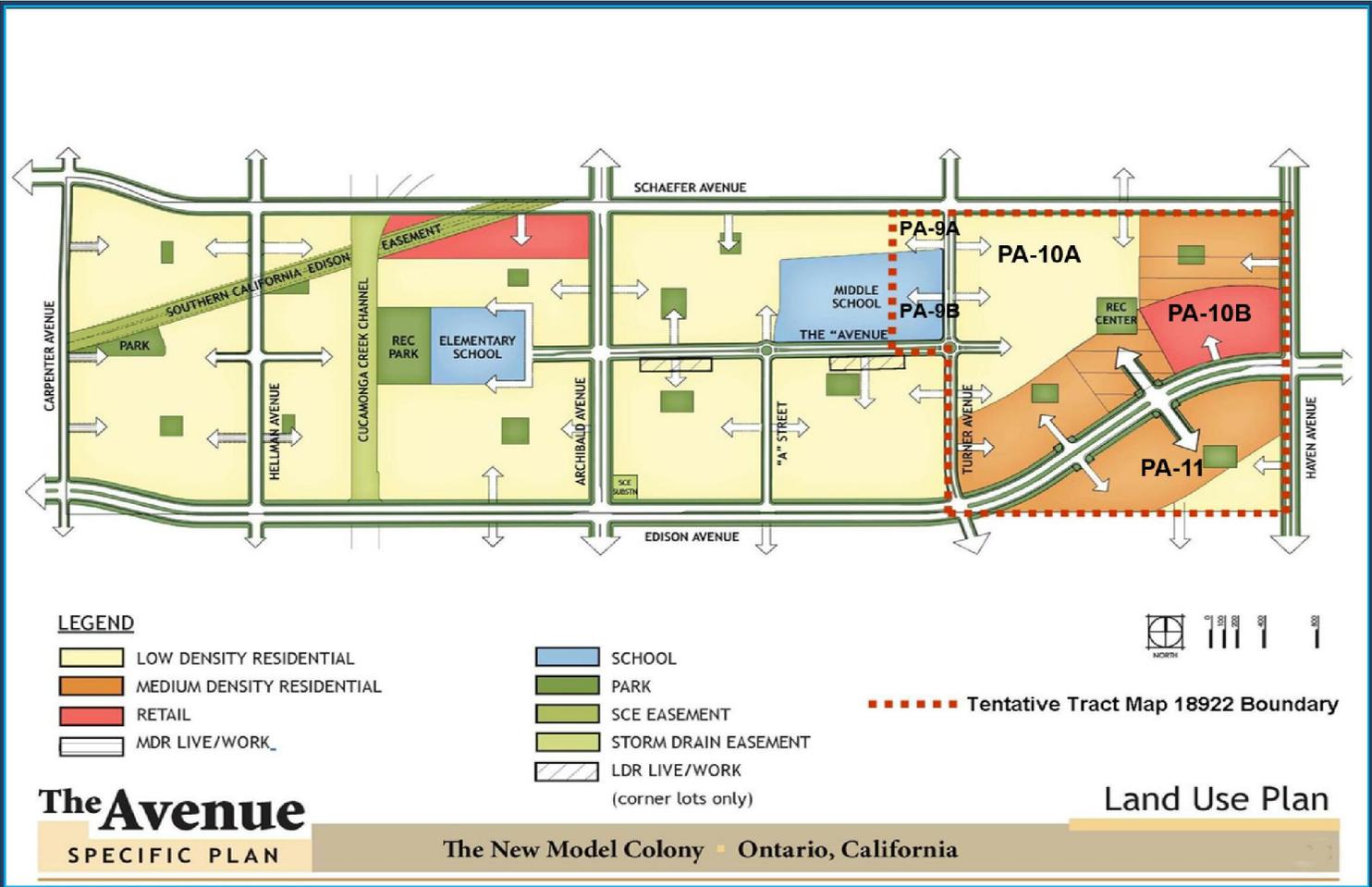
APN: 0218-201-45-0-000

Parcel 2 of Parcel Map No. 14273, in the County of San Bernardino, State of California, as shown by map on file in Book 169, Pages 63 and 64 of Parcel Maps, records of San Bernardino County, California.

APN:0218-201-30-0-000

The northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 14, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, according to the United States government township plat thereof approved by the Surveyor General December 30, 1881.

EXHIBIT "B" TO DEVELOPMENT AGREEMENT The Avenue Specific Plan



**EXHIBIT "C"
TO DEVELOPMENT AGREEMENT**

Existing Development Approvals

On November 28, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-141 recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC06-143 recommending City Council approval of The Avenue Specific Plan (PSP05-003).

On December 9, 2006, the City Council:

- a) Adopted Resolution No. 2006-131 certifying The Avenue Specific Plan Environmental Impact Report (SCH No. 2005071109)

On January 16, 2007, the City Council:

- a) Adopted Ordinance No. 2851 approving The Avenue Specific Plan (PSP05-003)

On February 2, 2010, the City Council:

- a) Adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004)
- b) Adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004)

On April 8, 2014, the Planning Commission:

- a) Adopted Resolution No. PC14-022 recommending City Council approval of the BrookCal Ontario, LLC, Development Agreement File No. PDA10-002
- b) Adopted Resolution No. PC14-023 approving Tentative Tract Map 18922 (Referred to as the "A" Map)

On June 3, 2014 the City Council:

- a) Adopted Ordinance No. 2989 approving the BrookCal Ontario, LLC, and Development Agreement File No. PDA10-002

On August 28, 2014, the Planning Commission:

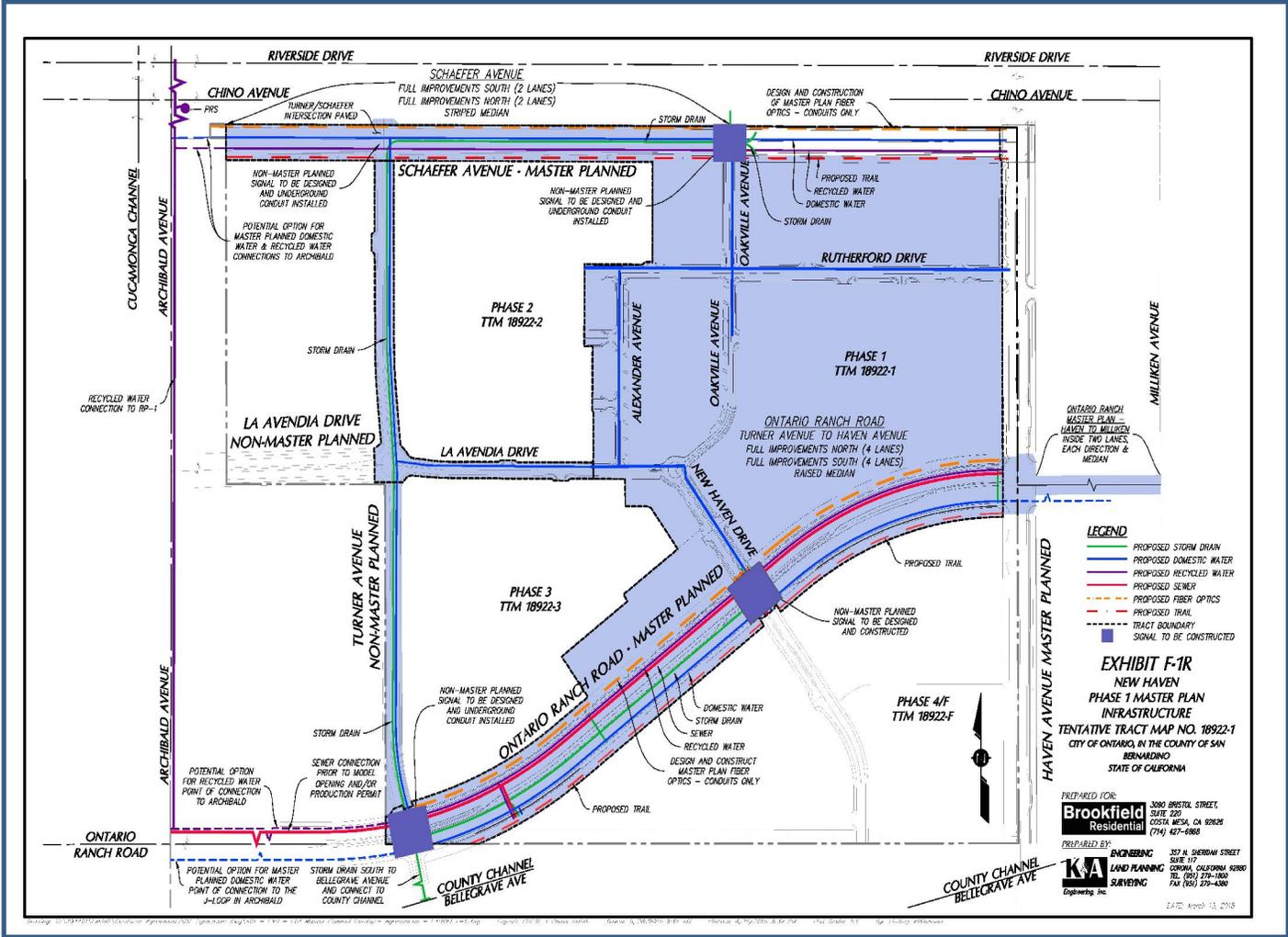
- a) Adopted Resolution No. PC14-078 approving Tentative Tract Map 18991
- b) Adopted Resolution No. PC14-079 approving Tentative Tract Map 18992
- c) Adopted Resolution No. PC14-080 approving Tentative Tract Map 18993
- d) Adopted Resolution No. PC14-081 approving Tentative Tract Map 18994

On June 23, 2015, the Planning Commission:

- a) Adopted Resolution No. PC15-040 recommending City Council approval of the BrookCal Ontario, LLC, Development Agreement Amendment File No. PDA15-002

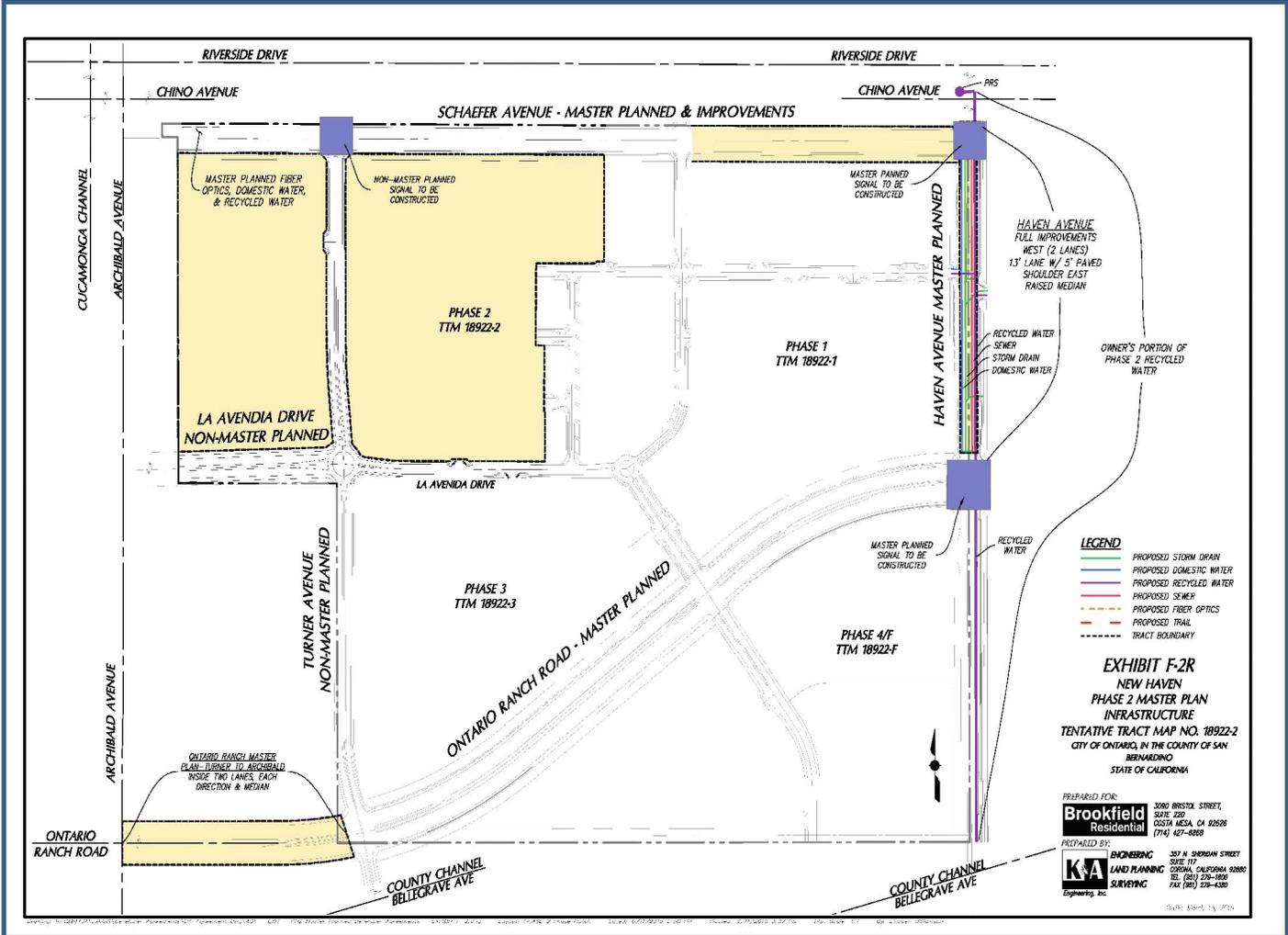
Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 1 Master Plan Required Infrastructure Improvements



Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 2 Master Plan Required Infrastructure Improvements



Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 3 Master Plan Required Infrastructure Improvements

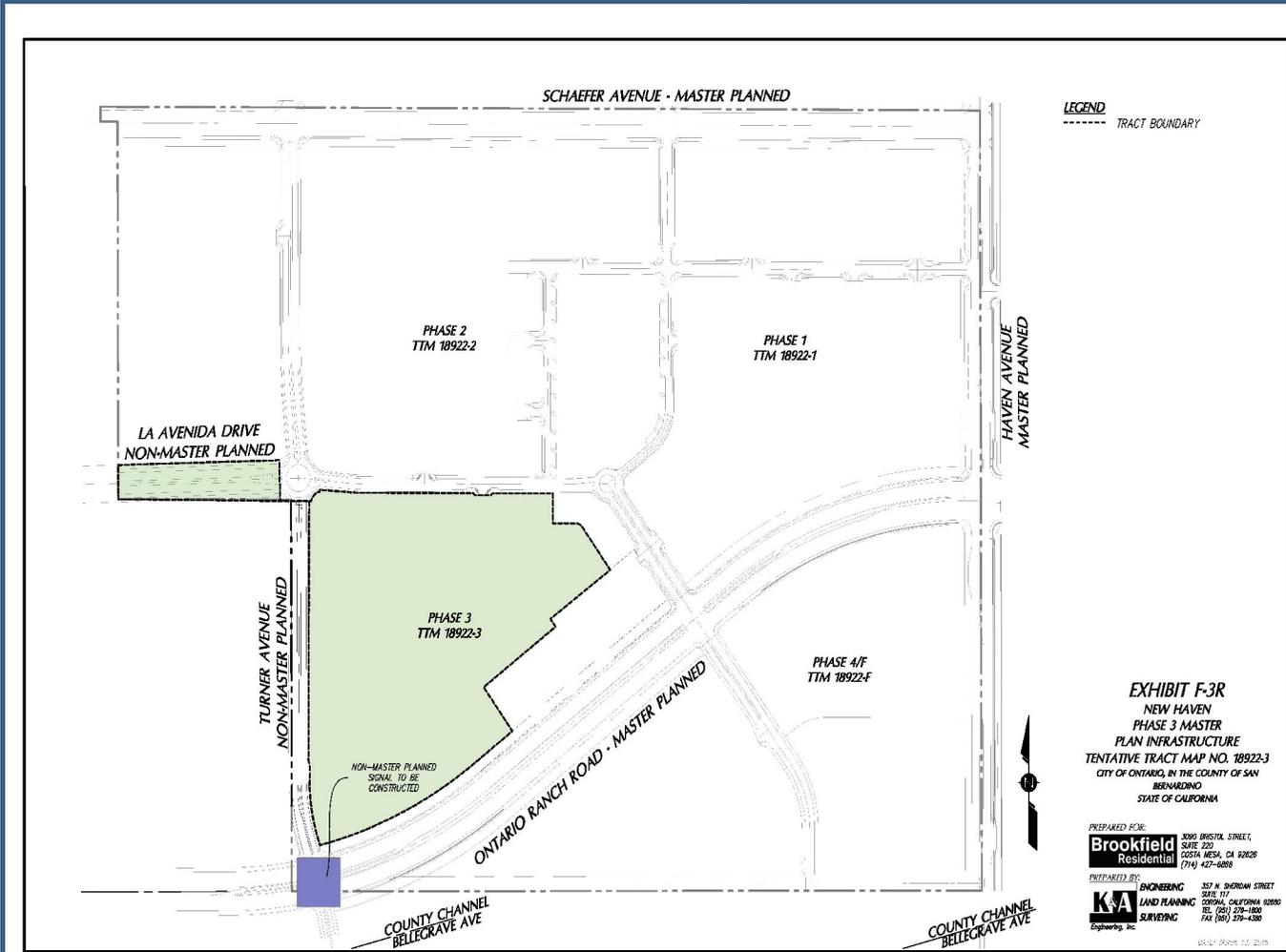


EXHIBIT F-3R
NEW HAVEN
PHASE 3 MASTER
PLAN INFRASTRUCTURE
TENTATIVE TRACT MAP NO. 18922-3
 CITY OF ONTARIO, IN THE COUNTY OF SAN
 BERNARDINO
 STATE OF CALIFORNIA

PREPARED FOR:
Brookfield Residential
 8080 BRISTOL STREET,
 SUITE 200
 COSTA MESA, CA 92626
 (714) 427-0888

PREPARED BY:
KVA ENGINEERING
 357 N. SHARDAN STREET
 SUITE 117
 CORONA, CALIFORNIA 92626
 TEL: (951) 278-1800
 FAX: (951) 278-4300
 Engineering, Inc.

DATE: 05/09/11 11:25:15

Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 4 Master Plan Required Infrastructure Improvements

