

CITY OF LOMA LINDA  
CITY COUNCIL AGENDA

REGULAR MEETING OF MARCH 11, 2014

A regular meeting of the City Council of the City of Loma Linda is scheduled to be held Tuesday, March 11, 2014 in the City Council Chamber, 25541 Barton Road, Loma Linda, California. *Pursuant to Municipal Code Section 2.08.010, study session or closed session items may begin at 5:30 p.m. or as soon thereafter as possible. The public meeting begins at 7:00 p.m.*

Reports and Documents relating to each agenda item are on file in the Office of the City Clerk and are available for public inspection during normal business hours. The Loma Linda Branch Library is also provided an agenda packet for your convenience. The agenda and reports are also located on the City's Website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov).

*Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 25541 Barton Road, Loma Linda, CA during normal business hours. Such documents are also available on the City's website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov) subject to staff's ability to post the documents before the meeting.*

Persons wishing to speak on an agenda item, including any closed session items, are asked to complete an information card and present it to the City Clerk prior to consideration of the item. When the item is to be considered, please step forward to the podium, the Chair will recognize you and you may offer your comments. The City Council meeting is recorded to assist in the preparation of the Minutes, and you are therefore asked to give your name and address prior to offering testimony.

The Oral Reports/Public Participation portion of the agenda pertains to items NOT on the agenda and is limited to 30 minutes; 3 minutes allotted for each speaker. Pursuant to the Brown Act, no action may be taken by the City Council at this time; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 799-2819. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.

**Agenda item requests for the APRIL 8, 2014 meeting must be submitted in writing to the City Clerk no later than NOON, MONDAY, MARCH 24, 2013**

**A. Call To Order**

**B. Roll Call**

**C. Closed Session Items (5:30 p.m.)** – conference with Real Property Negotiator (Government Code Section 54956.8)

Property: Portions of APN 0281-162-29, 31, 37, 38, and 40 equating to 46,000 square feet on the west side of Richardson Street, north of Redlands Boulevard  
Negotiating Parties: Representative of Sagemont-Loma Linda LLC; T. Jarb Thaipejr and Konrad Bolowich on behalf of the City  
Under Negotiation: Price, terms of payment

**7:00 Reconvene**

**D.** **Invocation and Pledge of Allegiance** – Mayor pro tempore Popescu (In keeping with long-standing traditions of legislative invocations, this City Council meeting may include a brief, non-sectarian invocation. Such invocations are not intended to proselytize or advance any one, or to disparage any other, faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.)

**E.** **Items To Be Added Or Deleted**

**F.** **Oral Reports/Public Participation - Non-Agenda Items (Limited to 30 minutes; 3 minutes allotted for each speaker)**

**G.** **Conflict of Interest Disclosure** - Note agenda item that may require member abstentions due to possible conflicts of interest

**H.** **Scheduled And Related Items**

1. Presentation of proclamation to Clark Morrow of the San Bernardino County Sheriff's Department declaring April 2014 Child Abuse Prevention Month [**Mayor**]
2. **Public Hearing** - Council Bill #R-2014-09 - Determine costs related to the Fall 2013 Weed Abatement Program [**Fire Dept.**]

**I.** **Consent Calendar**

3. Demands Register
4. Minutes of February 25, 2014
5. January 2014 Treasurer's Report
6. February 2014 Fire Department Report
7. Request from Southern California Conference of Seventh Day Adventists for City water and sewer service for property located within the City's Sphere of Influence, but outside of the incorporated City boundaries (Korean Church) [**Public Works**]
8. Accept \$5,000 from Republic Services and appropriate the funds to be expended toward the Community Garden Program [**Public Works**]

**J.** **Old Business**

9. Council Bill #O-2014-05 (Second Reading/Roll Call Vote) -Specific Plan Amendment No. 13-037 to amend the East Valley Corridor Specific Plan from Single-Family Residential to General Commercial for approximately 1.07 acres located at the southwest corner of Mountain View Avenue, Interstate 10, and Rosewood Avenue [**Community Development**]
10. Council Bill #O-2014-06 (Second Reading/Roll Call Vote)-Zone Change No. 14-011 to amend the Zoning Map from EVC Single Family Residential to General Commercial for approximately 1.07 acres located at the southwest corner of Mountain View Avenue, Interstate 10, and Rosewood Avenue [**Community Development**]

**K.**     **New Business**

11.     Council Bill #R-2014-10 – Approving an Agreement relating to property exchange between Sagemont-Loma Linda LLC and City of approximately 46,000 square feet on the west side of Richardson Street, north of Redlands Boulevard [**Assistant City Manager**]
  
12.     Accept \$89,400 from Loma Linda University and appropriate the funds to be expended toward the Campus Street Widening Project [**Public Works**] (**Rule of Necessity previously determined that Councilmen Popescu, Dailey and Dupper sit to constitute a quorum and vote; Councilmen Rigsby and Lenart abstain.**)

**L.**     **Reports of Councilmen** (This portion of the agenda provides City Council Members an opportunity to provide information relating to other boards/commissions/committees to which City Council Members have been appointed).

**M.**     **Reports Of Officers** (This portion of the agenda provides Staff the opportunity to provide informational items that are of general interest as well as information that has been requested by the City Council).

13.     Statistical report from the San Bernardino County Sheriff's Department

**N.**     **Adjournment**



# City of Loma Linda Official Report

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Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

**COUNCIL AGENDA:** March 11, 2014

**TO:** City Council

**FROM:** T. Jarb Thaipejr, City Manager

**SUBJECT:** Presentation of proclamation to Clark Morrow of the San Bernardino County Sheriff's Department declaring April 2014 Child Abuse Prevention Month

Approved/Continued/Denied By City Council Date _____
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# CITY OF LOMA LINDA, CA

## PROCLAMATION "CHILD ABUSE PREVENTION MONTH"

April 2014

**WHEREAS**, all children have the right to receive the care, protection and guidance a family provides, to be free from harm, and to have their physical, emotional and educational needs met, the State and Federal governments have proclaimed April 2014 as **Child Abuse Prevention Month** for the purpose of promoting community involvement in the prevention of child abuse; and

**WHEREAS**, more than 29,000 children in San Bernardino County were referred to the Department of Children's Services for suspected child abuse and neglect in 2013; and

**WHEREAS**, as the prevention of child abuse requires rigorous solutions, energy, strength, determination and commitment from concerned citizens and the entire community, the County of San Bernardino provides services and professionals in the field of child abuse who are dedicated, compassionate and skilled in the prevention of child abuse; and

**WHEREAS**, with the Blue Ribbon as the international symbol for child abuse prevention, the Children's Network and Children's Fund, in partnership with the San Bernardino County Board of Supervisors, the San Bernardino County Departments of Children and Family Services, Public Health, Superintendent of Schools, Sheriff, Fire, Probation, Behavioral Health, Preschool Services, and Library and First 5 of San Bernardino, Children's Fund Assessment Center, Community Action Partnership, Loma Linda Children's Hospital Safe Kids Coalition, and Arrowhead Regional Medical Center, have planned a Blue Ribbon Media Campaign – the 16<sup>th</sup> "Annual Shine a Light on Child Abuse" during the month of April to increase awareness of child abuse;

**NOW, THEREFORE**, I, Rhodes Rigsby, Mayor of the City of Loma Linda, on behalf of the entire City Council, do hereby proclaim April 2014 as

### CHILD ABUSE PREVENTION MONTH

in the City of Loma Linda and encourage citizens, organizations, schools, non-profits, businesses, and other entities in the community to engage in activities and events that assist in the efforts to prevent child abuse and provide for children's physical, emotional, and developmental needs.

SIGNED this 11<sup>th</sup> day of March 2014.



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Rhodes Rigsby, Mayor



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

COUNCIL AGENDA: March 11, 2014

TO: City Council

VIA: Jarb Thaipejr, City Manager *TJT*

FROM: Jeff Bender, Fire Chief *JB*

SUBJECT: Fall 2013 Weed Abatement Program  
Report of Proceedings / Account of Costs

### RECOMMENDATION

That the City Council: Receive the report of the Fall 2013 Weed Abatement Program, approve the report and accounting of costs, and adopt the accompanying Resolution establishing liens and assessments on properties.

### BACKGROUND

The International Fire Code, 2010 edition, Section 304 adopted and amended by Loma Linda Municipal Code Chapter 15.28, establishes the authority for removing combustible vegetation when it is determined to be a fire hazard. Section 304.1.2 states "Weeds, litter, flammable waste, grass or other vegetation capable of being ignited and endangering property shall be cut down and removed by the owner or occupant of the premises." Vegetation clearance requirements in the wildland-urban interface areas shall be in accordance with Chapter 49.

### ANALYSIS

The Fall 2013 Weed Abatement program began on **September 3, 2013** with an initial inspection of approximately 445 parcels. Pursuant to Sections 104.5 of the International Fire Code, 177 Notices to Clean Property, Exhibit "A", were sent by regular mail on **September 10, 2013** to the **OWNER OF RECORD** as provided by the County Assessor's office. Follow-up inspections began on **October 1, 2013**. If abatement had not been accomplished, or if arrangements for a time extension had not been made with this office, the parcel was placed on an abatement list which was given to the City contractor for initiation of the abatement work. Combustible vegetation/fire hazards were abated by the City contractor on **26 parcels**.

On **February 4, 2014** invoices (See Exhibit "B") specifying the cost of the work performed by the contractor, plus the City's administrative fee, were mailed to the **OWNER OF RECORD** for each parcel giving them the opportunity to make payment of the bill by **March 6, 2014**.

Parcels abated by the City contractor and which **remain un-paid** are listed on Exhibit "C". Upon completion and documentation of the abatement work payment was made to the contractor by the City.

Owners have the opportunity to appear at the hearing to ask questions or dispute any bills or proceedings.

Subsequent to the March 11, 2014 Hearing and Council action, the Report of Costs, with accompanying Resolution (see attached), will be forwarded to the Property Tax Division of the San Bernardino County Auditor/Controller-Recorder for collection as assessments and or liens against the property.

#### **ENVIRONMENTAL**

No adverse environmental impact. The Weed Abatement program removes weeds and other flammable vegetation that is deemed to present a fire hazard.

#### **FINANCIAL IMPACT**

Recovery of abatement costs plus administrative fees are outlined on Exhibit "C".

#### **ATTACHMENTS:**

Exhibit A: Sample Notice to Clean Property

Exhibit B: Sample Invoice

Exhibit C: List of Parcels Abated by City with costs

Copy of Resolution Adopting Report and Statement of Expenses and Imposing a Lien upon Property for payment.

I:\Fire Prevention\Weed Abatement\Hearing to Determine Costs\Hearing Packet – Fall 2013



# City of Loma Linda Fire Department

## FIRE PREVENTION BUREAU

25541 Barton Rd, Loma Linda, California 92354 • (909) 799-2859 • Fax: (909) 799-2891

### NOTICE TO CLEAN PROPERTY

Loma Linda CA 92354

**Location:**

**Problem:** weeds on rear slope area

Under the provisions of the California Fire Code, 2010 edition, Section 304.1.2 adopted and amended by Loma Linda Municipal Code Chapter 15.28, an inspection of the property listed above has been performed by this Department. Based upon the inspection, a fire hazard, or potential fire hazard has been determined to exist on this property. Notice is hereby given that **any weeds, tumbleweeds, grasses, vines, dead shrubs, dead trees, trimmings, or other combustible materials or debris** present on your lot, field or parcel of land are a fire hazard or in all probability will become a fire hazard, and as such must be removed or abated. In addition, any weeds or combustible materials must be cleared away from any road or street for a distance of 10 ft.

The combustible vegetation or material on your property must be removed or abated in an acceptable manner by **September 30, 2013**. Failure to remove or abate by this date will be cause for the City of Loma Linda or its designated contractor to enter onto the property to accomplish the abatement. In addition to the costs for cleaning, you will also be assessed an administrative fee of 30% of the cost of the work or \$100, whichever is greater. Failure to pay the charges will cause a tax assessment / lien to be placed against the property.

Due to uncontrolled regrowth, a second or third clean up of the property may be necessary during the year. Property owners are advised that it is their responsibility to maintain their property in good condition and that any regrowth during the year may be subject to removal without further notice if determined to be a fire hazard.

This Notice is given pursuant to the provision of the California Fire Code Section 109.2 authorizing action to remove any hazard deemed unsafe. The Fire Department maintains a consistent and impartial position in the application and enforcement of the California Fire Code. For further information, please call (909) 799-2859.

You as owner, occupant or person otherwise in charge of the property may appeal to the Fire Marshal of the City of Loma Linda any of the requirements of this Notice pursuant to Loma Linda Municipal Code Section 2.08.030. Such an appeal shall be in writing and shall be submitted only after all reasonable efforts to resolve the matter have been exhausted with the staff of this Department. Said appeal may include any arguments why the property should not be declared a fire hazard and abated by the City. Any appeal shall be submitted to this Department within ten (10) calendar days from the date of this Notice.

If you are no longer the owner of this property or are in the process of selling it, please inform the new owner of this Notice, and advise this Department in writing of the date the title change occurred. All address information used to mail Notices has been provided by the San Bernardino County Assessors Office.

JAMES GRAY  
FIRE MARSHAL

By: *James Shea*

James Shea  
FIRE PREVENTION INSPECTOR

**EXHIBIT A**



# City of Loma Linda

25541 Barton Road, Loma Linda, California 92354-3160 • (909)799-2858 • fax (909) 799-2891

Sister City – Manipal, Karnataka, India

## INVOICE

Glen / Patricia Foster  
24479 Lawton Ave  
Loma Linda Ca 92354

Parcel Number: 028427106  
Location: 24479 Lawton Ave

Under the provisions of the 2009 International Fire Code, adopted as the 2010 California Fire Code and the Loma Linda Municipal Code Chapter 15.28, a fire hazard that existed on the above real property was abated by a City contractor on November 17, 2013.

The following amount is now due for **Fall 2013** weed abatement:

Abatement Cost: \$340.00

Administrative Charges: \$102.00

**Total Due: \$442.00**

Make checks payable to: City of Loma Linda - Weeds  
25541 Barton Rd  
Loma Linda Ca 92354-3160

Payment must be received by **march 6, 2014** after which time a Public Hearing will be conducted to hear a Report of Cost. The Public Hearing is scheduled for **march 11, 2014** at 7:00 p.m. at the City of Loma Linda Council Chambers, 25541 Barton Rd, at which time Total Charges will be placed as assessments and or liens against the above the real property.

at Any appeals for the abatement work performed or the amount billed above shall be addressed to the City Council the time of the Public Hearing. (Before and after pictures are available for review. Call 909-799-2859 for further information).

James Gray  
Fire Marshal

By:

James Shea  
Fire Prevention Inspector

**EXHIBIT B**

**Loma Linda Fire Department  
Fall 2013 Outstanding Weed Abatement Invoices**

	Assessor Parcel #	Owner of Record	Abatement Cost	Administrative Fee	Total Billed	Date abatement completed
1	028109123	Sam Kim	\$75.00	\$100.00	\$175.00	12-9-13
2	028308243	Leader Group LLC	\$162.50	\$100.00	\$262.50	12-9-13
3	028310110	General telephone	\$75.00	\$100.00	\$175.00	12-2-13
4	028311425	Jesse Enriquez	\$75.00	\$100.00	\$175.00	12-2-13
5	028312123	Hugo Chinchay	\$75.00	\$100.00	\$175.00	12-2-13
6	028314113	Brian Brehm	\$125.00	\$100.00	\$225	12-4-13
7	028316213	Jose Torres	\$200.00	\$100.00	\$300.00	12-5-13
8	028316220	Wilbert Camp	\$100.00	\$100.00	\$200.00	12-11-13
9	028325108	Peter Aziz	\$400.00	\$120.00	\$520	12-11-13
10	028326119	Hung Lim	\$225.00	\$100.00	\$325.00	12-4-13
11	028435154	Samuel Eilar	\$1,284.00	\$385.20	\$1,669.20	12-16-13
12	029209210	Mildred Alfaorri	\$479.00	\$143.70	\$622.70	12-17-13
13	029211135	Donald Hunt	\$550.00	\$165.00	\$715.00	11-5-13
14	029212115	Spehar Business Properties	\$385.00	\$115.50	\$500.50	10-30-13
15	029212203	Lewis Investment	\$175.00	\$100.00	\$275.00	11-7-13

Loma Linda Fire Department  
 Fall 2013 Outstanding Weed Abatement Invoices

16	029212227	Southeastern SDA	\$485.00	\$145.50	\$630.50	10-30-13
17	029213149	Eddie Lerma	\$75.00	\$100.00	\$175.00	11-6-13
18	029216209	Southeastern SDA	\$75.00	\$100.00	\$175.00	12-2-13
19	029302120	Imad Thomas	\$75.00	\$100.00	\$175.00	11-4-13
20	029303220	Abigal Haro	\$100.00	\$100.00	\$200.00	11-4-13
21	029304148	Elizabeth Brutus	\$320.00	\$100.00	\$420	11-6-13
22	029304151	Diana Walayat	\$320.00	\$100.00	\$420	11-4-13

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA ADOPTING A REPORT AND STATEMENT OF EXPENSES FOR THE FALL 2013 WEED ABATEMENT PROGRAM AND IMPOSING A LIEN UPON PROPERTY FOR PAYMENT THEREFOR**

**WHEREAS, the Weed Abatement Program of the City of Loma Linda has been carried out in accordance with Municipal Code requirements; and**

**WHEREAS, the City Council has held a hearing on the statement of expenses for abatement of the nuisances and has heard and considered the staff report and all objections or protests;**

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Loma Linda as follows:**

**That the statement of expenses attached hereto as Exhibit "A" and incorporated herein by reference, is hereby confirmed and adopted as amended; and**

**That the statement of expenses (Exhibit "A") is fair, reasonable, and appropriate;**

**That the cost of the abatement work done or caused to be done by the City as shown on the statement of expenses is hereby ordered to be paid by March 25, 2014; and**

**That if said costs have not been paid by March 25, 2014, they shall constitute a lien upon the real property against which the nuisance was abated and shall be collected either by a personal civil suit against the person creating, causing or permitting the nuisance, or by a special assessment against the real property; and**

**That the City Clerk shall file a certified copy of this Resolution and report and statement of expenses as amended with the San Bernardino County Auditor, Assessor and Tax Collector, and shall direct the Auditor to enter the amounts of the charges contained in the report and statement of expenses against the real property described in the report and statement of expense; and**

That the amount of the charges shall constitute a lien against the real property against which the charges have been imposed; and

That the Tax Collector shall include the amount of the charges on the bills for taxes levied against said real property and the same shall be collected in the same manner together with the general taxes for the City of Loma Linda, and shall be subject to the same penalties and interest.

PASSED, APPROVED AND ADOPTED this 11th day of March 2014 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

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Rhodes Rigsby, Mayor

ATTEST:

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Pamela Byrnes-O'Camb, City Clerk



# City of Loma Linda Official Report

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Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: March 11, 2014

TO: City Council

VIA: T. Jarb Thaipejr, City Manager

FROM: Pamela Byrnes-O'Camb, City Clerk

SUBJECT: Minutes of February 25, 2014

Approved/Continued/Denied By City Council Date _____
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## RECOMMENDATION

It is recommended that the City Council approve the Minutes of February 25, 2014.

City of Loma Linda

City Council Minutes

Regular Meeting of February 25, 2014

A regular meeting of the City Council was called to order by Mayor Rigsby at 6:45 p.m., Tuesday, February 25, 2014, in the City Council Chamber, 25541 Barton Road, Loma Linda, California.

Councilmen Present:	Mayor Rhodes Rigsby Mayor pro tempore Ovidiu Popescu Ron Dailey Phill Dupper John Lenart
Councilman Absent:	None
Others Present:	City Manager T. Jarb Thaipejr City Attorney Richard E. Holdaway

**CC-2014-018 - Closed Session – Conference with Legal Counsel – Pending Litigation (Government Code Section 54956.9(d)(2) – One Case**

The City Council immediately recessed to consider the closed session item as listed and reconvened at 7:06 p.m. with all members present. City Attorney Holdaway announced that the City Council met with Legal Counsel to receive a report; direction was given; and there was no final action to report at this time.

Mayor Rigsby led the invocation and Pledge of Allegiance; no items were added or deleted; no public participation comments were offered upon invitation of the Chair; and no conflicts of interest were noted.

**Scheduled And Related Items**

**CC-2014-019 - Appeal by Little League of Parks, Recreation, and Beautification Committee Decision regarding use of ball fields**

City Manager Thaipejr introduced the item, stating that each year Staff works with those requesting use of the parks, including the ball fields, and the issuance of Park Use Permits. The first meeting to review the requests was December 7, 2013. An application was not received from the Little League. The Parks Committee decided to delay a decision relating to the ball fields because the Little League had not submitted an application.

On January 6, 2014, a Parks Committee meeting was held. Representatives of the Pony League attended and reviewed the program with the Parks Committee; Little League representatives did not attend. The Parks Committee approved issuance of a Park Use Permit to the Pony League.

On January 14, 2014, representatives of the Little League asked the City Council to reconsider the Park Use Permit. Because the request was not agendaized for City Council consideration, the request was referred to the Parks Committee. In the meantime, Staff met with representatives of the Little League to attempt to arrive at a compromise for use of the ball fields.

On February 4, a meeting was held with the Parks Committee at which representatives for both the Pony League and Little League were present. The Parks Committee confirmed the issuance of a Park Use Permit to the Pony League for use of the ball fields for this year.

At the conclusion of the meeting, the Little League requested an appeal of the Committee's decision to the City Council; hence the agendaized item.

Those speaking were: Kenny Boyd (Pony League); Bez Renifo (Little League); Gary Mendoza (Little League District Manager); Euni Cho (Pony League); Dick Wiley; Vincent Rouzan; Kurt Swigart (Parks Committee); Deanna Evers (Pony League); Ramon Issa (Pony League); Tim Ireland (Pony League); Randy Possinger (Pony League).

Extensive discussion ensued. The two groups were encouraged to work together for use of the ball fields and equipment for the benefit of the children.

**Motion by Dupper, seconded by Lenart and carried to affirm the Parks Committee's decision to issue the Park Use Permit to the Pony League. Mayor Rigsby and Mayor pro tempore Popescu opposed.**

**CC-2014-020 - Public Hearing – 1.07 acres located at the southwest corner of Mountain View Avenue, Interstate 10, and Rosewood Avenue**

- a. Adopt the Mitigated Negative Declaration
- b. Adopt the Mitigation Monitoring Report
- c. Council Bill #O-2014-05 (First Reading/Set Second Reading for March 11) -Specific Plan Amendment No. 13-037 to amend the East Valley Corridor Specific Plan from Single-Family Residential to General Commercial
- d. Council Bill #O-2014-06 (First Reading/Set Second Reading for March 11)-Zone Change No. 14-011 to amend the Zoning Map from EVC Single Family Residential to EVC General Commercial
- e. Tentative Parcel Map No. 13-038 to consolidate six parcels into two parcels
- f. Variance No. 13-054 to allow a 75-foot high freestanding sign and relocation of interior landscaping
- g. Conditional Use Permit No. 13-028 – Construction of a 46,718 square-foot marketplace with convenience store, gas station, car wash, and separate commercial building pad and a 75-foot high freestanding sign

The public hearing was opened and Assistant City Manager Bolowich presented the item into evidence, stating that the public hearing pertained to the establishment of a gas station, an automated drive through car wash, a free-standing sign that will require a variance and a parcel map to consolidate six parcels into two parcels. The Planning Commission forwarded the proposed project to the City Council with a recommendation of denial.

He went on to say that subsequent to the Planning Commission meeting, Staff met with the applicant to address the issues the Planning Commission raised.

Mr. Bolowich showed the site, noting that immediately behind the site was a City well site. He also noted that the General Plan designated the site as “Commercial” and designated the entire residential neighborhood as “Commercial.” The Zone Change request changes the designation of the site on the Zoning Map from “Residential Zone” to “Commercial Zone” which would bring the site into compliance with the General Plan.

He then addressed the request for variances for the setbacks on the north side of the site to be reduced to the property line so there would be no “dead space” with the required landscaping to then be modified on the interior of the property. The design included protective turn movements along Mountain View which created a left in and a right out. The other variance related to the height of the sign due to the grade separation of the site and adjacent freeway.

The Planning Commission asked that:

- The pedestrian access be moved. In response, the pedestrian access from Mountain View has been widened.
- Lush landscaping and decorative concrete similar to that on Barton Road, be installed in the median. From an operational standpoint, that would create a maintenance burden on the City and from a safety standpoint, line of site would be inhibited.
- Installation of a wall along the west property line to separate commercial from residential space. The applicant has asked to keep the existing structure on the site through the construction phase as a construction office and will then demolished it as a Condition of Approval.

The plans show a change in the routing of trucks to facilitate access of tanker trucks and fire apparatus and the turn radius needed.

He then showed a Traffic Analysis excerpt, Site Overlay, Parking, Elevations, and Landscape Plan including decorative concrete.

Mr. Bolowich stated that a letter was received from Caltrans this afternoon requesting modifications to the Mountain View Avenue access.

Dan Haskins, the applicant’s consultant addressed the issued posed by the Planning Commission and responded to questions from Council Members.

Carl Ballard of Kuzman and Associates, who prepared the Traffic Study also addressed the City Council and responded to questions.

Dee Elias who presented the site to Applicant Mr. Alabassi spoke, supporting the project.

No other public testimony was offered and the public hearing was closed.

Mr. Alabassi, applicant, addressed the City Council, stating that the project began in 2006; several challenges had been overcome; he is a licensed engineer who has worked for Caltrans for many years; has built and owns several stations. He expressed shock at the letter from Caltrans and stated that he would work with Caltrans to resolve the issues

Extensive discussion ensued. Mayor pro tempore Popescu expressed opposition due to the increase in traffic the station would cause. Mayor Rigsby, Councilmen Dailey and Lenart expressed support of the project as submitted.

Kurt Swigart commented that the applicant had done his due diligence and that the project is a beautiful project.

**Motion by Dailey, seconded by Lenart and carried to adopt the Negative Declaration and the Mitigation Monitoring Report; introduce Council Bills #O-2014-05 and 06 on First Reading and to set the Second Reading for March 11; approve Tentative Parcel Map No. 13-038, Variance No. 13-054, and Conditional Use Permit No. 13-028. Councilmen Popescu and Dupper opposed.**

CC-2014-021 - Consent Calendar

**Motion by Dailey, seconded by Dupper and unanimously carried to approve the following items:**

The Demands Register dated February 25, 2014 with commercial demands totaling \$705,449.12 and payroll demands totaling \$226,820.63.

The Minutes of February 11, 2014 as presented.

Award of contract to Denis Grubb and Associates LLC for Fire Life Safety Plan Check, Inspections, and Testing – VA Medical Clinic, Redlands Blvd.  
Accepted as complete and authorized recordation of a Notice of Completion for Campus Street Widening from Barton Road to Molnar Way - KAD Paving Company, Contractor.

SANBAG Agreement No. R14131 Trade Corridors Improvement Fund Project Baseline Agreement for the I-10 Freeway/Tippecanoe Interchange Improvement Phase II.

Appropriation of Measure I Reserve funds in the amount of \$126,000.00 for the Stewart Street Project.

Agreement with UReach to manage the Van Leuven Street Community Garden Site.

Old Business

CC-2014-022 - Council Bill #O-2014-02 - (Second Reading/Roll Call Vote) Modifying Wastewater Rates to reflect the increase in the City of Loma Linda for operation of the Sewer Collection System within the City effective April 1, 2014 through January 1, 2018 and repealing Ordinance No. 701

City Manager Thaipejr presented the report, stating that on February 11, the City Council held a public hearing; that the wastewater (sewer) rates were comprised of two components: the City of Loma Linda portion for collection and the City of San Bernardino portion for treatment; that the proposed ordinance affected the City of Loma Linda portion only, and was based on the rate study that was presented on December 10.

**Motion by Popescu, seconded by Dupper and unanimously carried to waive reading of Council Bill #O-2014-02 in its entirety; direct the Clerk to read by title only and to call the roll.**

The Clerk read the title and called the roll with the following results:

Ayes:	Rigsby, Popescu, Dailey, Dupper, Lenart
Noes:	None
Abstain:	None
Absent:	None

**Ordinance No. 716**

An Ordinance of the City Council of the City of Loma Linda, California, establishing Wastewater Collection Rates Effective April 1, 2014 and repealing Ordinance No. 701

CC-2014-023 - Council Bill #O-2014-03 - (Second Reading/Roll Call Vote) Modifying Water Rates Effective April 1, 2014 through January 1, 2018 and repealing Ordinance No. 690

City Manager Thaipejr presented the report, noting that the proposed rate increase was based on the rate study presented at the meeting of December 10. He also indicated that new water meters had been installed to replace older, inefficient meters. Water conservation was encouraged, particularly in this period of extreme drought throughout the state.

**Motion by Dupper, seconded by Lenart and unanimously carried to waive reading of Council Bill #O-2014-03 in its entirety; direct the Clerk to read by title only and to call the roll.**

The Clerk read the title and called the roll with the following results:

Ayes:	Rigsby, Popescu, Dailey, Dupper, Lenart
Noes:	None
Abstain:	None
Absent:	None

**Ordinance No. 717**

An Ordinance of the City Council of the City of Loma Linda, California, modifying the water rates effective April 1, 2014 and repealing Ordinance No. 690

CC-2014-034 - Council Bill #O-2014-04 - (Second Reading/Roll Call Vote) - Development Code Amendment DCA 13-138 - Amending Chapter 17 pertaining to provisions for and regulations relating to emergency shelters

Assistant City Manager Bolowich presented the report stating that the Housing Element of the General Plan required emergency shelters. The proposed ordinance identified the zones where emergency shelters were permitted without discretionary approval to comply with Government Code Section 65583.

**Motion by Dupper, seconded by Popescu and unanimously carried to waive reading of Council Bill #O-2014-01 in its entirety; direct the Clerk to read by title only and to call the roll.**

The Clerk read the title and called the roll with the following results:

Ayes:	Rigsby, Popescu, Dailey, Dupper, Lenart
Noes:	None
Abstain:	None
Absent:	None

**Ordinance No. 718**

An Ordinance of the City Council of the City of Loma Linda amending Chapters 17.48 - Commercial Manufacturing Zone and 17.60 - Institutional Zone, adding Sections 17.02.195 and 17.02.196 to Chapter 17.02 - Introduction and Definitions, to Title 17 (Zoning), to define and add specific provisions and regulations relating to emergency shelters in the City of Loma Linda

CC-2014-035 - Council Bill #O-2014-01 - (Second Reading/Roll Call Vote) - Development Code Amendment DCA 13-114 - Regulations relating to the on-site sale of beer and wine in conjunction with restaurants and hotels with a minimum of 50 rooms located in the Neighborhood Business (C-1) and General Business (C-2) zones in the City of Loma Linda

Assistant City Manager Bolowich presented the report, stating the ordinance addressed the consumption and service of beer and wine in restaurants and bar service in hotels of 50 rooms or more. A public hearing was held on February 11.

Mayor pro tempore Popescu expressed his opposition.

**Motion by Dupper, seconded by Lenart and carried to waive reading of Council Bill #O-2014-01 in its entirety; direct the Clerk to read by title only and to call the roll.**

The Clerk read the title and called the roll with the following results:

Ayes:	Rigsby, Dailey, Dupper, Lenart
Noes:	Popescu
Abstain:	None
Absent:	None

**Ordinance No. 719**

An Ordinance of the City Council of the City of Loma Linda amending Chapters 17.44 and 17.46 to revise the regulations related to restaurants and the on-site sale of beer and wine in conjunction with restaurants, and for hotels with a minimum of 50 rooms located in the Neighborhood Business (c-1) Zone and General Business (C-2) Zone in the City of Loma Linda

**New Business**

**CC-2014-036 - Mid-Year Budget Review**

Finance Director DeAnda presented the report, stating that the Mid-Year Budget Review was an opportunity to look at the City's current financial status and to project possible changes in the General Fund, the City's key operational fund and the City as a whole, including the General Fund, Special Revenue Funds, Enterprise Funds and the Housing Authority.

She compared the Adopted Budget/Mid-Year Budget and the Adjusted Budget/Mid-Year Budget and noted that the General Fund had a beginning available fund balance of \$5,282,500 and at Mid-Year had an ending available fund balance of \$5,294,500.

Ms. DeAnda then reviewed the top seven revenues of the General Fund consisting of sales tax, MVL Fees, Administrative Overhead, Property Tax, Refuse Service, Franchise Fee, and Business Licenses, noting that at Mid-Year there was a positive change of \$679,538. In reviewing the General Fund Expenditures consisting of Administration, General Government, Police Services, Community Development, Fire Department and Public Works, she noted that expenditures were increased by \$588,007.

She then reviewed the City as a whole including the General Fund, Sewer Fund, LLCCP Fund, Water fund, Capital Fund, and Other Funds, noting that there was a total increase in revenue of \$1,731,605 while expenditures totaled \$1,337,174.

Ms. DeAnda concluded that the City continued to practice revenue projections in a very conservative manner and was extremely conscientious in projecting expenditures; therefore the General Fund was projected to end Fiscal Year 2013/2014 with an increase to fund balance of \$12,000, leaving \$5.29 million in Available Fund Balance, \$3.5 million in the "Rainy Day Reserve," and \$1,250,000 in "Equipment Replacement Reserve."

She then responded to questions.

**Motion by Dailey, seconded by Dupper and unanimously carried to approve the requested budget changes.**

**Reports of Councilmen**

Mayor pro tempore Popescu announced the open house at the San Bernardino International Airport on February 27 at 10:00 a.m.

**Reports Of Officers**

City Manager Thaipejr stated that a grading permit had been issued to the VA pertaining to its development on Redlands Boulevard, west of California Street; that the City received a letter from the State Department of Public Health stating that the City failed to monitor the nitrate level on two wells that were not in use; therefore, a standard letter must be mailed to all residents as required by the State.

Assistant City Manager Bolowich stated that a letter was received from the State Department of Housing and Community Development that the City's Housing Element of the General Plan had been certified.

The meeting adjourned at 11:21 p.m.

Approved at the meeting of



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

Approved/Continued/Denied By City Council Date _____
--

COUNCIL AGENDA: March 11, 2014  
TO: City Council  
VIA: T. Jarb Thaipejr, City Manager  
FROM: Diana De Anda, Finance Director/City Treasurer   
SUBJECT: January 2014 Treasurer's Report

## **RECOMMENDATION**

It is recommended that the City Council receive the report for filing.

CITY OF LOMA LINDA  
COMPOSITION OF CASH  
JANUARY 2014

**DEMAND DEPOSIT ACCOUNTS**

CITY - BANK OF AMERICA - MAIN CHECKING ACCOUNT	\$	868,115.22
Outstanding Checks as of month-end		(129,528.14)
CITY - MAIN CHECKING ACCOUNT AVAILABLE BALANCE	\$	738,587.08
 BANK OF AMERICA - PAYROLL	 \$	 13,250.93
 HOUSING AUTHORITY - BANK OF AMERICA - CHECKING ACCOUNT		 62,962.54
Outstanding Checks as of month-end		(553.71)
HOUSING AUTHORITY - CHECKING ACCOUNT AVAILABLE BALANCE	\$	62,408.83
 SUCCESSOR AGENCY - BANK OF AMERICA - CHECKING ACCOUNT		 19,151.94
Outstanding Checks as of month-end		-
SUCCESSOR AGENCY - CHECKING ACCOUNT AVAILABLE BALANCE	\$	19,151.94

**DEMAND DEPOSIT ACCOUNTS - TOTAL** **\$ 833,398.78**

**INVESTMENTS**

**YIELD**

**LOCAL AGENCY INVESTMENT FUND (LAIF)**

CITY	0.244%		\$	23,519,287.35
SUCCESSOR RDA	0.244%	1,973,777.90		
SUCCESSOR RDA -Bond Proceeds		4,606,909.34		
SUCCESSOR RDA -Total				6,580,687.24
HOUSING AUTHORIT	0.244%			170,222.38

**INVESTMENTS TOTALS** **\$ 30,270,196.97**

**OTHER CASH**

IMPREST ACCOUNT	\$	500.00
CASH ON HAND		1,350.00

**OTHER CASH TOTAL** **\$ 1,850.00**

**CASH AND INVESTMENTS - GRAND TOTAL** **31,105,445.75**

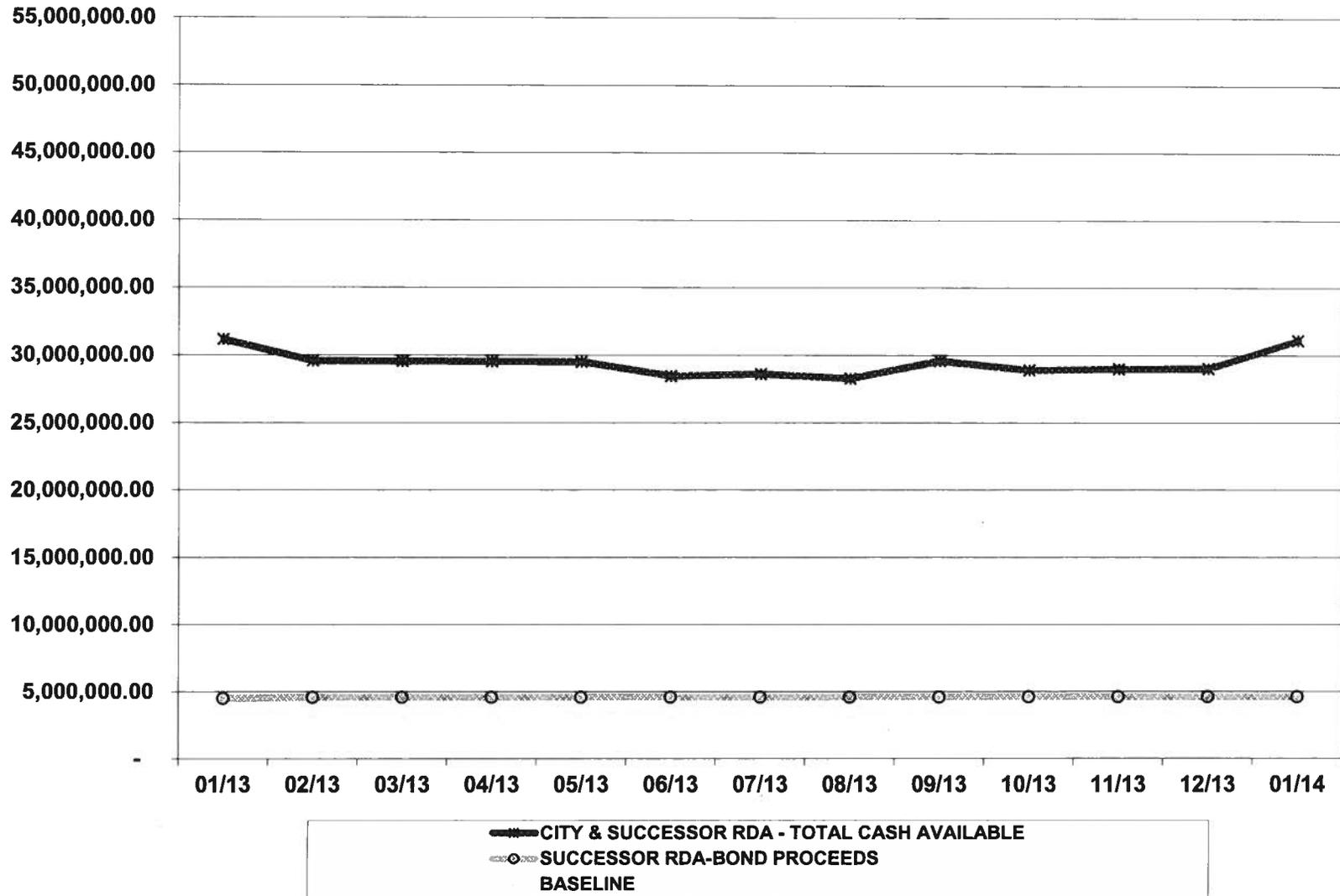
**PREVIOUS MONTH** **29,021,014.61**

**CHANGE +/-** **\$ 2,084,431.14**

All investments are in accordance with the City Investment Policy, and as such, sufficient funds are available to meet the cash flow requirements of Loma Linda, including the next thirty days' obligations. City and Agency funds are pooled.

  
Treasurer

**CITY OF LOMA LINDA  
MONTHLY TREASURER'S REPORT 01/13 - 01/14**





# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilmember  
Phillip Dupper, Councilmember  
John Lenart, Councilmember

COUNCIL AGENDA: March 11, 2014  
TO: City Council  
VIA: T. Jarb Thaipejr, City Manager  
FROM: Jeff Bender, Fire Chief *JB*  
SUBJECT: February Fire Department Activity Report

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## Operations Division

The Fire Department's Operations Division responded to **320** incidents in February 2014.

The alarm types are broken down as follows:

Fire & Rescue	Month		YTD	
Medical Aid (MA)	205	64.1%	421	62.5%
Traffic Collision (TC)	26	8.1%	36	5.3%
<i>MA + TC</i>	<b>231</b>	<b>72.2%</b>	<b>457</b>	<b>67.8%</b>
Hazardous Conditions	3	0.9%	5	0.7%
Hazardous Material	0	0.0%	0	0.0%
Mutual/Automatic Aid	29	9.1%	55	8.2%
Public Assistance	20	6.3%	33	4.9%
Rescue	3	0.9%	4	0.6%
Structure Fire	7	2.2%	10	1.5%
Vegetation Fire	0	0.0%	0	0.0%
Vehicle Fire	0	0.0%	0	0.0%
Refuse Fire	0	0.8%	3	0.4%
<i>All Fires</i>	<b>7</b>	<b>2.2%</b>	<b>13</b>	<b>1.9%</b>
Other	10	3.1%	52	7.7%
Fire Alarm Activation*	17	5.3%	55	8.2%

\*Note: Includes accidental activation, burnt food, good intent, system malfunction, malicious, etc.

## Training Division Highlights:

- EMS, continuing education – Pediatric Trauma
- Multi Company drill at Station 211
- 6 month written and manipulative testing, Rookie FFPM Gregory

## Public Education/Relations Detail:

- First Aid/Safety briefing for Loma Linda baseball coaches and board members
- Participate in annual MDA Fill the Boot fundraising program
- Valentine's Day luncheon at Emeritus on Van Leuven
- Fire/Water safety presentation at Mission Elementary as part of the Sheriff's Department KidsWatch program
- Static Display of antique apparatus for Chase Bank's grand opening ribbon cutting ceremony
- Read to children at Mission Elementary in support of "Read Across America Day"

**SUBJECT: February 2014 Fire Department Activity Report Continued**

**Fire Prevention Division:**

The Fire Departments Prevention Division monthly activity report is as follows:

Certificate Of Occupancy Inspection	2
Commercial UL-300 Hood Inspections	
Commercial UL-300 Hood Inspections 6 mo. Cert.	
Construction Site Inspection	8
Fire Alarm System Test & Inspection (# of trips)	4
Fire Building Final Inspection	2
Fire Flow Test (Hydrant Testing)	2
Fire Sprinkler Final – Commercial	
Fire Sprinkler Final – Residential	
Fire Sprinkler Rough – Commercial	3
Fire Sprinkler Rough – Residential	
Fire Underground – Inspection, test, flush	18
Five Year FS System Certification – Observe Flush	
Knox Box Inspection	3
New Tenant Inspection	
Over-Head Hydro – Commercial	
Over-Head Hydro – Residential	
Plan Check Review / Project Review (hours)	16
Smoke Alarm Check / Installed For Resident	
Solar Panel Inspection	14
EOC Training or Activation (hours)	
Evacuation / Fire Drills, LLUMC, Schools	
Fire Code Research (hours)	11.5
Meetings	6
Public Education (hours)	
Public Hearings / Council Meetings	2
Training Classes (hours)	10
Annual Fire Inspections	18
Engine Co. Computer / RMS (Hours)	6.5
Engine Company Follow-up Inspection (hours)	
Field Investigation / Inquiries	6
Fire / Arson / Illegal Burn Investigation (hours)	
Special Events – July 4 <sup>th</sup> Fireworks Patrol	
State Fire Marshal Permits Issued	
State Fire Marshal Title 19 Inspections: RCF's	18
Weed Abatement Administrative Time (hours)	
Weed Abatement, Parcels Inspected	



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: March 11, 2014

TO: City Council

FROM: T. Jarb Thaipejr, Public Works Director/City Engineer *T.J.T.*

SUBJECT: Request for City Utility Services to 26769 Bermudez Street and Approve an Irrevocable Pre-Annexation Agreement to the City of Loma Linda (Charles McKinsty).

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## **RECOMMENDATION:**

It is recommended that the City Council approve the subject irrevocable pre-annexation agreement, then, upon recordation, allow the City provided utility services to 26769 Bermudez Street.

## **BACKGROUND:**

City policy allows utility services, based on availability, to be provided outside the corporate City limits. As a condition of approval, the property owner must enter into a pre-annexation agreement as processed through the Local Agency Formation Commission (LAFCO). The property owner must agree to have the subject property annexed into the City at such time as annexation is proposed.

## **ANALYSIS:**

This request is to connect to the existing water mainline. Any and all cost associated with the extension of services shall be borne by the applicant. All construction required to extend services shall be to City standards and under permit. There is capacity available within the existing systems to service this parcel.

## **FINANCIAL:**

None

Recording Requested By And  
When Recorded Mail To:

City Clerk  
City of Loma Linda  
25541 Barton Road  
Loma Linda, CA 92354

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AN IRREVOCABLE AGREEMENT  
TO ANNEX TO THE CITY OF LOMA LINDA

(APN 0239-091-01,03, 06, 07)

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_,  
between Southern California Conference of Seventh Day Adventists hereinafter referred to as  
"owner," and the City of Loma Linda, hereinafter referred to as "City."

WHEREAS, owner is the legal property owner of the real property consisting of  
approximately 8.1 acres, located 26769 Bermudez Street Redlands; also referenced as San  
Bernardino County Tax Assessor Parcel No. 0293-091-01, 03, 06, 07, shown as Exhibit "A"  
attached and more fully described in Exhibit "B" attached; and

WHEREAS, the subject property is within the unincorporated area of San Bernardino  
County, which is a part of the City of Loma Linda Sphere of Influence; and

WHEREAS, owner has an urgent need to connect to and utilize the City of Loma Linda  
water system; said system otherwise being available only to properties within the City of Loma  
Linda corporate limits; and

WHEREAS, owner is desirous of annexing to the City of Loma Linda; and

WHEREAS, the City of Loma Linda is willing to consent to the connection of said  
property to the water main only on the condition that the property be annexed to the City of Loma  
Linda at the earliest possible time; and

WHEREAS, the City of Loma Linda intends to pursue annexation of owner's property plus  
other property, but said annexation will cause delay, which delay would create a substantial  
hardship for owners of the said property; and

WHEREAS, the agreements, conditions and covenants contained herein are made for the  
direct benefit of the land subject to this Agreement and described herein, and shall create an  
equitable servitude upon the land and operate as a covenant running with the land, for the benefit  
of the owner of the land and his heirs, successors, and assigns;

NOW, THEREFORE, the parties do agree as follows:

1. Owner does hereby give his irrevocable consent to annex to the City of Loma Linda  
at such time as the annexation may be properly approved through appropriate legal proceedings,  
and owner does further agree to provide all reasonable cooperation and assistance to the City in the  
annexation proceedings. Said cooperation is contemplated to include signing any applications of  
consent, prepared by the City, and submitting any evidence reasonably within the control of owner

to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of owner to institute any litigation or judicial proceeding whatsoever to force annexation to the City of Loma Linda.

2. The City of Loma Linda does hereby agree to authorize the connection of said property, proposed to be developed on owner's property, to the water main located in Barton Road and New Jersey Street (name of street). Said connection to the water main shall be permitted by the City at such time as all applicable permits have been obtained and associated fees have been paid.

3. Owner agrees to pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City.)

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the water, and owners agree to be bound by all City ordinances, rules and regulations respecting the water system.

5. This Agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

6. Owner shall install any and all future improvements upon said property to the City's standards, except that County standard(s) shall apply when more restrictive than City standard(s).

7. Owner shall execute the Agreement on behalf of himself, his heirs, successors and assigns; and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit to the subject property will inure to the benefit of subsequent owners, their heirs, successors, and assigns, and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

OWNERS

CITY OF LOMA LINDA

Charles McKinstry  
Charles McKinstry

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Pamela Byrnes-O-Camb, City Clerk

The Mayor and City Clerk of the City of Loma Linda have been authorized to execute this Agreement on behalf of the City of Loma Linda at a regularly held meeting of the City Council held on \_\_\_\_\_.

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On 2/26/14 before me, Richard Harrison, Notary Public  
(Here insert name and title of the officer)

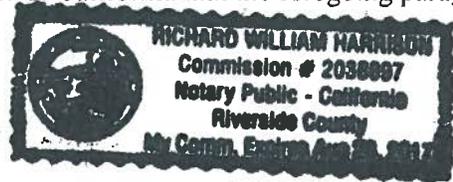
personally appeared Charles McKinstry

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.

*Richard Harrison*  
Signature of Notary Public



(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Agreement to Amend to Loan Note  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages 2 Document Date \_\_\_\_\_

\_\_\_\_\_  
(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer  
VP  
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

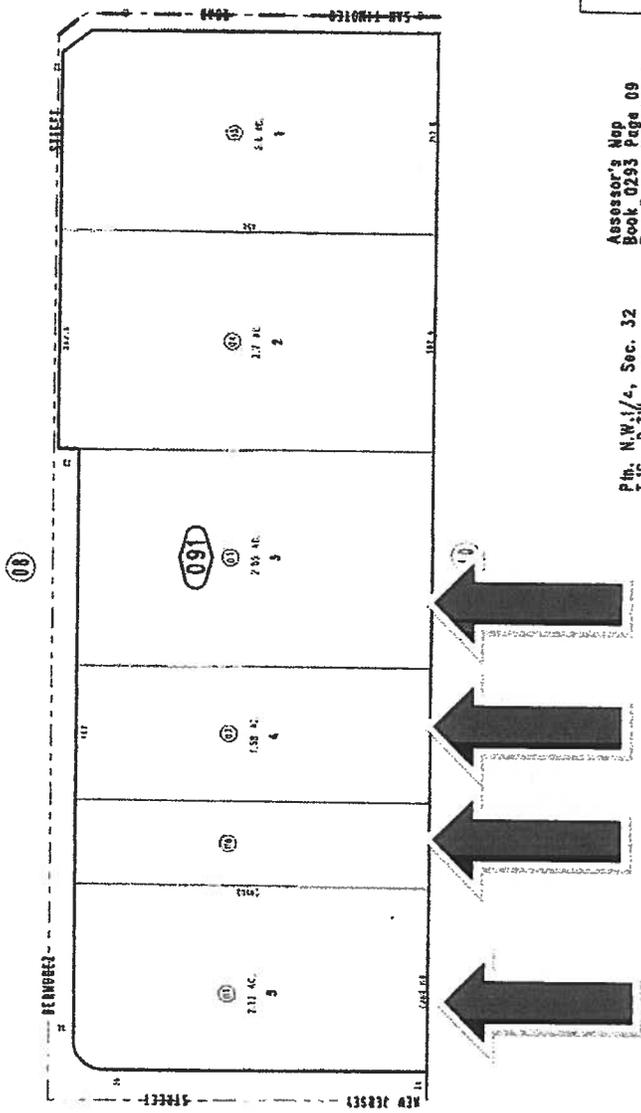
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT "A"

Pin. Mrs. Bermudez Survey  
M.B. 13/35

Redlands Unified  
Tax Rate Area  
104031 0293-09

THIS MAP IS FOR THE PURPOSE  
OF ASSESSOR'S MAP ONLY



REVISED  
06/15/04 85-04  
07/27/04 85-04  
07/27/04 85-04

Assessor's Map  
Book 0293 Page 09  
San Bernardino County

P4h, N.W. 1/4, Sec. 32  
T.15S., R.3W.

February 2004

This map should be used for reference purposes only. No liability is assumed for the accuracy of the data shown. Parcels may not comply with local subdivision or building ordinances.



BARTON RD.

NEW JERSEY ST.

SAN TIMOTEO CANYON RD.

BERMUDEZ ST.

ROMERO RD.



NOT TO SCALE

## EXHIBIT "B"

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

**Parcel 1:**

All of Lot 5 and all of Lot 4, except the East 162, according to plat showing Mrs. Bermudez Survey, in the County of San Bernardino, State of California, as per map recorded in Book 13, Page 35 of Maps, in the office of the County Recorder of said County.

Assessor's Parcel Number: 0239-092-01-0-000 and 0239-092-06-0-000

**Parcel 2:**

The East 162 feet of Lot 4, according to plat showing Mrs. Bermudez Survey, in the County of San Bernardino, State of California, as per map recorded in Book 13, Page 35 of Maps, in the office of the County Recorder of said County.

Assessor's Parcel Number: 0293-091-07-0-000

**Parcel 3:**

Lot 3, according to plat showing Mrs. Bermudez Survey, in the County of San Bernardino, State of California, as per map recorded in Book 13, Page 35 of Maps, in the office of the County Recorder of said County.

Assessor's Parcel Number: 0293-091-03-0-000



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

Approved/Continued/Denied By City Council Date _____
--

COUNCIL AGENDA: March 11, 2014

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director *T. J. T.*

SUBJECT: Request to Accept \$5,000 from Republic Services and Appropriate the Funds to be Expended towards the Community Garden Program

## **RECOMMENDATION**

It is recommended that the City Council accept the funds of \$5,000 from Republic Services and appropriate to expense account, 01-3610-1870, to assist in revitalizing the Community Garden program on Van Leuven Street.

## **BACKGROUND**

As part of the franchise agreement, Republic Services annually allocates incentive funds to the City to be used towards improving existing solid waste/recycling programs or towards new sustainable programs.

In 2012, due to State budget cuts, the City was forced to shut down two community gardens. This year, Healthy Loma Linda coalition group is working to revitalize one of the Community Gardens through community donations and volunteer services. The City is interested in partnering with Healthy Loma Linda to achieve this goal by appropriating this year's incentive funds from Republic Services towards the reestablishment of the Community Garden.

## **ANALYSIS**

Reopening of the Community Garden will be an enhancement to Loma Linda. The Garden will provide a sense of community and connection to the environment; provide individuals and families living in multifamily units the opportunity to plant their own flower or vegetable gardens; and provide to healthier eating.

## **FINANCIAL IMPACT:**

Increase revenue account 01-9804 by \$5,000 and appropriate \$5,000 into expenditure account no. 01-3610-1870, Materials and Services.



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: March 12, 2014  
TO: City Council  
VIA: T. Jarb Thaipejr, City Manager  
FROM: Konrad Bolowich, Assistant City Manager  
SUBJECT: Council Bill # O-2014-05

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## **RECOMMENDATION**

It is recommended that the City Council:

- a. Waive reading of Council Bill # O-2014-05 in its entirety;
- b. Direct the Clerk to read by title only;
- c. Adopt the proposed ordinance on roll call vote.

## **BACKGROUND**

On February 26, 2014, the City Council held a public hearing and adopted the Mitigated Negative Declaration and Mitigation Monitoring Report, approved Conditional Use Permit No. 13-028, Precise Plan of Design No. 14-12, Tentative Parcel Map No. 13-038, and Variance No. 13-054 for the subject site located on the west side of Mountain View Avenue, at the intersection of Mountain View Avenue, the I-10 Freeway (east-bound Mountain View off-ramp), and Rosewood Drive.

Development of the site includes a gasoline service station, with a fueling canopy, a convenience store with attached automated drive-thru car wash, and a 75-foot freestanding freeway sign. The City Council also introduced the proposed ordinance (SP 13-037) that would amend the East Valley Corridor Specific Plan (EVCSP) for the subject site from EVC-Single Family Residential to EVC-General Commercial and set the Second Reading for this date.

## **ATTACHMENT**

- Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA AMENDING THE EAST VALLEY CORRIDOR SPECIFIC PLAN FROM EAST VALLEY CORRIDOR – SINGLE FAMILY RESIDENTIAL TO EAST VALLEY CORRIDOR GENERAL COMMERCIAL FOR PARCELS ON THE NORTH SIDE OF ROSEWOOD DRIVE, WEST OF MOUNTAIN VIEW AVENUE (SPECIFIC PLAN AMENDMENT NO. 13-037)

WHEREAS, the City Council of the City of Loma Linda adopted the East Valley Corridor Specific Plan (EVCSP) on September 12, 1989; and

WHEREAS, from time to time, amendments are made to the EVCSP pursuant to findings peculiar to the specific amendment requests; and

WHEREAS, the City Council has received a request to amend certain properties within the EVCSP from East Valley Corridor (EVC) – Single Family Residential to EVC – General Commercial per Exhibit “A” attached hereto and made a part hereof:

Parcels 0281-251-01, -02, -03, -04, and 0281-242-12, -29 generally described as lying on the north side of Rosewood Drive, west of Mountain View Avenue.

THE CITY COUNCIL OF THE CITY OF LOMA LINDA DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** The Land Use District Map, showing the boundaries of the land use districts and plan area, is hereby amended as per Exhibit “A” attached hereto and made part hereof for property on the north side of Rosewood Drive, and generally west of Mountain View Avenue;

**Section 2. Validity.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such holding or holdings shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 3. Posting.** Prior to the expiration of fifteen (15) days from its passage, the City Clerk shall cause this Ordinance to be posted pursuant to law in three (3) public places designated for such purpose by the City Council.

This Ordinance was introduced at the regular meeting of the City Council of the City of Loma Linda, California, held on the 25<sup>th</sup> day of February 2014 and was adopted on the \_\_\_ day of March 2014 by the following vote to wit:

Ayes:  
Noes:  
Abstain:  
Absent:

---

Rhodes Rigsby, Mayor

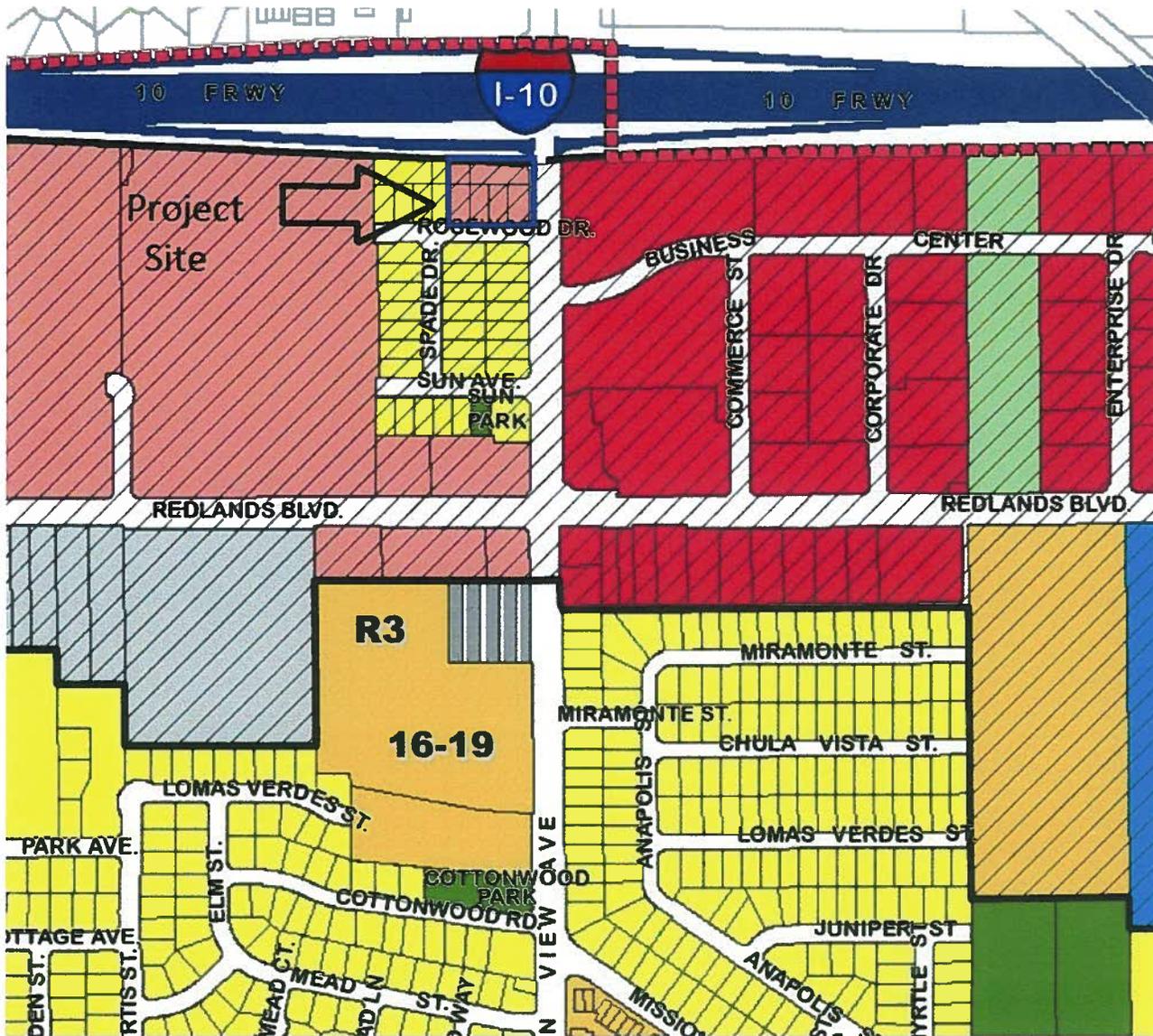
Attest:

---

Pamela Byrnes-O'Camb, City Clerk

# EXHIBIT A

## Zoning/Specific Plan Map



**Zoning Legend**

- City Sphere of Influence
- CITY HALL / CORP YARD
- INSTITUTIONAL (I)
- ADMIN. PROFESSIONAL OFFICES (AP)
- NEIGHBORHOOD BUSINESS (C1)
- GENERAL BUSINESS (C2)
- COMMERCIAL MANUFACTURING (CM)
- COMMERCIAL INDUSTRIAL
- RESTRICTED MANUFACTURING (MR)
- SINGLE RESIDENCE (R1)
- DUPLEX (R2)
- MULTI FAMILY RESIDENCE (R3)
- MOBILEHOME PARK (R4)
- AGRICULTURAL (A1)
- PLANNED COMMUNITY (PC)
- PARK
- PARK - OPEN SPACE
- HILLSIDE

RS ————— SINGLE FAMILY RESIDENTIAL  
 2500-RM ————— MULTI-FAMILY RES. 15 DU MAX.  
 IC ————— COMMERCIAL INDUST.  
 CG ————— GENERAL COMMERCIAL  
 SD ————— SPECIAL DEVELOPMENT  
 PI ————— PUBLIC INSTITUTIONAL

**East Valley Corridor Legend**

- EAST VALLEY CORRIDOR
- EVC-INSTITUTIONAL
- EVC-GENERAL BUSINESS
- EVC-GENERAL COMMERCIAL
- EVC-COMMERCIAL INDUSTRIAL
- EVC- SINGLE FAMILY RESIDENTIAL
- EVC-MULTI FAMILY RESIDENCE
- EVC-SPECIAL DEVELOPMENT

— FAULT LINES  
 — CITY LIMITS

0 358 716 1,432 2,148 2,864 Feet



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: March 12, 2014  
TO: City Council  
VIA: T. Jarb Thaipejr, City Manager  
FROM: Konrad Bolowich, Assistant City Manager  
SUBJECT: Council Bill # O-2014-06

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## **RECOMMENDATION**

It is recommended that the City Council:

- a. Waive reading of Council Bill # O-2014-06 in its entirety;
- b. Direct the Clerk to read by title only;
- c. Adopt the proposed ordinance on roll call vote.

## **BACKGROUND**

On February 26, 2014, the City Council held a public hearing and adopted the Mitigated Negative Declaration and Mitigation Monitoring Report, approved Conditional Use Permit No. 13-028, Precise Plan of Design No. 14-12, Tentative Parcel Map No. 13-038, and Variance No. 13-054 for the subject site located on the west side of Mountain View Avenue, at the intersection of Mountain View Avenue, the I-10 Freeway (east-bound Mountain View off-ramp), and Rosewood Drive.

Development of the site includes a gasoline service station, with a fueling canopy, a convenience store with attached automated drive-thru car wash, and a 75-foot freestanding freeway sign. The City Council also introduced the proposed ordinance (ZC 14-011) that would amend the Zoning Map for the subject site from EVC - Single Residential to EVC - General Commercial and set the Second Reading for this date.

## **ATTACHMENT**

- Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF LOMA LINDA FROM CITY ZONING EAST VALLEY CORRIDOR SPECIFIC PLAN – SINGLE FAMILY RESIDENTIAL, TO EAST VALLEY CORRIDOR SPECIFIC PLAN – GENERAL COMMERCIAL FOR PARCELS ON ROSEWOOD DRIVE WEST OF MOUNTAIN VIEW AVENUE (ZONE CHANGE NO. 14-011)

**Section 1. Adoption of Ordinance.** The City Council of the City of Loma Linda, California, does hereby ordain the following:

**Section 2. Statement of Intent.** It is the purpose of the Ordinance to amend various zoning designations in this City and adopt a revised Zoning Map.

**Section 3. Amendment of Zoning Designations.** The zoning of the City of Loma Linda is hereby amended to change the following described property within the City of Loma Linda from City Zoning East Valley Corridor Specific Plan – Single Family Residential (EVC-SFR) to City Zoning East Valley Corridor Specific Plan – General Commercial (EVC – GC) per Exhibit “A” attached hereto and made a part hereof:

Parcels 0281-251-01, -02, -03, -04, and 0281-242-12, 29 generally described as lying on the north side of Rosewood Drive, west of Mountain View Avenue.

**Section 4. Validity.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such holding or holdings shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 5. Posting.** Prior to the expiration of fifteen (15) days from its passage, the City Clerk shall cause this Ordinance to be posted pursuant to law in three (3) public places designated for such purpose by the City Council.

This Ordinance was introduced at the regular meeting of the City Council of the City of Loma Linda, California, held on the 25<sup>th</sup> day of February, 2014 and was adopted on the \_\_\_ day of \_\_\_ 2014 by the following vote to wit:

Ayes:  
Noes:  
Abstain:  
Absent:

---

Rhodes Rigsby, Mayor

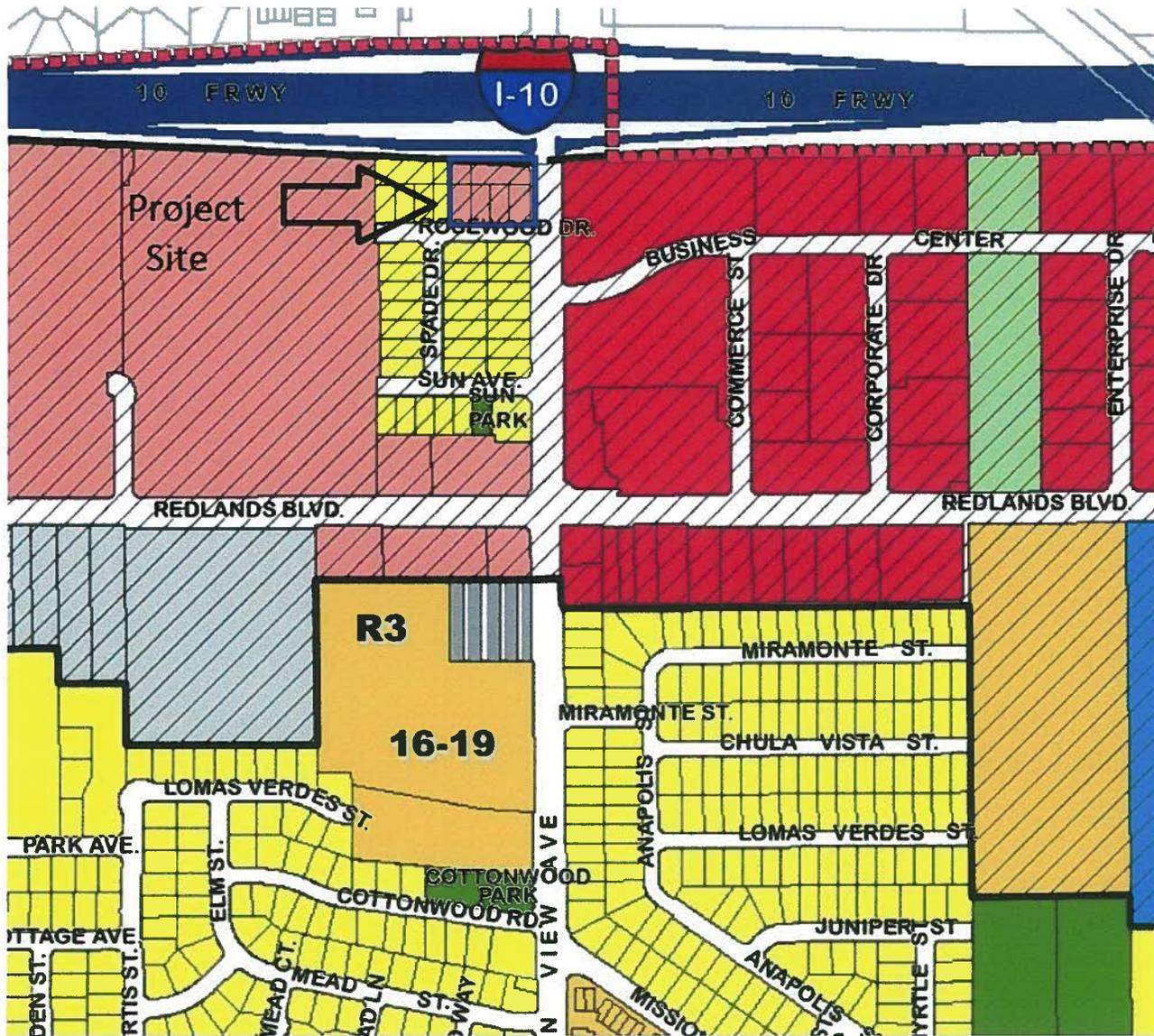
Attest:

---

Pamela Byrnes-O'Camb, City Clerk

# EXHIBIT A

## Zoning/Specific Plan Map



**Zoning Legend**

- City Sphere of Influence
- CITY HALL / CORP YARD
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- EVC-MULTI FAMILY RESIDENCE
- EVC-SPECIAL DEVELOPMENT

— FAULT LINES  
 — CITY LIMITS

0 258 750 1,420 2,130 2,840 Feet



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: Property exchange between The City of Loma Linda and Sagemont LLC

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

TO: City Council

FROM: Konrad Bolowich, Assistant City Manager

SUBJECT: Property exchange between The City of Loma Linda and Sagemont LLC

## **RECOMMENDATION**

It is recommended that the City Council approve an agreement with Sagemont LLC to exchange approximately 75,000 sf of undeveloped landlocked property located near Richardson Street and Interstate 10 for approximately 64,000 sf of accessible property adjacent to an existing City owned lot on Richardson St.

## **BACKGROUND**

The City owns a parcel of approximately 77,000 sf at the intersection of Richardson St. and Interstate 10 (APN 0281-162-31). 2,000 sf of the site is dedicated to a City well site, and leased cellular facilities. The remainder of the site is landlocked and has limited access adjacent roadways.

Sagemont LLC owns a highly irregularly shaped parcel (APN 0281-152-37), and one undevelopable parcel (APN 0281-162-38) between Redlands Blvd. and Interstate 10, abutting the existing motorcycle dealership in the west, and extending in irregular extensions to Richardson St to the east. The majority of the site is entitled for a Holiday Inn Express Hotel.

Both of the exchange sites are undevelopable in their current configuration.

## **ANALYSIS**

On December 9, 2013 Benefiel Appraisal Service made an assessment of the relative values of the properties to be exchanged and concluded that the “the parcels are essentially equal in value with any difference being nominal”

The exchanged properties would allow each party to create lots having the potential to be developed for projects in the future. Sagement LLC has expressed interest in developing a second hospitality use on the site. The City has the opportunity to use the site for municipal services, or to dispose of the site for future development.

### **ENVIRONMENTAL**

There is no environmental impact

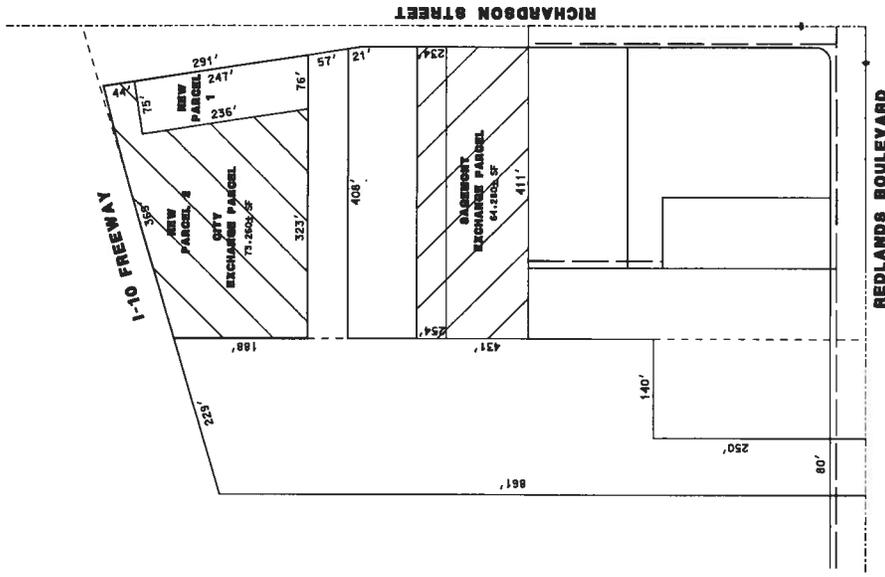
### **FINANCIAL IMPACT**

The proposed cost is estimated at \$5,000.00 for City's portion of title insurance.

This is an unbudgeted cost and would have to be appropriated from reserves to account number 01-1940-1860

#### Attachments:

- 1 Exchange Parcels
- 2 Existing and Proposed parcel Ownership
- 3 Appraisal Letter



PROPOSED PARCEL EXCHANGE

**Goodman & Associates**  
 6000 W. 10th Street, Suite 100  
 Los Angeles, CA 90024  
 (310) 551-1111

Prepared by: [Signature]  
 Checked by: [Signature]  
 Date: [Date]

PLANS PREPARED UNDER THE SUPERVISION OF  
 [Signature]  
 P.L.C.E. 00000

CITY OF LOMA LINDA  
 PROPOSED LAND EXCHANGE  
 HOLIDAY INN EXPRESS LOMA LINDA  
 REDLANDS BLVD., LOMA LINDA, CA 92384

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

APPROVED: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)

DATE: \_\_\_\_\_  
 DIRECTOR OF PUBLIC WORKS / CITY ENGINEER (SEE CITY)



**BENEFIEL APPRAISAL SERVICE**  
*Real Estate Appraisers & Consultants*

December 12, 2013

Mr. Konrad Bolowich  
Assistant City Manager  
City of Loma Linda  
25541 Barton Road  
Loma Linda, CA 92354

Dear Mr. Bolowich:

At your request and authorization, I have reviewed the proposed parcel swap as outlined in your communication of December 9, 2013

It is my opinion the parcels are essentially equal in value with any difference being nominal. The City's advantage is to acquire a parcel with better frontage on Richardson Street while < > picks ups some additional freeway visibility.

Please let me know if I can be of any further assistance.

Respectfully submitted,  
*Benefiel Appraisal Service*



Jey E. Younger, III  
Certified General Real Estate Appraiser

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA APPROVING AN AGREEMENT FOR THE EXCHANGE OF CERTAIN PROPERTY BY AND BETWEEN THE CITY OF LOMA LINDA AND SAGEMONT – LOMA LINDA, LLC**

**WHEREAS**, the City of Loma Linda (“City”) is a chartered city organized and operating under its city charter (the “Charter”) and the laws of the State of California; and

**WHEREAS**, Sagemont – Loma Linda, LLC, a California limited liability company (“Sagemont”) has proposed to the City that, pursuant to an agreement substantially in the form submitted herewith (the “Exchange Agreement”), Sagemont will deed to the City certain property identified therein as the “Developer Exchange Parcel” and the City will deed to Sagemont certain property identified therein as the “City Exchange Parcel”; and

**WHEREAS**, the City Exchange Parcel is surplus to the needs of the City and the needs of the City can be better addressed by obtaining the Developer Exchange Parcel; and

**WHEREAS**, the Developer Exchange Parcel is not needed by Sagemont and Sagemont desires to obtain ownership of the City Exchange Parcel to further its business purposes; and

**WHEREAS**, the Exchange Agreement does not obligate Sagemont to undertake improvements to any property; and

**WHEREAS**, the City has obtained advice from an independent real estate appraiser, a copy of which is on file with the City, which has determined that the City Exchange Parcel and the Developer Exchange Parcel are of equal value; and

**WHEREAS**, in that the Exchange Agreement provides for an exchange of properties without payment of cash consideration, the City will not be transferring an asset for less than a fair market price within the meaning of Section 1720(b)(3) of the California Labor Code; and

**WHEREAS**, a copy of the Exchange Agreement, together with a report describing the proposed transaction, has been on file with the City Clerk as a public record; and

**WHEREAS**, a public meeting of the City Council on the proposed Exchange Agreement was duly noticed; and

**WHEREAS**, the proposed Exchange Agreement, and a staff report have been available for public inspection prior to the public meeting; and

**WHEREAS**, all actions required by all applicable laws with respect to the proposed Exchange Agreement have been taken in an appropriate and timely manner; and

**WHEREAS**, the City Council has duly considered all of the terms and conditions of the proposed Exchange Agreement and believes that the Exchange Agreement is in the best interests

of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMA LINDA DOES RESOLVE AS FOLLOWS:**

**Section 1.** The City Council hereby finds and determines that: (i) each statement set forth in the Recitals hereto is true and correct; (ii) the value of the City Exchange Parcel is equal to the value of the Developer Exchange Parcel; (iii) under the Exchange Agreement, the City will not be transferring an asset for less than a fair market price within the meaning of Section 1720(b)(3) of the California Labor Code; and (iv) the exchange of the City Exchange Parcel for the Developer Exchange Parcel will be a fair value exchange with no financial assistance being provided by the City to the Developer.

**Section 2.** The City Council hereby approves the Exchange Agreement in substantially the form presented to the City Council, subject to such revisions as may be made by the City Manager or his designee. The City Manager is hereby authorized to execute the Exchange Agreement (including without limitation all attachments thereto) on behalf of the City. A copy of the Exchange Agreement when executed by the City shall be placed on file in the office of the City Clerk.

**Section 3.** The City Manager is hereby authorized, on behalf of the City, to make revisions to the Exchange Agreement which do not increase any amounts to be paid by the City or materially or substantially increase the City's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Exchange Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Exchange Agreement and related documents.

**PASSED and ADOPTED** this \_\_\_th day of \_\_\_\_\_, 2014 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

---

Rhodes Rigsby, Mayor

ATTEST:

---

Pamela Byrnes-O'Camb, City Clerk

**AGREEMENT FOR THE EXCHANGE OF CERTAIN  
PROPERTY**

By and Between the

**CITY OF LOMA LINDA**

and

**SAGEMONT - LOMA LINDA, LLC**  
a California limited liability company

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**ATTACHMENTS**

Attachment No. 1	Site Map
Attachment No. 2	City Exchange Parcel Deed
Attachment No. 3	Developer Exchange Parcel Deed

**AGREEMENT FOR THE EXCHANGE OF CERTAIN PROPERTY**

This **AGREEMENT FOR THE EXCHANGE OF CERTAIN PROPERTY** (the “Agreement”) is entered into as of March 11, 2014, by and between the **CITY OF LOMA LINDA**, a chartered municipal corporation (the “City”) and **SAGEMONT - LOMA LINDA, LLC**, a California limited liability company (the “Developer”).

*RECITALS*

The following recitals are a substantive part of this Agreement:

**A.** The City holds title to certain real property, consisting of approximately one acre, as shown on the Site Map as the “City Exchange Parcel” and more fully described in Attachment No. 2 hereto. The City Exchange Parcel is surplus to the needs of the City, does not substantially advance the interests of the City, and is less useful to the City than the “Developer Exchange Parcel” (as described below).

**B.** The Developer holds title to certain real property, consisting of approximately one acre, as shown on the Site Map as the “Developer Exchange Parcel” and more fully described in Attachment No. 3 hereto. The Developer Exchange Parcel is surplus to the needs of the Developer, does not substantially advance the interests of the Developer, and is less useful to the Developer than the City Exchange Parcel.

**C.** The City Exchange Parcel and the Developer Exchange Parcel have substantially equivalent market values.

**D.** The City and the Developer have determined that it is their respective interests to effect an exchange of the City Exchange Parcel for the Developer Exchange Parcel on the terms and conditions as more fully set forth in this Agreement.

**E.** The conveyance of the City Exchange Parcel to the Developer in exchange for the acquisition by City of the Developer Exchange Parcel pursuant to the terms of this Agreement, is in the vital and best interest of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws.

**NOW, THEREFORE**, the City and the Developer hereby agree as follows:

**100. DEFINITIONS.**

“*Adverse Litigation*” means any litigation (including without limitation the filing of a claim) concerning (i) the Agreement, (ii) the subject matter of the Agreement, or (iii) the land use approvals, zoning classifications, or environmental process with respect to the City Exchange Parcel, the Developer Exchange Parcel or the Agreement.

“*Agreement*,” as defined in the first paragraph hereof, means this Agreement for the Exchange of Certain Property by and between the City and the Developer.

“*Best Knowledge*” is defined in Section 212.1 hereof.

“City”, as defined in the first paragraph hereof, means the City of Loma Linda, a chartered municipal corporation.

“City Conditions Precedent” means those conditions precedent to the recording of the Developer Exchange Parcel Deed, set forth in Section 205.1 hereof.

“City Exceptions” has the meaning established therefor in Section 203(b).

“City Exchange Parcel Deed” means a grant deed for conveyance of the City Exchange Parcel in the form of Attachment No. 2.

“City Exchange Parcel” means that certain property described in Exhibit A to the City Exchange Parcel Deed.

“City Exchange Parcel Legal Description” means the description of the City Exchange Parcel which is attached hereto as Attachment No. 2.

“City Exchange Parcel Title Policy” is defined in Section 204 hereof.

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

“Closing” means the recording among the official land records of the County of the City Exchange Parcel Deed and the Developer Exchange Parcel Deed.

“County” means the County of San Bernardino, California.

“Date of Agreement” means the date first above written [which shall be the date this Agreement is approved by the City].

“Deadline” means May 1, 2014.

“Default” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

“Determination Date” means the thirtieth (30<sup>th</sup>) day after the Date of Agreement.

“Developer” means Sagemont - Loma Linda, LLC, a California limited liability company.

“Developer Conditions to Closing” means those conditions to the recording of the Developer Exchange Parcel Deed, as set forth in Section 205.2.

“Developer Exceptions” has the meaning established therefor in Section 203(a).

“Developer Exchange Parcel” means that certain property described in Exhibit A to the Developer Exchange Parcel Deed.

“Developer Exchange Parcel Deed” means a grant deed for conveyance of the Developer Exchange Parcel in the form of Attachment No. 3.

*“Developer Exchange Parcel Title Policy”* is defined in Section 204(b) hereof.

*“Environmental Consultant”* means a company having experience in evaluating soils and other site conditions.

*“Escrow”* means the escrow for the exchange of properties as described in Section 202.

*“Escrow Holder”* means Ticor Title Company of California or another mutually acceptable escrow holder.

*“Exceptions”* means the exceptions to Title, as set forth in Section 203 hereof.

*“Governmental Requirements”* means all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, the City, or any other political subdivision in which the City Exchange Parcel is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Developer or the Site.

*“Hazardous Material”* or *“Hazardous Materials”* means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those product and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a

significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

*“Legal Description of the City Exchange Parcel”* means the description of the City Exchange Parcel which appears as Exhibit A to the City Exchange Parcel Deed.

*“Legal Description of the Developer Exchange Parcel”* means the description of the Developer Exchange Parcel which appears as Exhibit A to the Developer Exchange Parcel Deed.

*“Materially Adverse Conditions”* are surface or subsurface conditions of the City Exchange Parcel or the Developer Exchange Parcel which: (i) are not apparent from a visual inspection of the surface of the City Exchange Parcel or the Developer Exchange Parcel and (ii) (a) include the presence of Hazardous Materials at the City Exchange Parcel or the Developer Exchange Parcel in excess of currently applicable levels permitted under federal or state law, or (b) include the presence of conditions not typically found in properties within the City and which: (i) as to the City Exchange Parcel, a mutually acceptable independent third party geotechnical firm retained by Developer estimates will increase development costs by over Fifty Thousand Dollars (\$50,000.00) and, (ii) as to the Developer Exchange Parcel, the City estimates costs to render the Developer Exchange Parcel suitable for use by the City, would exceed Fifty Thousand Dollars (\$50,000).

*“Municipal Code”* means the Municipal Code of the City of Loma Linda as in effect as of the Date of Agreement and as amended from time to time.

*“Notice”* means a notice in the form prescribed by Section 501 hereof.

*“Outside Date”* means June 2, 2014.

*“Principals”* means Hiral Patel.

*“Project Area”* means that area designated as the project area in the Redevelopment Plan.

*“Purchase Price”* means One Hundred Five Thousand Dollars (\$105,000.00).

*“Redevelopment Plan”* means the Redevelopment Plan for the Loma Linda Community Redevelopment Project Area as adopted and approved by Ordinance No. 226 of the City of Loma Linda adopted on July 14, 1980 and as subsequently amended.

*“Site Map”* means Attachment No. 1.

*“Studies”* means the studies and investigations which are conducted pursuant to Section 207 hereof.

*“Title Company”* means Ticor Title Company of California or another mutually acceptable title insurer.

**200. CONVEYANCES OF THE CITY EXCHANGE PARCEL AND THE DEVELOPER EXCHANGE PARCEL.**

201. **Conveyances.** The City agrees to convey to the Developer the City Exchange Parcel in exchange for Developer’s conveyance of the Developer Exchange Parcel to the City in condition

conforming to this Agreement. Each of the City Exchange Parcel and the Developer Exchange Parcel has a value approximately equal to the Purchase Price.

202. **Exchange Escrow.** Within fifteen (15) days after the Date of Agreement, the City shall open an escrow (the “Escrow”) with Escrow Holder for the conveyance of the City Exchange Parcel by the City to the Developer and the conveyance of the Developer Exchange Parcel by the Developer to the City.

202.1 **Costs of Escrow.** City and Developer shall pay their respective portions of the premium for the City Exchange Parcel Title Policy and the Developer Exchange Parcel policy as set forth in Section 204 hereof, the City shall pay for the documentary transfer taxes due with respect to the conveyance of the City Exchange Parcel, the Developer shall pay for the documentary transfer taxes due with respect to the conveyance of the Developer Exchange Parcel, and Developer and City each agree to pay one-half of all other usual fees, charges, and costs which arise from the Escrow.

202.2 **Escrow Instructions.** This Agreement constitutes the joint escrow instructions of Developer and City, and the Escrow Holder to whom these instructions are delivered is hereby empowered to act under this Agreement as to the City Exchange Parcel and the Developer Exchange Parcel and the Developer Exchange Parcel. The parties will reasonably consider such supplemental escrow instructions as may be prepared by Escrow Holder to facilitate the Closing. The parties hereto agree to do all acts reasonably necessary to facilitate timely Closing. Insurance policies for fire or casualty are not to be transferred. All funds received in escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State. All disbursements shall be made by check from such account. The Escrow Holder shall release City’s escrow closing statements as to the City Exchange Parcel to the City and Developer’s escrow closing statements is to the Developer Exchange Parcel to the Developer with a copy to the other party.

202.3 **Authority of Escrow Holder.** Escrow Holder is authorized to, and shall:

(a) Pay and charge the Developer and the City for their respective shares of the premium of the City Exchange Parcel Title Policy and the Developer Exchange Parcel Title Policy and any endorsements thereto as set forth in Section 204 and any amount necessary to place title in the condition necessary to satisfy Section 203 of this Agreement.

(b) Pay and charge Developer and City for their respective shares of any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.

(c) Disburse funds and deliver and record the Developer Exchange Parcel Deed and the City Exchange Parcel Deed when both the Developer Conditions to Closing and the City Conditions Precedent have been fulfilled or waived by Developer and City.

(d) Insert dates and make such edits to escrow instructions as are confirmed by the parties and do such other actions as necessary, including, without limitation, obtaining the City Exchange Parcel Title Policy and the Developer Exchange Parcel Title Policy, to fulfill its obligations under this Agreement.

(e) Within the discretion of Escrow Holder, direct each party to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to

comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Each Party agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Holder, on the form to be supplied by Escrow Holder.

(f) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

202.4 **Termination of Escrow.** If the conveyance of the City Exchange Parcel or the Developer Exchange Parcel is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate the Escrow. If either party makes a written demand for return of documents or properties, the Escrow shall not terminate until five (5) days after Escrow Holder shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Holder is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made and the Escrow Holder is not otherwise instructed by the City, the Escrow Holder shall proceed with the Closing as soon as possible.

202.5 **Closing Procedure.** Escrow Agent shall close the Escrow as follows:

(a) Record the Developer Exchange Parcel Deed and immediately thereafter the City Exchange Parcel Deed (with instructions to deliver the Developer Exchange Parcel Deed to the City and the City Exchange Parcel Deed to the Developer, with a certified copy of each to the other party);

(b) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements; and

(c) Deliver the FIRPTA Certificate, if any, to the grantee in each case;  
and

(d) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into the Escrow, with such recording and filing date and information endorsed thereon.

203. **Review of Title Due Diligence.**

(a) Within thirty (30) days from the Date of Agreement, City shall cause the Title Company to deliver to Developer a standard preliminary title report (the "City Exchange Parcel Preliminary Title Report") with respect to the City Exchange Parcel, together with legible copies of the documents underlying the exceptions ("Developer Exceptions") set forth in the City Exchange Parcel Preliminary Title Report. Developer shall have the right to reasonably approve or disapprove the Developer Exceptions; provided, however, that the Developer herein approves the

Redevelopment Plan and the lien of current non-delinquent special assessments, if any, as acceptable Exceptions.

Developer shall have thirty (30) calendar days from the date of receipt of the City Exchange Parcel Preliminary Title Report pursuant to this Section 203 to give written notice to City of Developer's approval or disapproval of any of such Developer Exceptions. Developer's failure to give written approval of the City Exchange Parcel Preliminary Title Report received by Developer within such time limit shall be deemed to constitute approval of the City Exchange Parcel Title Report, provided that the City has given the Developer (during or at the end of the thirty (30) day period commencing with receipt of the title report) notice of an additional seven (7) calendar days from the later of the end of such thirty (30) day period or the mailing or delivery of such notice. If Developer notifies City of its disapproval of any Developer Exceptions in the City Exchange Parcel Preliminary Title Report, City shall have the right, but not the obligation, to remove any disapproved Developer Exceptions within thirty (30) calendar days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the City Exchange Parcel Closing. If City cannot or in its sole discretion does not elect to remove any of the disapproved Developer Exceptions within that period, Developer shall have fifteen (15) calendar days after the expiration of such thirty (30) calendar day period to either give City written notice that Developer elects to accept conveyance of the City Exchange Parcel and proceed with the development of the City Exchange Parcel subject to the disapproved Developer Exceptions or to give City written notice that the Developer elects to terminate this Agreement. The Developer Exceptions to title approved by Developer as provided herein shall hereinafter be referred to as the "Developer Condition of Title." City shall not voluntarily create any new exceptions to title to the City Exchange Parcel following the Date of Agreement.

(b) Within thirty (30) days from the Date of Agreement, Developer shall cause the Title Company to deliver to City a standard preliminary title report (the "Developer Exchange Parcel Preliminary Title Report") with respect to the Developer Exchange Parcel, together with legible copies of the documents underlying the exceptions ("City Exceptions") set forth in the Developer Exchange Parcel Preliminary Title Report. City shall have the right to reasonably approve or disapprove the City Exceptions; provided, however, that the City herein approves the Redevelopment Plan and the lien of current non-delinquent special assessments, if any, as acceptable Exceptions.

City shall have thirty (30) calendar days from the date of receipt of the Developer Exchange Parcel Preliminary Title Report pursuant to this Section 202 to give written notice to Developer of City's approval or disapproval of any of such City Exceptions. If City notifies Developer of its disapproval of any City Exceptions in the Developer Exchange Parcel Preliminary Title Report, Developer shall use commercially reasonable efforts to remove any disapproved City Exceptions within thirty (30) calendar days after receiving written notice of City's disapproval or provide assurances satisfactory to City that such Exception(s) will be removed on or before the Developer Exchange Parcel Closing. The City Exceptions to title approved by City as provided herein shall hereinafter be referred to as the "City Condition of Title." Developer shall not voluntarily create any new exceptions to title to the Developer Exchange Parcel following the Date of Agreement without City's consent, not to be unreasonably withheld, and shall cause the Developer Exchange Parcel to be free of any loans.

**203.1 Soils Due Diligence.**

(a) Based upon its preliminary review, the Developer believes that the City Exchange Parcel is suitable for the development and use provided under this Agreement, excepting as to the possible presence of Materially Adverse Conditions as to which Developer has not undertaken investigation. City shall provide the Developer access to the City Exchange Parcel for the purposes of this Section 203.1. As described in Section 207 hereof, the Developer shall, prior to the Determination Date, conduct such investigation as to the City Exchange Parcel, including on-site testing, as it deems necessary or appropriate. On or before the Determination Date, the Developer shall notify the City to the following effect: (i) that the Developer has determined that there are not Materially Adverse Conditions on the City Exchange Parcel, or (ii) that there are Materially Adverse Conditions on the City Exchange Parcel and the Developer elects to terminate pursuant to Section 403(iv) hereof unless the City and the Developer agree, within (15) days following the date such notice is received by the City to otherwise resolve such conditions.

(b) Based upon its preliminary review, the Developer believes that the City Exchange Parcel is suitable for the development and use provided under this Agreement, excepting as to the possible presence of Materially Adverse Conditions as to which Developer has not undertaken investigation. City shall provide the Developer access to the City Exchange Parcel for the purposes of this Section 203.1. As described in Section 207 hereof, the Developer shall, prior to the Determination Date, conduct such investigation as to the City Exchange Parcel, including on-site testing, as it deems necessary or appropriate. On or before the Determination Date, the Developer shall notify the City to the following effect: (i) that the Developer has determined that there are not Materially Adverse Conditions on the City Exchange Parcel, or (ii) that there are Materially Adverse Conditions on the City Exchange Parcel and the Developer elects to terminate pursuant to Section 503(iv) hereof unless the City and the Developer agree, within (15) days following the date such notice is received by the City to otherwise resolve such conditions.

**204. Title Insurance.**

(a) Concurrently with and as a condition to Closing, there shall be issued to Developer a CLTA form policy of title insurance (the "City Exchange Parcel Title Policy") in the amount of the Purchase Price which insures the Developer's interest in the City Exchange Parcel, together with such endorsements as are reasonably requested by the Developer, issued by the Title Company, insuring that, upon recordation of the City Exchange Parcel Deed, title to the City Exchange Parcel is held by the Developer in the condition required by Section 203 of this Agreement. The Title Company shall provide City with a copy of the City Exchange Parcel Title Policy. City agrees to remove on or before City Exchange Parcel Closing any deeds of trust against the City Exchange Parcel. City shall pay that portion of the premium for the City Exchange Parcel Title Policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price. Any additional costs, including the incremental additional cost of an ALTA policy or any endorsements requested by the Developer, shall be borne by the Developer.

(b) Concurrently with and as a condition to the Developer Exchange Parcel Closing, there shall be issued to City a CLTA form policy of title insurance (the "Developer Exchange Parcel Title Policy") in the amount of the Purchase Price (the "Developer Exchange Parcel Insurance Amount") which insures the City's interest in the Developer Exchange Parcel, together with such endorsements as are reasonably requested by the City, issued by the Title Company, insuring that, upon recordation of the Developer Exchange Parcel Deed, title to the Developer

Exchange Parcel is held by the City in the condition required by Section 207 of this Agreement. The Title Company shall provide Developer with a copy of the Developer Exchange Parcel Title Policy. Developer agrees to remove on or before the Developer Exchange Parcel Closing any deeds of trust against the Developer Exchange Parcel. Developer shall pay that portion of the premium for the Developer Exchange Parcel Title Policy equal to the cost of a CLTA standard coverage title policy based upon the Developer Exchange Parcel Insurance Amount. Any additional costs, including the incremental additional cost of an ALTA policy or any endorsements requested by the City, shall be borne by the City.

205. **Conditions to Closing.**

205.1 **City Conditions to Closing.** City's obligation to execute the City Exchange Parcel Deed and convey the City Exchange Parcel to Developer and to accept title to the Developer Exchange Parcel is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (g), inclusive, described below ("City Conditions Precedent"), which are solely for the benefit of City, and which shall be fulfilled or waived by the time provided in the Schedule of Performance for satisfaction of the City Conditions Precedent:

(a) **Execution of Documents.** Developer shall have executed and delivered to the Escrow Holder the Developer Exchange Parcel Deed (in connection with Sections 206 and 209 of this Agreement) and any other documents required hereunder for the City Exchange Parcel Closing.

(b) **Payment of Funds.** Prior to the Closing, Developer shall have paid its share of closing costs in connection therewith into the Escrow in accordance with Sections 201 and 202 hereof].

(c) **Title Policies.** The Title Company shall have agreed to issue each of the City Exchange Parcel Title Policy, and the Developer Exchange Parcel Title Policy.

(d) **Environmental Condition.** City shall not have elected to terminate this Agreement pursuant to Section 208.2 hereof and the Clean-up of the City Exchange Parcel (if undertaken by City pursuant to that Section) of the City Exchange Parcel shall have been completed as provided in Section 208.

(e) **Developer Confirmation.** The City shall have received written confirmation from the Developer that the Developer Conditions to Closing have been satisfied or waived, excepting that the requirement for a title policy may not be waived.

(f) **Execution and Delivery of Documents.** The Developer shall have executed and deposited with the Escrow Holder for delivery to the City upon recordation with the San Bernardino County Recorder substantially concurrently with recordation of the City Exchange Parcel Deed, the Developer Exchange Parcel Deed.

(g) **No Default, Representations and Warranties.** Developer shall not be in default in any of its obligations under the terms of this Agreement. All representations and warranties of Developer contained herein shall be true and correct in all material respects on and as of the Closing as though made at that time and all covenants of Developer which are required to be performed prior to the Closing shall have been performed by such date.

205.2 **Developer Conditions to Closing.** Developer's obligation to execute the City Exchange Parcel Deed and accept conveyance of the City Exchange Parcel is subject to the fulfillment (or waiver by Developer) of each and all of the conditions precedent (a) through (f), inclusive, described below ("Developer Conditions to Closing"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **Execution of Documents.** City shall have executed and deposited with the Escrow Holder for delivery to the Developer upon recordation with the San Bernardino County Recorder substantially concurrently with the recordation of the Developer Exchange Property Deed, the City Exchange Parcel Deed, a deed acceptance as to the Developer Exchange Parcel Deed, and any other documents required hereunder with respect to the conveyance of the City Exchange Parcel to the Developer.

(b) **Review and Approval of Title.** Developer shall have reviewed and approved the condition of title as to the City Exchange Parcel, as provided in Section 203 hereof.

(c) **City Exchange Parcel Title Policy.** The Title Company shall have agreed to issue each of the City Exchange Parcel Title Policy and the Developer Exchange Parcel Title Policy.

(d) **Environmental Condition.** Developer shall not have elected to terminate this Agreement pursuant to Section 208.2 hereof, and the Clean-up of the Developer Exchange Parcel (if required pursuant to that Section) of the City Exchange Parcel shall have been completed as provided therein.

(e) **Approval of Studies.** Developer shall not have disapproved the Studies with respect to the City Exchange Parcel pursuant to Section 207 hereof.

(f) **No Default; Representations and Warranties.** City shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of City contained herein shall be true and correct in all material respects.

206. **Representations and Warranties.**

206.1 **City Representations.** City represents and warrants to Developer as follows:

(a) **Authority.** City is a chartered municipal corporation. City has full right, power and lawful authority to convey the City Exchange Parcel and acquire the Developer Exchange Parcel as provided herein and the execution, performance, and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

(b) **Litigation.** To the best of the knowledge of the City Manager, there are no actions, suits, material claims, legal proceedings, or any other proceedings pending affecting the City Exchange Parcel or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign. The foregoing does not encompass comments concerning the environmental impact report or the land uses or activities which have not, to the knowledge of the City, given rise to litigation.

(c) **No Conflict.** To the best of City's knowledge, City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) **No City Bankruptcy.** City is not the subject of a bankruptcy proceeding.

Until the Closing, City shall, upon learning of any fact or condition as to the City Exchange Parcel which would cause any of the warranties and representations in this Section 206.1 not to be true as of the Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by City hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the City Exchange Parcel pursuant to the City Exchange Parcel Deed. If Developer elects to accept possession of the City Exchange Parcel following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Developer elects to not accept possession of the City Exchange Parcel, then this Agreement shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

206.2 **Developer Representations.** Developer represents and warrants to City as follows:

(a) **Authority.** Developer is a duly organized California limited liability company and is qualified to do business in and is in good standing under the laws of the State of California. Developer has full right, power and lawful authority to purchase and accept possession to the City Exchange Parcel and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

(b) **Litigation.** To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings pending affecting the Developer, at law or in equity before any court or governmental agency, domestic or foreign. The foregoing does not encompass comments concerning the environmental impact report or the land uses or activities which have not, to the knowledge of the Developer, given rise to litigation.

(c) **No Conflict.** To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(d) **No Developer Bankruptcy.** Developer is not the subject of a bankruptcy proceeding.

(e) **Title to the Developer Exchange Parcel.** The Developer holds fee title to the Developer Exchange Parcel. The Developer Exchange Parcel is free of occupancy, tenancy and rights of possession excepting only for the rights of Developer as owner.

(f) **Developer Experience; Sophisticated Party.** Developer and its Principals are sophisticated parties, with substantial experience in development and operation of retail facilities. Each of Developer and its Principals is familiar with and has reviewed all laws and regulations pertaining to the development of improvements to the Developer Exchange Parcel and the development of the City Exchange Parcel pursuant to this Agreement, including without limitation the operation of retail facilities, and has obtained advice from any advisers of its own choosing in connection with this Agreement.

Until the Developer Exchange Parcel Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of Closing, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have a detrimental effect on the ownership or use of the Developer Exchange Parcel by the City. If City elects to proceed with the Closing following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). The representations and warranties set forth in this Section 206.2 shall survive the Closing.

207. **Studies and Reports.** Developer shall have until the Determination Date to conduct any and all studies, and to approve or disapprove, in Developer's reasonable discretion, the results of such studies, concerning the development of the City Exchange Parcel along with any engineering tests, soils, seismic and geologic reports with respect to the City Exchange Parcel as Developer may elect to make or obtain (the "Studies"). The City shall have a like period to conduct studies concerning the Developer Exchange Parcel.

Prior to the Closing, representatives of Developer shall have the right of access to all portions of the City Exchange Parcel at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including the investigation of the environmental condition of the City Exchange Parcel. Any preliminary work undertaken on the City Exchange Parcel by Developer prior to the Closing shall be done at the sole expense of the Developer and only after written consent of City, which consent shall not be unreasonably withheld, and Developer's execution of a "Right of Entry Agreement", in a form to be provided by the City and its legal counsel, which protects City against such entry. The Right of Entry Agreement shall provide that the Developer shall save and protect City, City, and their respective officers, employees, agents, and representatives against any claims resulting from all preliminary work, access or use undertaken pursuant to this Section 207, and that, if requested by the City, the Developer shall, at its expense, restore the City Exchange Parcel to the condition prior to the undertaking of work pursuant to this Section 207. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

Prior to the Closing, representatives of the City shall have the right of access to the Developer Exchange Parcel at all times on the basis set forth in the preceding paragraph of this Section 207.

208. **Condition of the City Exchange Parcel and the Developer Exchange Parcel.**

208.1 **Disclosure.** City hereby represents that to the best of the knowledge of the City Manager, the City Manager is not aware of and has not received any notice or communication

from any government agency having jurisdiction over the City Exchange Parcel notifying City of the presence of surface or subsurface zone Hazardous Materials in, on, or under the City Exchange Parcel, or any portion thereof. "Best knowledge," as used herein, shall not impose a duty of investigation, and, as it relates to the knowledge of the City, shall be limited to the best knowledge of the City Manager.

Developer hereby represents that the Developer is not aware of and has not received any notice or communication from any government agency having jurisdiction over the Developer Exchange Parcel notifying Developer or its Principals of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Developer Exchange Parcel, or any portion thereof.

**208.2 Investigation of City Exchange Parcel and Developer Exchange Parcel.**

The Developer shall have the right, at its sole cost and expense, prior to the City Exchange Parcel Closing, to engage its own Environmental Consultant to make such investigations as Developer deems necessary, including any "Phase 1" or "Phase 2" investigations of the City Exchange Parcel, subject to the Developer's compliance with the requirements for entry upon the City Exchange Parcel which are described in Section 207, and City shall be provided a copy of all reports and test results provided by City's Environmental Consultant promptly after receipt by the Developer of any such reports and test results.

The City shall have the right, at its sole cost and expense, prior to the City Exchange Parcel Closing, to engage its own Environmental Consultant to make such investigations as City deems necessary, including any "Phase 1" or "Phase 2" investigations of the Developer Exchange Parcel, subject to the City's compliance with the requirements for entry upon the Developer Exchange Parcel which are described in Section 207, and Developer shall, if it so requests, be provided a copy of all reports and test results provided by Developer's Environmental Consultant promptly after receipt by the City of any such reports and test results.

If, prior to the City Exchange Parcel Closing, the Developer provides written evidence that a qualified geotechnical firm reasonably believes that environmental clean-up of the City Exchange Parcel having an estimated cost of over Fifty Thousand Dollars (\$50,000) is required, then the Developer may terminate this Agreement by written notice to City; provided, however, that if City, at its option, agrees to pay for clean-up costs in excess of Fifty Thousand Dollars (\$50,000) and cause the clean-up of the City Exchange Parcel to applicable attainment levels ("Clean-up"), such termination shall be ineffective. In such event, City shall be required to fund costs in excess of Fifty Thousand Dollars (\$50,000) and cause the performance of the Clean-up of the City Exchange Parcel either prior to or after the City Exchange Parcel Closing, at the option of the Developer. Developer shall reasonably approve or disapprove of the environmental condition of the City Exchange Parcel within ninety (90) days of the Date of Agreement. Developer's approval of the environmental condition of the City Exchange Parcel on or before the Determination Date or such extension thereof as may hereafter be mutually approved in writing by the parties, each acting at its sole discretion in that regard.

If, prior to the Closing, the City provides written evidence that a qualified geotechnical firm reasonably believes that environmental clean-up of the Developer Exchange Parcel is required, then the Developer shall either (i) agree to cause the clean-up of the Developer Exchange Parcel to applicable attainment levels ("Clean-up") prior to the Closing, or (ii) terminate this Agreement prior to the Closing. City's approval of the environmental condition of the Developer Exchange Parcel prior to the Closing shall be one of the City Conditions Precedent to Closing.

**208.3 No Further Warranties As To City Exchange Parcel or the Developer Exchange Parcel.** Except as otherwise provided herein, the physical condition and possession of the City Exchange Parcel, is and shall be delivered from City to Developer in an “as-is” condition, with no warranty expressed or implied by City, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the City Exchange Parcel for the development purposes intended hereunder. Except as otherwise provided herein, the physical condition and possession of the Developer Exchange Parcel, is and shall be delivered from Developer to City in an “as is” condition, with no warranty expressed or implied by Developer, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Developer Exchange Parcel for use by the City.

**208.4 Developer Hazardous Materials Indemnity.** Upon the City Exchange Parcel Closing, Developer agrees to indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees, excepting that if Developer proposes to employ its legal counsel for the defense of the City as well as the Developer and the City elects instead to select other counsel for its defense, the cost of such other counsel as selected by City shall be borne by the City), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, City Exchange Parcel or the Developer Exchange Parcel which occurs after the City Exchange Parcel Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the City Exchange Parcel or the Developer Exchange Parcel which occurs after the City Exchange Parcel Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance.

### **300. LAND USE APPROVALS, CONSTRUCTION DOCUMENTS**

**301. Land Use Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the City Exchange Parcel, Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits, and approvals which may be required for the Improvements by the City or any other governmental agency affected by or having jurisdiction over such construction or work. Developer shall, without limitation, apply for and secure, and pay when due all costs, charges and fees associated therewith, all permits and fees required by the City, the County, and other governmental agencies with jurisdiction over the Improvements. Execution of this Agreement does not constitute the granting of or a commitment to obtain or to assist in obtaining any required land use entitlements, or approvals required by the City.

302. **City Approval of Plans, Drawings, and Related Documents.** The City shall have the right of architectural and planning review of all plans and submissions including any changes therein. The Developer agrees that the City Exchange Parcel shall be used for purposes consistent with the Municipal Code.

303. **Cost of Improvements.** The cost of developing the City Exchange Parcel and the Improvements, including without limitation architectural and design fees, construction and financing costs and all fees of the City and fees imposed by other governmental agencies shall be borne by the Developer; provided that, concerning offsite improvements adjacent to the City Exchange Parcel, the cost of development shall be borne by the Developer excepting to the extent as may otherwise be set forth in a separate written agreement between the Developer and the City.

304. **Compliance with Laws.** (a) Developer shall carry out the design, construction and development of any work which may be undertaken by the Developer on the City Exchange Parcel, in conformity with all applicable laws, including without limitation all applicable state labor standards and state labor laws relating to payment of prevailing wages to the extent, if any, that laws relating to prevailing wages are applicable, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, and Civil Code Section 51, *et seq.* The previous listing of certain laws is not a statement that such laws will be applicable to activities undertaken by the Developer; it is only a statement that, where such laws are applicable, the Developer will comply with them.

(b) Labor Code Section 1720(b)(3) treats work performed under contract with certain public entities as a “public work” where the work is paid for in whole or in part with public funds, which payment may be accomplished by a transfer of an asset of value for less than a fair market value price. The City believes that its transfer of the City Exchange Parcel to the Developer under this Agreement is being accomplished at a fair value price that is equal to the value of the Developer Exchange Parcel. Notwithstanding the foregoing, if and to the extent required by applicable law, Developer and its contractors and subcontractors shall pay prevailing wages in compliance with Health and Safety Code Sections 33423 through 33426, and Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, complying with the requirements of Labor Code Sections 1726 and 1781 (in such regard Developer acknowledges and agrees it is and shall remain the “awarding body” for the work of construction to complete the Improvements), and complying with all regulations and statutory requirements pertaining thereto. The City makes no representations or warranties whatsoever with respect to the applicability of the foregoing prevailing wage and public works requirements, and Developer shall make its own determination as to such applicability.

Further, the Developer agrees that all public works (as defined in California Labor Code Section 1720) if any are performed pursuant to this Agreement (the “work”) shall comply with the requirements of California Labor Code Sections 1770, *et seq.* In all bid specifications relating to public works, if any, contracts and subcontracts for the work, Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of

worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision:

It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code Section 1775 and the payroll record keeping requirements of California Labor Code Section 1771.

Developer does hereby and shall indemnify and hold each of City and City harmless from and against any and all claims, demands, causes of action, obligations, damages, liabilities, costs and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by City or City with respect to or in any way arising from Developer's compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards including without limitation the requirements of Labor Code Section 1720.

305. **Nondiscrimination in Employment.** Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability.

306. **Taxes and Assessments.** Following the City Exchange Parcel Closing, Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the City Exchange Parcel. Developer shall remove or have removed any levy or attachment made on any of the City Exchange Parcel or any part thereof which is owned or leased by Developer or assure the satisfaction thereof within a reasonable time, but in no event to exceed thirty (30) days. The Developer shall additionally defend, indemnify, and hold harmless the City from and against any taxes, assessments, mechanic's liens, claims of materialmen and suppliers, or other claims by private parties in connection with activities undertaken by the Developer.

#### **400. DEFAULTS AND REMEDIES.**

401. **Default Remedies.** Subject to the extensions of time set forth in Section 502 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

402. **Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California.

403. **Termination by the Developer.** In the event that: (i) the Developer is not in default under this Agreement and City does not tender the conveyance of the City Exchange Parcel pursuant to the City Exchange Parcel Deed in the manner and condition and by the date provided in this Agreement (or the City refuses to accept conveyance of the Developer Exchange Parcel upon tender in accordance with this Agreement); or (ii) on or before the Deadline, Adverse Litigation is pending; or (iii) the Developer is not in default under this Agreement, the Developer has notified the City that the City Exchange Parcel has Materially Adverse Conditions and the parties have not agreed as to the bearing of costs to remedy the Materially Adverse Conditions; or (iv) on or before the Deadline, the City notifies the Developer that the Developer Exchange Parcel has Materially Adverse Conditions and the parties have not agreed as to the bearing of costs to remedy the Materially Adverse Conditions; or (v) in the event of any default of City prior to the City Exchange Parcel Closing which is not cured within the time set forth in Section 401 hereof, and any such failure is not cured within the applicable time period after written demand by the Developer, then the Developer may seek specific performance of this Agreement or this Agreement may, at the option of the Developer, be terminated by Notice thereof to City. From the date of the receipt of Notice of Termination of this Agreement by the Developer to City and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

404. **Termination by City.** In the event that, prior to the time established in the Schedule of Performance for the satisfaction of the City Conditions Precedent:

(a) Developer (or any successor in interest) assigns this Agreement or any rights therein or in the City Exchange Parcel in violation of this Agreement and fails to cure such default within the time set forth in Section 401 hereof; or

(b) Developer does not fulfill one or more of City Conditions Precedent (including without limitation providing proof of financing) and such failure is not caused by City; or

(c) Developer notifies City that there are Materially Adverse Conditions on the City Exchange Parcel; or

(d) City determines that there are Materially Adverse Conditions on the Developer Exchange Parcel; or

(e) On or before the Deadline, Adverse Litigation is pending; or

(f) Developer fails to execute the Developer Exchange Parcel Deed or the City Exchange Parcel Deed; or

(g) Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 401 hereof;

then this Agreement and any rights of the Developer or any assignee or transferee with respect to or arising out of the Agreement or the City Exchange Parcel, shall, at the option of City, be terminated by City by Notice thereof to the Developer. From the date of the Notice of termination of this Agreement by City to the Developer and thereafter this Agreement shall be deemed terminated, and there shall be no further rights or obligations among the parties, except that City may pursue any remedies it has hereunder.

405. **Acceptance of Service of Process.** In the event that any legal action is commenced against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced against the Developer, service of process on the Developer shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

406. **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

407. **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

408. **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**500. GENERAL PROVISIONS.**

501. **Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice (“Notice”) which a party hereto may desire to give to another party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Loma Linda  
25541 Barton Road  
Loma Linda, California 92354  
Attention: City Manager

with a copy to:  
(delivery of which copy shall not constitute notice to City)

Stradling Yocca Carlson & Rauth  
Attention: Mark J. Huebsch, Esq.  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660

To Developer: The Sagemont - Loma Linda, LLC  
Attention: Hiral Patel  
1713 Spyglass Court  
Beaumont, CA 92223

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be deemed to be effective on the fifth (5<sup>th</sup>) day from the date of the attempted delivery or deposit in the United States mail.

502. **Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, nonperformance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; riots; strikes; Adverse Litigation (unless one or more of the parties elects to terminate this Agreement under Sections 403 or 404 hereof in connection with Adverse Litigation); acts of God; acts or omissions of another party, or acts or failures to act of the City or any other public or governmental agency or entity (excepting that acts or failures to act of City or City shall not excuse performance by City or City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the delay and shall commence to run from the time of the commencement of the cause (but not more than 30 days preceding the date notice is given), if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. The City Manager shall have the authority to approve extensions on behalf of City to approve extensions of time not to exceed a cumulative total of ninety (90) days. Notwithstanding any provision of this Agreement to the contrary, (i) the lack of funding available to Developer to construct improvements or (ii) the inability to obtain entitlements as to the City Exchange Parcel shall not constitute grounds of enforced delay pursuant to this Section 502.

503. **Transfers of Interest in Agreement or in City Exchange Parcel Prior to Closing.** Section 503, and all subsections of this Section 503, shall apply to transfers prior to the City Exchange Parcel Closing.

503.1 **Prohibition.** The qualifications and identity of the Developer are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with the Developer. For the period commencing upon the Date of Agreement and until the City Exchange Parcel Closing, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the City Exchange Parcel or the Improvements thereon without prior written approval of City, except as otherwise expressly set forth herein.

503.2 **Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, the approval by the City of an assignment of this Agreement or conveyance of the City Exchange Parcel, or any part thereof shall not be required, in connection with any of the following so long as the Developer gives prior written notice to the City:

(a) Any transfers to an entity or entities in which the Developer or Hiral Patel retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest or retains management and control of the transferee entity or entities (provided that City shall determine whether such ownership, beneficial interest, management and control is maintained by the Developer).

(b) The conveyance or dedication of any portion of the City Exchange Parcel to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.

In the event of a proposed assignment by Developer under subparagraph (a) above, Developer agrees that at least thirty (30) days prior to such assignment it shall give written notice to City including a request for approval of such assignment and satisfactory evidence that the assignee has assumed jointly with Developer the obligations of this Agreement. This Section 503.2 and Section 503.1 shall cease to be of effect following the conveyance of the City Exchange Parcel to the Developer (excepting that the Developer shall remain responsible to convey the Developer Exchange Parcel to the City in conformance with this Agreement).

503.3 **Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

503.4 **Assignment by City.** City may assign or transfer any of its rights or obligations under this Agreement with the approval of the Developer, which approval shall not be unreasonably withheld; provided, however, that City may assign or transfer any of its interests hereunder to the City at any time without the consent of the Developer.

504. **No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement.

505. **Non-Liability of Officials and Employees of City.** No member, official, officer or employee of City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by City (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

506. **Relationship Between City and Developer.** It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, including the Attachments hereto, neither the City nor the City shall have any rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

507. **City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires.

Approval by the City of this Agreement does not constitute any land use approval by the City nor does it obligate the City to undertake the approval of any land use, zoning or building applications.

508. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

509. **Integration.** This Agreement contains the entire understanding among the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon such party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 23 and Attachment Nos. 1 through 3, which Attachments are attached hereto and incorporated herein by reference, which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements among the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

510. **Real Estate Brokers.** City and Developer each represent and warrant to each other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

511. **Attorneys' Fees.** In any action among the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

512. **Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

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

514. **No Waiver.** A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

515. **Modifications.** Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

516. **Severability.** If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

517. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the

last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

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

519. **Time of Essence.** Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation and condition of this Agreement.

520. **Time for Acceptance of Agreement by City.** This Agreement, when executed by the Developer and delivered to City, must be authorized, executed and delivered by the City on or before thirty (30) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the City and the Developer have signed this Agreement on the respective dates set forth below to be effective as of the Date of Agreement.

**CITY:**

**CITY OF LOMA LINDA**, a chartered municipal corporation

By: \_\_\_\_\_  
T. Jarb Thaipejr, City Manager

**ATTEST:**

\_\_\_\_\_  
Pamela Byrnes-O’Camb, City Clerk

**DEVELOPER:**

**SAGEMONT - LOMA LINDA, LLC**, a California limited liability company

By: \_\_\_\_\_  
Name: Hiral Patel  
Its: Managing Member

**ATTACHMENT NO. 1**

**SITE MAP**

[to come]

**ATTACHMENT NO. 2**  
**CITY EXCHANGE PARCEL DEED**

RECORDING REQUESTED BY,  
MAIL TAX STATEMENTS TO AND  
WHEN RECORDED MAIL TO:

The SAGEMONT - LOMA LINDA, LLC  
Attention: Hiral Patel  
1713 Spyglass Court  
Beaumont, CA 92223

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This document is exempt from payment of a recording  
fee pursuant to government Code Section 27383.

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged,

The **CITY OF LOMA LINDA**, a chartered municipal corporation (the "City") hereby grants to **SAGEMONT - LOMA LINDA, LLC**, a California limited liability company ("Developer"), the real property hereinafter referred to as the "City Exchange Parcel" described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

**CITY:**

**CITY OF LOMA LINDA**, a chartered municipal  
corporation

By: \_\_\_\_\_  
T. Jarb Thaipejr, City Manager

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb, City Clerk

**EXHIBIT "A" TO ATTACHMENT NO. 2**

**LEGAL DESCRIPTION OF THE CITY EXCHANGE PARCEL**

[to come]

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 OF NOTARY PUBLIC

**ATTACHMENT NO. 3**

**DEVELOPER EXCHANGE PARCEL DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City of Loma Linda  
25541 Barton Road  
Loma Linda, California 92354  
Attn: City Clerk

APN: [applicable APN]

[Space above for recorder.]

Exempt from recording fee and documentary  
transfer tax pursuant to Government Code Section  
27283.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, The SAGEMONT - LOMA LINDA, LLC, a California limited liability company (“Grantor”), hereby grants to the CITY OF LOMA LINDA, a public body corporate and politic (“Grantee”), that certain real property located in the County of San Bernardino, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “Subject Property”).

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 2014.

SAGEMONT - LOMA LINDA, LLC,  
a California limited liability company

By: \_\_\_\_\_

Name: Hiral Patel

Its: Managing Member

**EXHIBIT "A" TO GRANT DEED**

**LEGAL DESCRIPTION OF THE SUBJECT PROPERTY**

Real property in the City of Loma Linda, County of San Bernardino, State of California, described as follows:

[to come; Legal Description of the Developer Exchange Parcel]

APN: [applicable APN]

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the fee interest in real property conveyed under the foregoing Grant Deed by Sagemont - Loma Linda, LLC, a California limited liability company as to the following property:

Real property in the City of Loma Linda, County of San Bernardino, State of California, described as follows:

[to come]

APN: [applicable APN]

is hereby accepted by the City Manager of the City of Loma Linda on behalf of the City Council and the City of Loma Linda pursuant to authority conferred by Resolution No. 2004 of said City Council adopted on October 21, 1997, and the Grantee consents to recordation thereof by its duly authorized officer.

**CITY OF LOMA LINDA**, a public body corporate  
and politic

By: \_\_\_\_\_  
T. Jarb Thaipejr  
Its: City Manager

**ATTEST:**

\_\_\_\_\_  
Pamela Byrnes-O'Camb, City Clerk

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 OF NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 OF NOTARY PUBLIC



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Ovidiu Popescu, Mayor pro tempore  
Ronald Dailey, Councilman  
Phillip Dupper, Councilman  
John Lenart, Councilman

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

COUNCIL AGENDA: March 11, 2014

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director *T.J.T.*

SUBJECT: Request to Accept \$89,375 from Loma Linda University and Appropriate the Funds to be Expended towards the Campus Street Widening Project

## **RECOMMENDATION**

It is recommended that the City Council accept the contribution of \$89,375 from Loma Linda University and to appropriate the funds to expense account, 13-2200-8500 for the Campus Street Widening Project.

## **BACKGROUND**

On September 10, 2013, City Council approved a Memorandum of Understanding (MOU) between the City of Loma Linda and Loma Linda University, which details the rights, responsibilities and obligations of each party for the above-noted project.

The City and Loma Linda University authorized the Contractor to install/repair additional driveway approaches, not included in the original work scope. Loma Linda University agreed to pay the costs for that additional work, which totaled \$89,375. The work was completed satisfactory.

The City accepted the project and filed the Notice of Completion to City Council on February 25, 2014.

## **FINANCIAL IMPACT:**

Increase revenue account 13-9804 by \$89,375 and appropriate \$89,375 into expenditure account no. 13-2200-8500, Infrastructure.

*I:\Public Works Admin\Staff Reports\Accept LLU Contribution Campus St.03-11-14.doc*