

ORDINANCE NO. 3149

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, APPROVING DEVELOPMENT AGREEMENT DA23-0001 FOR THE PROPERTY LOCATED AT 12826 PHILADELPHIA STREET ALSO KNOWN AS THE COMSTOCK PROJECT (APPLICANT MW INVESTMENT GROUP, LLC); AND FINDING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (14 CCR § 15162).

WHEREAS, on August 30, 2022, the City Council previously approved a 52-Unit, Multi-Family Residential Project at 12826 Philadelphia Street (The Comstock) (A.I.N. 8139-024-027), including Development Review No. DRP21-0078; Specific Plan Amendment No. SPA21-0001; and Tentative Parcel Map No. TPM22-0004 (TPM 83775) (the "Project");

WHEREAS, the developer of the Project and the City desire to enter into Development Agreement 23-0001 for the purpose of furthering the previously approved Project, without changes, and in compliance with all prior Project approvals, applicable regulations, and prior CEQA certification by the City;

WHEREAS, on June 13, 2023, the City Council of the City of Whittier held a duly noticed and published public hearing at which interested persons had an opportunity to testify in support of, or opposition to, approval of the Development Agreement and at which the City Council considered the Development Agreement as presented by the applicant, together with the recommendations of the Community Development Director and the Planning Commission;

WHEREAS, the City previously certified a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for the Project, as well as the Project having complied with all notifications, hearing notices, hearing requirements, etc., as required by law for the Project, including specifically the following: a Notice of Project Application being sent to the Gabrieleno Band of Mission Indians - Kizh Nation and Soboba Band of Luiseño Indians on October 29, 2021, per Assembly Bill 52 (Public Resources Code Section 21080.3.1); a consultation meeting being held by request on April 7, 2022 with the Gabrieleno – Kizh Nation; mitigation measure language from the Kizh Nation being included for tribal cultural resources; no response from the Soboba Band of Luiseno Indians being received; the City contacting the Native American Heritage Commission (NAHC) as to invitations to consult to the Gabrieleno/Tongva San Gabriel Band of Mission Indians, the Gabrielino/Tongva Nation, Gabrielino-Tongva Tribe, and the Gabrieleno Band of Mission Indians – Kizh Nation on November 16, 2021, pursuant to Senate Bill 18 (California Government Code Section 65352.3), and no other requests for consultation having been received;

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WHEREAS, the Planning Commission of the City of Whittier held a duly noticed public hearing on June 5, 2023, at which interested persons had the opportunity to testify and at which the Planning Commission considered the Development Agreement. At said public hearing, the Planning Commission, by a vote of 3-0-2 (Vice Chair Cornejo absent and Commissioner Connolly) recommended that the City Council approve Development Agreement DA23-0001; and,

WHEREAS, or about August 30, 2022, the City Council, in compliance with the California Environmental Quality Act, certified the MND and MMRP for the Project, and further, the City Council finds that there are no changes to the Project, no change in circumstances, and no new information which would require or permit further environmental review of the Development Agreement, pursuant to Title 14 of the California Code of Regulations, Section 15162. Specifically, the Council makes the following findings:

(1) No substantial changes are proposed in the project which would require major revisions of the certified MND/MMRP due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) No substantial changes have occurred with respect to the circumstances under which the project is being undertaken which would require major revisions of the MND/MMRP due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects; and,

(3) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND/MMRP was certified, now exists affecting or relating to the Project, in particular as to the following: a) the project will have any significant effects not previously discussed; b) no significant effects would be substantially more severe; c) there are no infeasible mitigation measures that are now feasible and which would substantially reduce significant effects; and d) there are no considerably different mitigation measures that would substantially reduce significant effects.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein.

SECTION 2. No new environmental review is permitted or required, based on the above stated findings, which are incorporated by reference, and, based upon all of the facts set forth in the Agenda Report presented to the Council and facts and evidence presented at the public hearing relating to the development agreement, the agreement does not change the previously approved Project, but merely allows the Project to be implemented and carried out, in compliance with the already approved conditions and

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Project approvals, and in compliance with already-applicable regulations and previously certified environmental review.

SECTION 3. The development agreement is consistent with and acts in furtherance of implementing the City's General Plan, and the Uptown Specific Plan, as to the previously approved Project, which was already found consistent with both the General Plan and the Specific Plan. The City Council, therefore, finds that entering into the development agreement with the Applicant/Developer/Owner is consistent with the Uptown Specific Plan and the General Plan of the City of Whittier, in accordance with the previously approved Project's consistency with both the Specific Plan and the General Plan.

SECTION 4. The City Council finds the Development Agreement DA23-0001, attached as Exhibit 1, is consistent with the requirements of the California Government Code and in the best interests of the City of Whittier in ensuring the ability of the developer to carry out the previously-approved Project, in supporting development in Uptown Whittier and in the addition of housing for the City, which are all in compliance with all prior approvals for the Project, including prior environmental review.

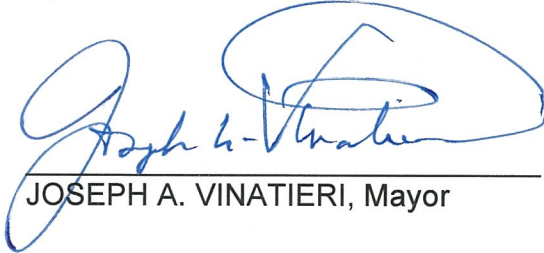
SECTION 5. The City Council hereby approves the Development Agreement and authorizes the Mayor to sign the Development Agreement and the City Manager to take such steps as are necessary and appropriate to implement the Development Agreement, in compliance with its terms and prior Project approvals.

SECTION 6. If any section, division, sentence, clause, phrase or portion of this resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

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SECTION 7. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective thirty (30) days after its adoption.

APPROVED AND ADOPTED this 25th day of July 2023.



JOSEPH A. VINATIERI, Mayor

ATTEST:



RIGOBERTO GARCIA JR, City Clerk
(seal)

Date: July 27, 2023

Exhibit 1: Development Agreement DA23-0001

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 3149 was introduced on the 27th day of June 2023, and was adopted by the City Council of the City of Whittier at the regular meeting held on the 25th day of July 2023, by the following vote:

AYES:	4	Council Members:	Vinatieri, Warner, O. Martinez, J. Martinez
NOES:	0		
ABSTAIN:	0		
ABSENT:	1	Council Member:	Dutra



RIGOBERTO GARCIA JR., City Clerk
(seal)

RECORDING REQUESTED BY AND
FOR RECORDER'S USE ONLY

WHEN RECORDED MAIL TO:

City of Whittier

Record for the Benefit of
the City of Whittier
Pursuant to Government Code Section 6103

(Space Above This Line Reserved for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WHITTIER

AND

THE WHITTIER COMSTOCK, LLC

DEVELOPMENT AGREEMENT DA23-0001

THIS DEVELOPMENT AGREEMENT ("Development Agreement" or "Agreement") is made and entered into as of _____, ____ ("Agreement Date") by and between the CITY OF WHITTIER, a Charter City ("City"), and THE WHITTIER COMSTOCK, LLC, a California limited liability company ("Developer"). City and Developer are referred to individually as "Party," and collectively as the "Parties."

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. Developer has a legal and equitable interest in certain real property consisting of an approximately 0.826-acre site located at 12826 Philadelphia Street (APN 8139-024-027), as more particularly described in Exhibit A attached hereto ("Property").

B. Developer intends to develop the Property as a multi-family residential community of 52 dwelling units, as more particularly described in Exhibit B attached hereto ("Project").

C. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by any change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

D. City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to California Government Code Sections 65864, 65866, et seq. *See also, Santa Margarita Area Residents Together v San Luis Obispo County Bd. of Supervisors*, 84 Cal. App. 4th 221 (2000) (upholding development agreements generally as valid exercise of police power).

E. City has determined that, by entering into this Development Agreement, development will proceed in accordance with the goals and policies set forth in the City of Whittier General Plan ("General Plan") and the Uptown Whittier Specific Plan, as amended ("Specific Plan"), and will implement City's stated General Plan and Specific Plan policies.

F. On [June 5, 2023], the City of Whittier Planning Commission ("Planning Commission"), the initial hearing body for purposes of development agreement review, recommended approval of this Development Agreement pursuant to Resolution No. [2023-07], after having given notice of and conducting a public hearing as required by law. On [7/25/23], the City of Whittier City Council ("City Council") adopted its Ordinance No. [3149] approving this Development Agreement and authorizing its execution.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

ARTICLE 1.
GENERAL PROVISIONS

1.1 Parties.

1.1.1 City. City is a California municipal corporation that is a Charter City, with offices located at 13230 Penn Street, Whittier, California 90602. "City," as used in this Development Agreement, shall include City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2 Developer. Developer is a California limited liability company, with offices located at 22702 Crown Valley Parkway, Suite D-4-197, Ladera Ranch, California 92694. "Developer," as used in this Development Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

1.2 Property Subject to this Development Agreement.

1.2.1 Property. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Development Agreement.

1.2.2 Mapping Adjustment. If the Parties determine that an adjustment of the legal description attached hereto as Exhibit A is required solely as a result of any discrepancy between the metes and bounds legal description and the final subdivision map that maps the Property, then the Parties shall execute and record an Administrative Amendment of this Agreement in accordance with Section 6.4.3 solely to amend Exhibit A to this Development Agreement to adjust the legal description of the Property to conform to such final subdivision map.

1.3 Term.

1.3.1 Effective Date. This Development Agreement shall become effective upon the effectiveness of the ordinance approving this Agreement (the "Effective Date").

1.3.2 Term of the Agreement. The term ("Term") of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of two years, unless earlier extended or terminated as provided in this Agreement. Within the first year of the Term, Developer shall have submitted for building permit(s) from the City for the Project. Within the second year of the Term, Developer shall have received building permit(s) from the City for the Project, or else Developer is in breach of this Agreement. The City Manager, or his designee, may extend the Term for one year, as long as such building permit(s) have been issued by the City prior to the expiration of the Term, and Developer shall commence construction activities within a reasonable time thereafter. Developer shall have "Commenced Construction Activities" if all three of the following have occurred: initiation of grading of the site, initiation of foundation construction, and initiation of construction of the framing of the building ("Commence Construction Activities"). If the Developer reasonably needs additional time to Commence Construction Activities, the City Manager, or his designee, may grant no more than one additional one-year extension, prior to the expiration of the first extension.

1.4 Project Approvals. Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term “Project Approvals” shall mean all of the approvals, plans and agreements described in this Section 1.4.

1.4.1 MND. The Mitigated Negative Declaration (the “MND”), which was prepared pursuant to CEQA, was recommended for adoption by the Planning Commission on July 18, 2022 after a duly noticed public hearing, by Resolution No. PC 2022-10, and adopted by the City Council on August 30, 2022 after a duly noticed public hearing, by Resolution No. 2022-68, in connection with Development Review No. DRP21-0078, Specific Plan Amendment No. SPA21-0001, and Tentative Parcel Map No. TPM22-0004; and by Resolution No. 2022-69 in connection with Specific Plan Amendment No. SPA21-0001 to amend the definitions contained within the Uptown Whittier Specific Plan and portions of the development and parking standards in the Specific Plan affecting properties within the entire Specific Plan, as well as amendments to specific standards for parcels in the Uptown Core and Uptown Center Areas (the “Specific Plan Amendment” or “Specific Plan Amendments”).

1.4.2 Development Review, Specific Plan Amendment, and Tentative Parcel Map. On May 12, 2022, the Design Review Board adopted DRB Resolution No. 2022-01, approving the architectural design of the proposed building under Development Review No. DRP21-0078. On August 23 and 30, 2022, following Planning Commission review and recommendation at a duly noticed public hearing on July 18, 2022, the City Council, after a duly noticed public hearing, approved Development Review No. DRP21-0078, Specific Plan Amendment No. SPA21-0001, and Tentative Parcel Map No. TPM22-0004, by adoption of Resolution No. 2022-70.

1.4.3 Development Agreement. On [July 25, 2023], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. [3149], approved this Development Agreement and authorized its execution.

1.4.4 Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.4.1 through 1.4.3 above (collectively, “Subsequent Approvals”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

ARTICLE 2. PUBLIC BENEFITS

2.1 Public Benefits. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide as public benefits (“Public Benefits”) to the City additional housing supply and a project that serves as a catalyst to reinvigorate the Specific Plan area within the City.

ARTICLE 3.
DEVELOPMENT OF THE PROPERTY

3.1 Project Development. Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 3.2).

3.2 Vested Elements. The permitted uses of the Property, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

a. The General Plan of City on the Agreement Date (“Applicable General Plan”);

b. The Specific Plan of City on the Agreement Date, including the Specific Plan Amendments (“Applicable Specific Plan”);

c. The Zoning Ordinance of City on the Agreement Date (“Applicable Zoning Ordinance”)

d. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Agreement Date (collectively, together with the Applicable General Plan, the Applicable Specific Plan, and the Applicable Zoning Ordinance, the “Applicable Rules”); and

e. The Project Approvals, as they may be amended from time to time upon Developer’s consent (such consent to be granted at the sole discretion of Developer) and City’s approval of any such amendment are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (“Vested Elements”). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer’s compliance with the terms and conditions of this Development Agreement.

3.3 Effect of Project Approvals and Applicable Rules; Future Rules.

3.3.1 Timing of Development; Pardee Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over the parties’ agreement, it is the Parties’ intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) to develop the Property in such order and at such rate

and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

3.3.2 Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals, and (b) the Applicable Rules.

3.3.3 No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Developer under this Development Agreement if the development fails to occur.

3.3.4 Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies of City (collectively, "Future Rules") are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project. To the extent that Future Rules conflict with the Vested Elements, they shall not apply to the Project and the Vested Elements shall apply to the Project, except as provided in Section 3.3.4(b) herein.

b. Future Rules that conflict with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) required by changes in State or Federal law; (iv) the Future Rules consist of revisions to, or new building regulations to the extent required by the then current version of the California Building Code; or (v) the Future Rules are otherwise expressly permitted by this Development Agreement.

3.4 Life of Project Approvals and Subdivision Maps.

3.4.1 Life of Subdivision Maps. The terms of any subdivision or parcel map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such maps remain in effect for a period of time coterminous with the term of this Development Agreement.

3.4.2 Life of Other Project Approvals. The term of all other Project Approvals shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the term of this Development Agreement.

3.4.3 Termination of Agreement. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect (including any extensions).

3.5 Further Actions and Instruments. Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement.

3.6 Applicability of Government Code Section 66473.7. Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7, if, and to the extent, required by Government Code Section 65867.5(c). However, the Parties acknowledge that Government Code Section 66473.7 does not apply to the Project because the Project is not more than 500 dwelling units.

ARTICLE 4.
APPLICABILITY OF SPECIFIC PLAN

4.1 Specific Plan and Related Conditions of Approval Allocations.

4.1.1 Developer's Rights and Obligations. Developer shall be entitled to all of the rights, and shall be subject to all of the obligations, under the Specific Plan that (a) are set forth in those Sections of the Specific Plan that apply exclusively to the Project or the Property; or (b) are set forth in those Sections of the Specific Plan that apply nonexclusively to the Project or the Property, but only with respect to the share of such rights and obligations that is proportionately allocable to the Project or the Property.

4.1.2 Default. A default by any Party with respect to any obligation not identified as an obligation of Developer in the Specific Plan shall not constitute a default by Developer and shall not result in: (a) any remedies imposed against Developer, including without limitation any remedies under this Development Agreement; or (b) termination of this Development Agreement. In the event of any such default, the City shall not exercise any of the rights or remedies available to it in connection with such default in a manner that would adversely affect Developer or the development, use, operation or occupancy of the Property or the Project.

ARTICLE 5.
ANNUAL REVIEW

5.1 Annual Review. The annual review required by Government Code Section 65865.1 shall be conducted for the purposes and in the manner stated therein.

ARTICLE 6.
AMENDMENTS

6.1 Amendments to or Cancellation of Development Agreement. This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly

refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement shall automatically become part of the Project Approvals.

6.2 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 6.2 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.1 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.3 Administrative Amendments. Upon the request of Developer for an amendment or modification of any Project Approval, the Planning Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Rules. If the Planning Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an "Administrative Amendment," and the Planning Director or his/her designee may approve the Administrative Amendment, without public notice or a public hearing.

ARTICLE 7. DEFAULT, REMEDIES AND TERMINATION

7.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 10.1 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 9.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an "Event of Default," (i) if such defaulting Party does not cure such failure within sixty (60) days following written notice of default from the other Party ("Notice of Default"), where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims

constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

7.2 Meet and Confer. During the time periods specified in Section 7.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity.

7.3 Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Sections 7.1 and 7.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 7.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 7.5 herein. In the event that this Development Agreement is terminated pursuant to Section 7.5 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

7.4 Legal Action by Parties.

7.4.1 Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

7.4.2 No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies

otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

7.5 Termination.

7.5.1 Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3.

7.5.2 Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project, except to the extent the Project Approvals may expire and be of no further force or effect.

7.5.3 Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in Section 65864 et seq. of the Government Code and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to this Article 7 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies. At such hearing, Developer shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement, after a preliminary finding by the City that the Developer has not done so. If the City Council finds, based upon substantial evidence, that the Developer has not complied in good faith with the terms and conditions of this Agreement, the City Council may terminate this Agreement or modify this Agreement and impose conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to California Code of Civil Procedure Code Section 1094.5. Compliance with the procedures set forth in Sections 7.1 through 7.3 and this Section 7.5.3 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq.*) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 8.
TRANSFERS AND ASSIGNMENTS

8.1 Right to Assign. Developer shall have the right to sell, assign or transfer (“Transfer”) in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the Term of this Development Agreement subject to the prior consent of the City, which shall not be unreasonably withheld; provided,

however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so Transferred except through a transfer of the Property. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property.

8.2 Release upon Transfer. Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 8.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 8.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

8.3 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

ARTICLE 9.

MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

9.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion

thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("Mortgage"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise. Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules. 9.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default pursuant to Section 7.1 hereof given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Any such Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. In addition, the City shall be immediately provided from Developer a copy of any default notice Developer receives from any person or entity holding a mortgage on the Property.

9.4 No Supersedure. Nothing in this Article 9 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Article 9 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 9.3.

9.5 Technical Amendments to this Article 9. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 Force Majeure. The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control

of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, riots, insurrections, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, pandemic, government mandated shutdowns or government closure, litigation involving this Agreement or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project.

10.2 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic transmission followed by delivery of a “hard” copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 10.2.

City: City of Whittier
13230 Penn Street
Whittier, CA 90602
Attention: City Manager

with copies to: City of Whittier
13230 Penn Street
Whittier, CA 90602
Attention: City Attorney

City of Whittier
13230 Penn Street
Whittier, CA 90602
Attention: Director of Community Development

Developer: The Whittier Comstock, LLC
22702 Crown Valley Parkway, Suite D-4-197
Ladera Ranch, CA 92694
matt@walbern.com
Attention: Matthew J. Waken

with copies to: Cox, Castle & Nicholson LLP
50 California Street, 32nd Floor
San Francisco, CA 94111
sbirkey@coxcastle.com
Attention: Scott B. Birkey

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a “hard” copy is delivered as provided above.

10.3 Non-Intended Prevailing Wage Requirements. Nothing in this Development Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a “Non-Intended Prevailing Wage Requirement”). But for the understanding of the parties as reflected in the immediately preceding sentence, the parties would not have entered into this Development Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Development Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of the recent amendments to the California prevailing wage law. If, despite such efforts, any provision of this Development Agreement shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the parties hereby agree that, in such event, at the election of Developer in its sole and absolute discretion, this Development Agreement shall be reformed such that each provision of this Development Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Development Agreement as though such provisions were never a part of the Development Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Development Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement.

10.4 Severability. If any term or provision of this Development Agreement or the application of any term or provision of this Development Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

10.5 Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

10.6 Construction of Agreement. This Development Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

10.7 Entire Agreement. This Development Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of twenty (20) pages including the Recitals, and two (2) exhibits, attached hereto and incorporated by reference herein, which, together with the Project Approvals, constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits are as follows:

Exhibit A	Legal Description of the Property
Exhibit B	Project Site Plan

10.8 Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or the Planning Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

10.9 Recordation. Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of execution by the Parties of this Development Agreement or the Effective Date, the City Clerk shall record this Development Agreement with the Los Angeles County Recorder. Thereafter, if this Development Agreement is terminated, modified, or amended, the City Clerk shall record notice of such action with the Los Angeles County Recorder.

10.10 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be

performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.10.11 Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.10.12

Applicable Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.10.13 Third Party Beneficiaries. Except as otherwise provided herein, City and Developer hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.10.14 Counterparts. This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.10.15

Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils', redevelopment agencies' or other approvals have been obtained.

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

THE WHITTIER COMSTOCK, LLC, a California Limited Liability Company

By: _____
Name: _____
Title: _____

CITY:

CITY OF WHITTIER a California Charter City

By: _____
Name: _____
Title: _____

ATTESTATION:

By: _____, City Clerk

APPROVED AS TO FORM:

By: _____, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF WHITTIER IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 7, 8, 9 AND 10 OF NICHOL'S SUBDIVISION, IN THE CITY OF WHITTIER, AS PER MAP RECORDED IN BOOK 31 PAGE 81 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE INTEREST CONVEYED TO THE CITY OF WHITTIER OVER THE EAST 20 FEET OF LOT 7, BY DEED RECORDED IN BOOK 3404 PAGE 367, OFFICIAL RECORDS.

PARCEL 2:

LOTS 11 AND 12 OF NICHOLS SUBDIVISION, IN THE CITY OF WHITTIER, AS PER MAP RECORDED IN BOOK 31 PAGE 81 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOT 3 IN BLOCK 22, IN THE CITY OF WHITTIER, AS PER MAP RECORDED IN BOOK 21 PAGES 55 AND 56 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE EAST 20 FEET THEREOF, AS DEEDED TO THE CITY OF WHITTIER FOR STREET PURPOSES BY DEED RECORDED IN BOOK 4050 PAGE 187 OFFICIAL RECORDS.

PARCEL 4:

THE NORTH 15 FEET OF LOT 4 IN BLOCK 22 OF TOWNSITE OF WHITTIER, IN THE CITY OF WHITTIER, AS PER MAP RECORDED IN BOOK 21 PAGES 55 AND 56 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE 20 FEET THEREOF, AS DEEDED TO THE CITY OF WHITTIER FOR STREET PURPOSES BY DEED RECORDED IN BOOK 3150 PAGE 399 OFFICIAL RECORDS.

PARCEL 5

THE SOUTHERLY 35 FEET OF LOT 4 AND ALL OF LOT 5 IN BLOCK 22 OF WHITTIER, IN THE CITY OF WHITTIER, AS PER MAP RECORDED IN BOOK 21 PAGES 55 AND 56 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE 20 FEET THEREOF, AS DEEDED TO THE CITY OF WHITTIER FOR STREET PURPOSES BY DEED RECORDED IN BOOK 3150 PAGE 399 OFFICIAL RECORDS.

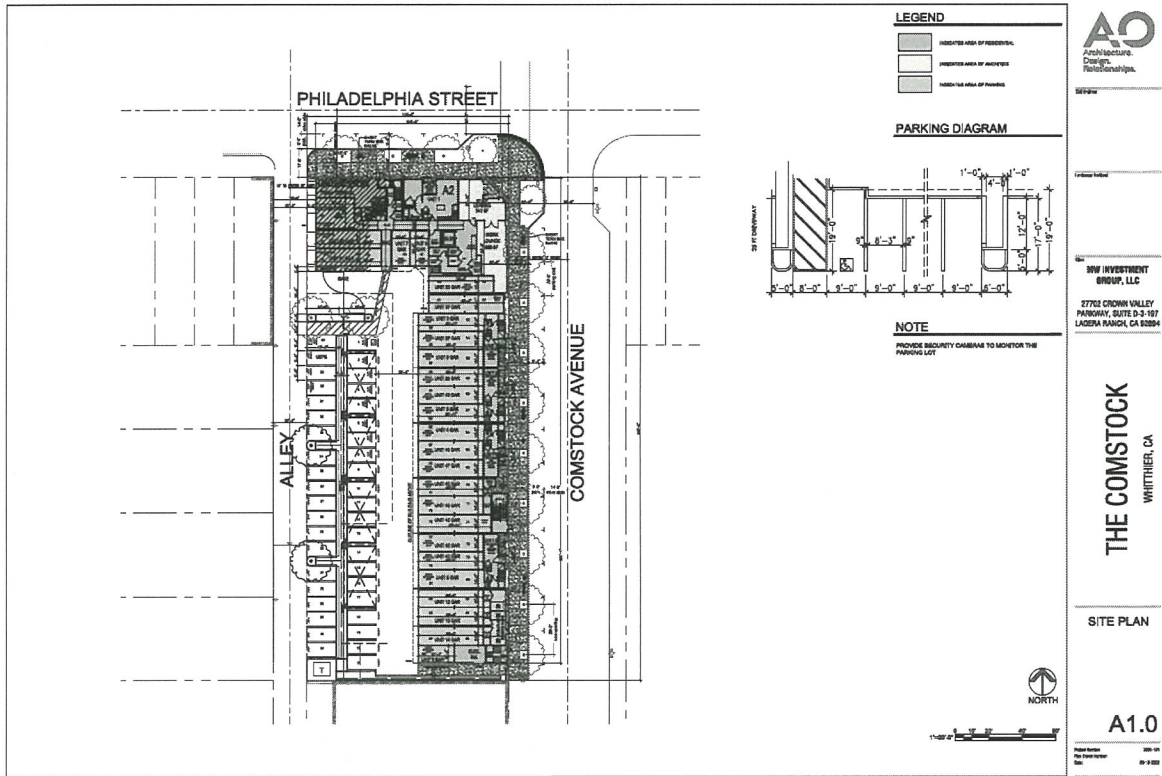
PARCEL 6:

LOT 6 IN BLOCK 22 OF WHITTIER, IN THE CITY OF WHITTIER, AS PER MAP RECORDED IN BOOK 21 PAGES 55 AND 56 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE EASTERLY 20 FEET THEREOF CONVEYED TO THE CITY OF WHITTIER FOR STREET PURPOSES.

APN: 8139-024-027

EXHIBIT B
PROJECT SITE PLAN



A0
Architecture
Design
Photography

3000

3000

300 INVESTMENT
GROUP, LLC
2702 CROWN VALLEY
PARKWAY, SUITE D-3-167
LASENA PARK, CA 95034

THE COMSTOCK
WHITTIER, CA

SITE PLAN

A1.0

3000
3000
3000