

Exhibit 11

Planning Commission Resolution No. 2015-023:
Mitigated Negative Declaration

RESOLUTION NO. 2015-023 PC

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA, RECOMMENDING TO CITY COUNCIL CERTIFICATION AND ADOPTION OF A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR GENERAL PLAN AMENDMENT GPA 15-001, DEVELOPMENT AGREEMENT DA 15-001, ZONE CHANGE ZCH 15-001, PLANNED COMMUNITY DEVELOPMENT PCD 15-001, TENTATIVE TRACT MAP TTM 73455 AND SITE PLAN REVIEW SPR 15-009 FOR PROPERTY GENERALLY LOCATED AT 800 NORTH BANNA AVENUE – APN: 8427-003-901

WHEREAS, in July 2014, the property owner, Charter Oak Unified School District, approved a purchase agreement with Sheldon Development Group for the sale and development of the project site; and

WHEREAS, in April 2015, Sheldon Development Group, “the applicant” submitted an application for a 108-unit single-family residential subdivision; and

WHEREAS, in May 2015, a Mitigated Negative Declaration for the project circulated for 30 days; receiving six agency comment letters. On May 13, the City of Covina held a neighborhood meeting; and on June 17, 2015, City staff met with a small group of residents representing a larger group of residents to discuss the proposed Project; and

WHEREAS, in September 2015, the applicant revised the proposed development in response to community concerns, resulting in a smaller project consisting of 63 residential units and an approximately 2-acre public park on the 8.15-acre site. The residential subdivision includes 63 single-family residential lots and six lettered lots for common areas on approximately 6.15 acres and two park lots on the remaining two acres, for a total of 71 lots. Hereinafter in this Resolution the request is referred to as “the proposed Project”.

WHEREAS, in September 2015, The applicant held two informational and community meetings (on a Saturday morning and Monday evening) at the Charter Oak High School to present the revised plans to residents within the surrounding neighborhood and the City held a combined Planning Commission study session/neighborhood meeting of the revised development plans to present the Planning Commission with a brief background and overview of the proposed Project, and allow the community to comment further on the proposed Project; and

WHEREAS, from October 30 through November 30, 2015, a Revised Mitigated Negative Declaration was recirculated for 30 days; no comments were received from the public; and

WHEREAS, the project includes the following land use entitlement applications:

- a. General Plan Amendment GPA 15-001, to change the General Plan land use map designation from “School” to “Medium Residential Density (6.1-14 dwelling Units per acre)” for 6.15 acres and “Park” for approximately 2 acres for property generally located at 800 North Banna Avenue; and
- b. Development Agreement DA 15-001, to implement the proposed Project under the terms, conditions and regulations currently in effect and ensure the timely execution of the project in the best public interest; and
- c. Zone Change ZCH 15-001, amending the official zoning map of the City by changing the zoning designation from “R-1-7500 Single Family” to “RD -3000 Multiple Family” for property generally located at 800 North Banna Avenue; and
- d. Planned Community Development District PCD 15-001 on the official zoning map of the City for property at 800 North Banna Avenue, establishing special zoning standards for the “One Charter Oak” Project; and
- e. Tentative Tract Map 73455, to establish a 71-lot subdivision for the purposes of a residential development, two-acre park and associated private streets (63 single family residential lots, 2 park lots and 6 lettered lots for common areas); and
- f. Site Plan Review (SPR) 15-009, for the development of 63 single-family residential units and related common areas on approximately 6.15 acres of the site; and

WHEREAS, the project proposal named “One Charter Oak” consists of 63 housing units, an approximately 2-acre public park and associated private streets is considered a “project” as defined by the California Environmental Quality Act, Public Resources Code § 21000 et seq. (“CEQA”); and

WHEREAS, after completion of a draft Initial Study, the City Planner determined that the Project required a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the proposed Project in compliance with the provisions of the CEQA; and

WHEREAS, the Initial Study/Draft Mitigated Negative Declaration was prepared and circulated for public and agency review on October 30, 2015, with a thirty-day review period ending on November 30, 2015. This comment period provided an opportunity for the public and agencies to review the issues addressed and offer comments on any aspect of the environmental review process, or the adequacy of the evaluation and mitigation measures; and

WHEREAS, on November 23, 2015, the Notice of Intent to Adopt the Mitigated Negative Declaration was noticed in the San Gabriel Valley Tribune, and notice of public hearing was also sent to all property owners within 1,000 feet of the project site; and

WHEREAS, as required under CEQA and in order to facilitate implementation of all mitigation measures adopted pursuant to CEQA, the Mitigation Monitoring and Reporting Program identifies the timing of, and the agency or agencies responsible for, enforcement and monitoring of each mitigation measure to be implemented to reduce potentially significant impacts to a less than significant level; and

WHEREAS, on December 8, 2015, at a duly noticed public hearing as prescribed by law, the Planning Commission considered the proposed Project and any comments received prior to or at the public hearing, at which time the City staff presented its report, and interested persons had an opportunity to and did testify either in support or in opposition to the proposed Project and the Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program. Following consideration of the entire record of information received at the public hearing and due consideration of the proposed Project, the Planning Commission found that there is not substantial evidence that the Project will have a significant effect upon the environment and adopted Resolution No. 15-2015-023 PC, incorporated herein by this reference, recommending that the City Council certify and adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program prepared for the proposed Project.

WHEREAS, all legal prerequisites prior to adoption of this Resolution have occurred.

SECTION 1. NOW, THEREFORE, BE IT RESOLVED, after reviewing the Mitigated Negative Declaration and considering all oral and written information regarding the Mitigated Negative Declaration presented before that hearing, the Planning Commission finds and determines as follows:

- a. The City has provided the public review period for the Mitigated Negative Declaration for the duration required under CEQA Guidelines Section 15073 and 15105.
- b. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program were prepared, processed and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.).
- c. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Covina.
- d. The Mitigation Monitoring and Reporting Program is designed to ensure compliance during the project implementation in that changes to the project and/or mitigation measures have been incorporated into the project and are fully enforceable through the permit conditions, agreements or other measures as required by Public Resources Code Section 21081.6.
- e. The revisions made to the project, agreed to by the applicant, and mitigation measures imposed as conditions of approval on the project, avoid or mitigate any potential significant effects on the environment as identified in the Initial Study to a point below the threshold of significance. Furthermore, after taking into consideration the revisions to the project and the mitigation measures imposed, the Planning Commission finds that there is no substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. Therefore, the Planning Commission finds that the project will not have a significant effect on the environment.

SECTION 2. In consideration of the findings stated above, the Planning Commission of

City of Covina hereby recommends that the City Council adopt the Mitigated Negative Declaration, subject to the Mitigation Measures of the Mitigation Monitoring and Reporting Program as shown in Exhibit "A," incorporated herein by reference.

SECTION 3. The Secretary to the Planning Commission shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED by the members of the Planning Commission of the City of Covina at a regular meeting thereof held on the 8th day of December, 2015.

CHARLES HODAPP, CHAIRMAN
CITY OF COVINA PLANNING COMMISSION

I hereby certify that the foregoing is a true copy of a resolution adopted by the Planning Commission of the City of Covina at a regular meeting thereof held on the 8th day of December, 2015, by the following vote of the Planning Commission:

AYES:
NOES:
ABSENT:
ABSTAIN:

COVINA PLANNING COMMISSION SECRETARY

Exhibit 12

Planning Commission Resolution No. 2015-024:
General Plan Amendment

RESOLUTION NO. 2015-024 PC

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF GENERAL PLAN AMENDMENT GPA 15-001 TO CHANGE THE GENERAL PLAN LAND USE MAP DESIGNATION FROM "SCHOOL" TO "MEDIUM DENSITY RESIDENTIAL 6.1-14 DWELLING UNITS PER ACRE" AND "PARK" FOR PROPERTY GENERALLY LOCATED AT 800 NORTH BANNA AVENUE - APN: 8427-003-901

WHEREAS, in July 2014, the property owner, Charter Oak Unified School District, approved a purchase agreement with Sheldon Development Group for the sale and development of the project site located at 800 N. Banna Avenue; and

WHEREAS, in April 2015, Sheldon Development Group, "the applicant" submitted an application for General Plan Amendment GPA 15-001 to change the General Plan land use designation of the property located at 800 N. Banna Avenue from "School" to "Medium Residential Density 6.1-14 Dwelling Units per Acre" to develop a 108-unit single-family residential subdivision; and

WHEREAS, in May 2015, a Mitigated Negative Declaration for the project circulated for 30 days; receiving six agency comment letters. On May 13, the City of Covina held a neighborhood meeting; and on June 17, 2015, City staff met with a small group of residents representing a larger group of residents to discuss the proposed Project; and

WHEREAS, in September 2015, the applicant revised the proposed development in response to community concerns, resulting in a smaller project consisting of 63 residential units and an approximately 2-acre public park. Hereinafter in this Resolution the subject General Plan Amendment request is referred to as "the proposed Project."

WHEREAS, in September 2015, The applicant held two informational and community meetings (on a Saturday morning and Monday evening) at the Charter Oak High School to present the revised plans to residents within the surrounding neighborhood and the City held a combined Planning Commission study session/neighborhood meeting of the revised development plans to present the Planning Commission with a brief background and overview of the proposed Project, and allow the community to comment further on the project; and

WHEREAS, from October 30 through November 30, 2015, a Revised Mitigated Negative Declaration was recirculated for 30 days; no comments were received from the public; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on December 8, 2015, at which time the parties were afforded the opportunity to present oral and written evidence to the Planning Commission.

WHEREAS, on December 8, 2015, at a duly noticed public hearing as prescribed by law, the Planning Commission considered the proposed Project and any comments received prior to or at the public hearing, at which time the City staff presented its report, and interested persons had an opportunity to and did testify either in support or in opposition to the proposed Project and the Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program. Following consideration of the entire record of information received at the public hearing and due consideration of the proposed Project, the Planning Commission found that there is not substantial evidence that the Project will have a significant effect upon the environment and adopted Resolution No. 15-2015-023 PC, incorporated herein by this reference, recommending that the City Council certify and adopt Mitigated Negative Declaration prepared for the proposed Project.

WHEREAS, all legal prerequisites prior to adoption of this Resolution have occurred.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. The General Plan land use designation for the described real property in the City of Covina, County of Los Angeles, State of California, is hereby amended as follows:

- a. Assessor's Parcel Map number 8427-003-901 is amended from "School" to "Medium Residential Density 6.1-14 Dwelling Unit per Acre" for approximately 6.15 acres and "Park" for approximately 2 acres.

SECTION 3. After giving full consideration to all evidence presented at the public hearing, both oral and documentary, and after being fully informed, said Planning Commission does hereby find and decide that this General Plan Amendment is consistent with and supports the City's General Plan for the following reasons:

- a. The project site (8427-003-901) is an underutilized property located within a residential area of the City and was originally developed as an elementary school. The site has not been used as a school for approximately 15 years and is currently leased to the Vision of Faith International Church. There are six single-story classroom and administration buildings, two restroom buildings, a parking lot, playground facilities, and field areas that currently occupy the site. The structures are nearing the end of their useful lifespan without needed significant investment and much of the 8-acre site is vacant and unused. The General Plan seeks to facilitate, through zoning provisions and applicable procedures, infill development, development of now-underutilized or vacant parcels, and, where necessary, redevelopment of deteriorating properties, particularly for housing creation and rehabilitation and economic development purposes. This project site is a unique opportunity for the redevelopment of an underutilized site for infill development and the creation of housing within an existing single-family residential neighborhood. (Land Use Element Section III – Goals, Objectives and Policies C-1a (6))

- b. The single-family residences proposed, as part of the project will be set back a minimum of 13 feet and provide aesthetic architectural treatments and landscaping within the site and along the perimeter of the site along the boundaries of the existing single-family neighborhoods. In addition, there is a two-acre park to be dedicated to the City, which will provide a buffer and transition between the project and the existing surrounding land uses. By this proposed design, the project is consistent with the General Plan policy that requires that new medium- to high-density residential projects, when adjacent to single-family residences, incorporate sufficient physical and visual buffers to ensure compatibility. Such buffers shall include, but not be limited to, building setback and architecture, landscaping, walls, and other physical and aesthetic elements and shall adequately protect the single family residences or sensitive uses from noise, light, trash, vehicular traffic, and other visual and environmental disturbances. (Land Use Element Section III – Goals, Objectives and Policies C-1a (7))
- c. The proposed Project supports the General Plan by developing an underutilized infill site in an established single-family neighborhood with compatible low-rise, owner-occupied, detached single-family homes. The project will result in the construction of owner-occupied housing and protect the existing surrounding single-family neighborhoods from incompatible encroachments and land uses with the establishment of a new single-family development. The proposed Project also addresses the deficiency in parkland by dedicating approximately two acres of the site for the development of a neighborhood park. (Land Use Element Section III – Goals, Objectives and Policies C-1a (10), C-1a(27), C-2a(1), C-2a(4), C-2a(5) and C-2a(8))
- d. The creation and adoption of a Planned Community Development (“PCD”) is an implementation tool of the General Plan, which allows a more flexible application of development standards. A PCD is permitted when the applicant can demonstrate that the project will maintain compatibility with existing surrounding uses and consistency with the General Plan. The adoption of the PCD land use category would ensure compatibility with surrounding land uses and further the policies identified in the City’s General Plan. (Land Use Element Section III – Goals, Objectives and Policies C-1a (25))
- e. The establishment of a new single family development on this site furthers the General Plan Policy that requires only single-family detached residences to be developed on large, underutilized single-family or “R-1”-designated parcels, in single-family detached neighborhoods, to ensure land use compatibility. (Land Use Element Section III – Goals, Objectives and Policies C-2a (11))
- f. The proposed Project would include reconstruction of the existing public sidewalk around the external perimeter of the project site, including a landscaped parkway according to the City’s requirements. Additionally, the east leg of the Glendora Avenue/Colver Place intersection will be restriped to provide two westbound approach lanes and one eastbound return lane. The westbound approach will be

striped to have a shared left plus through lane, and a dedicated right turn lane. The additional westbound lane approach would improve vehicle delays and levels of service at the intersection. As part of the project, a crosswalk will be installed across Cypress Street on the west leg of the intersection of Kidder Avenue/Cypress Street. This improvement would provide for enhanced sight distance for pedestrians and bicyclists on the east side of the existing Metrolink train crossing. These requirements further the General Plan Policy that requires developers to mitigate development impacts in the form of street improvements and public dedications as well as other reasonable requirements. (Land Use Element Section III - Goals, Objectives and Policies C-1a (26))

- g. The residential component would provide needed housing to enable the City to provide dwelling units according to the Regional Housing Needs Assessment (RHNA) under the Housing Element of the General Plan. The proposed 63 dwelling units would contribute to the City's remaining unmet need for 991 housing units, reducing the unmet housing need in the City by more than 6 percent. The Housing Element requires the City to adopt policies and practices that encourage the development of housing in the community, which has also been declared to be a matter of Statewide policy. (Covina Draft Housing Element Update, dated November 15, 2010).

SECTION 4. In consideration of the findings stated above, the Planning Commission of the City of Covina hereby recommends that the City Council approve General Plan Amendment GPA 15-001.

SECTION 5. The Secretary to the Planning Commission shall certify to the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the findings stated above, the Planning Commission of City of Covina hereby recommends to the City Council the approval of General Plan Amendment GPA 15-001.

PASSED, APPROVED AND ADOPTED by the members of the Planning Commission of the City of Covina at a regular meeting thereof held on the 8th day of December, 2015.

CHARLES HODAPP, CHAIRMAN
CITY OF COVINA PLANNING COMMISSION

I hereby certify that the foregoing is a true copy of a resolution adopted by the Planning Commission of the City of Covina at a regular meeting thereof held on the 8th day of December, 2015, by the following vote of the Planning Commission:

AYES:

NOES:

ABSENT:

ABSTAIN:

COVINA PLANNING COMMISSION SECRETARY

Exhibit 13

Planning Commission Resolution No. 2015-025:
Development Agreement with attached Draft Ordinance

RESOLUTION NO. 2015-025 PC

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF DEVELOPMENT AGREEMENT DA 15-001 FOR THE DEVELOPMENT PROPOSAL GENERALLY LOCATED AT 800 NORTH BANNA AVENUE – APN: 8427-003-901

WHEREAS, in July 2014, the property owner, Charter Oak Unified School District, approved a purchase agreement with Sheldon Development Group for the sale and development of the project site located at 800 N. Banna Avenue; and

WHEREAS, in April 2015, Sheldon Development Group, “the applicant” submitted an application for a Development Agreement DA 15-001 for the development of a 108-unit single-family residential subdivision. Hereinafter in this Resolution the subject Development Agreement request is referred to as “the application” or “Agreement”; and

WHEREAS, in May 2015, a Mitigated Negative Declaration for the project circulated for 30 days; receiving six agency comment letters. On May 13, the City of Covina held a neighborhood meeting; and on June 17, 2015, City staff met with a small group of residents representing a larger group of residents to discuss the application; and

WHEREAS, in September 2015, the applicant revised the proposed development in response to community concerns, resulting in a smaller project consisting of 63 single-family residential units and related common areas on approximately 6.15 acres of the site and an approximately 2-acre public park on the remaining two acres of the 8.15-acre site. Hereinafter in this Resolution the subject Site Plan Review request is referred to as “the Project”; and

WHEREAS, on September 12 and 14, 2015, the Applicant held additional community meetings at the Charter Oak High School to present the revised plans to residents within the surrounding neighborhood; and

WHEREAS, on September 29, 2015, the City held a combined Planning Commission study session/neighborhood meeting of the revised development plans to present the Planning Commission with a brief background and overview of the proposed project, and allow the community to comment further on the project; and

WHEREAS, from October 30 through November 30, 2015, a Revised Mitigated Negative Declaration was recirculated for 30 days; no comments were received from the public; and

WHEREAS, on December 8, 2015, at a duly noticed public hearing as prescribed by law, the Planning Commission considered the proposed Project and any comments received prior to or at the public hearing, at which time the City staff presented its report, and interested persons had an opportunity to and did testify either in support or in opposition to the proposed Project and the Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program. Following consideration of the entire record of information received at the public hearing and due consideration of the proposed Project, the Planning Commission found that there is not

substantial evidence that the Project will have a significant effect upon the environment and adopted Resolution No. 15-2015-023 PC, incorporated herein by this reference, recommending that the City Council certify and adopt Mitigated Negative Declaration prepared for the proposed Project.

WHEREAS, One Charter Oak, LLC. (Owner), has an equitable interest in all of the real property ("Property") described on Exhibit "A" of the attached development agreement and depicted on Exhibit "B" of the same.

WHEREAS, the approval of the application is contingent upon the approval of all associated entitlement applications for the property on 800 North Banna Avenue, including General Plan Amendment GPA 15-001, Zone Change ZCH 15-001, Planned Community Development Overlay Zone PCD 15-001, Tentative Tract Map 73455 and Site Plan Review (SPR) 15-009 allowing for development of the Property with up to 63 dwelling units, a two-acre public park and associated private streets (the "Project"); and

WHEREAS, Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorizes Covina to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and reducing the economic costs of such development; and

WHEREAS, the Planning Commission of the Covina has found that this Agreement is in the best public interest of the City and its residents, that approving this Agreement constitutes a present exercise of the City's police power, and that the Project is consistent with and conforms to the goals and policies of the City's General Plan; and

WHEREAS, approval of this Agreement is contingent upon approval of a Planned Community Development Overlay Zone, which establishes the development standards for the Project, and imposes appropriate standards and requirements with respect to the development of the Property in order to maintain the overall quality of life and of the environment within the City; and

WHEREAS, all legal prerequisites prior to adoption of this Resolution have occurred.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF COVINA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. The City desires to accomplish the goals and objectives set forth in the City's General Plan, and finds that the Project will accomplish said goals and objectives.

SECTION 3. After giving full consideration to all evidence presented at the public hearing, both oral and documentary, and after being fully informed, said Planning Commission does hereby find and decide that the Development Agreement is in the best public interest of the City and its residents, that it is consistent with the goals and policies of the City's General Plan

and imposes appropriate standards and requirements with respect to the development of the property in order to maintain the overall quality of life and of the environment within the City, based on the following:

- a. The project site (8427-003-901) is an underutilized property located within a residential area of the City and was originally developed as an elementary school. The site has not been used as a school for approximately 15 years and is currently leased to the Vision of Faith International Church. There are six single-story classroom and administration buildings, two restroom buildings, a parking lot, playground facilities, and field areas that currently occupy the site. The structures are nearing the end of their useful lifespan without needed significant investment and much of the 8-acre site is vacant and unused. The General Plan seeks to facilitate, through zoning provisions and applicable procedures, infill development, development of now-underutilized or vacant parcels, and, where necessary, redevelopment of deteriorating properties, particularly for housing creation and rehabilitation and economic development purposes. This project site is a unique opportunity for the redevelopment of an under-utilized site for infill development and the creation of housing within an existing single-family residential neighborhood. (Land Use Element Section III – Goals, Objectives and Policies C-1a (6))
- b. The single-family residences proposed, as part of the project will be set back a minimum of 13 feet and provide aesthetic architectural treatments and landscaping within the site and along the perimeter of the site along the boundaries of the existing single-family neighborhoods. In addition, there is a two-acre park to be dedicated to the City, which will provide a buffer and transition between the project and the existing surrounding land uses. By this proposed design, the project is consistent with the General Plan policy that requires that new medium- to high-density residential projects, when adjacent to single-family residences, to incorporate sufficient physical and visual buffers to ensure compatibility. Such buffers shall include, but not be limited to, building setback and architecture, landscaping, walls, and other physical and aesthetic elements and shall adequately protect the single family residences or sensitive uses from noise, light, trash, vehicular traffic, and other visual and environmental disturbances. (Land Use Element Section III – Goals, Objectives and Policies C-1a (7))
- c. The proposed Project supports the General Plan by developing an underutilized infill site in an established single-family neighborhood with compatible low-rise, owner-occupied, detached single-family homes. The project will result in the construction of owner-occupied housing and protect the existing surrounding single-family neighborhoods from incompatible encroachments and land uses with the establishment of a new single-family development. The proposed Project also addresses the deficiency in parkland by dedicating approximately two acres of the site for the development of a neighborhood park. (Land Use Element Section III – Goals, Objectives and Policies C-1a(10), C-1a(27), C-2a(1), C-2a(4), C-2a(5) and C-2a(8))

- d. The creation and adoption of a Planned Community Development (“PCD”) is an implementation tool of the General Plan, which allows a more flexible application of development standards. A PCD is permitted when the applicant can demonstrate that the project will maintain compatibility with existing surrounding uses and consistency with the General Plan. The adoption of the PCD land use category would ensure compatibility with surrounding land uses and further the policies identified in the City’s General Plan. (Land Use Element Section III – Goals, Objectives and Policies C-1a (25))
- e. The establishment of a new single family development on this site furthers the General Plan Policy that requires only single-family detached residences to be developed on large, underutilized single-family or “R-1”-designated parcels, in single-family detached neighborhoods, to ensure land use compatibility. (Land Use Element Section III – Goals, Objectives and Policies C-2a (11))
- f. The proposed Project would include reconstruction of the existing public sidewalk around the external perimeter of the project site, including a landscaped parkway according to the City’s requirements. Additionally, the east leg of the Glendora Avenue/Colver Place intersection will be restriped to provide two westbound approach lanes and one eastbound return lane. The westbound approach will be striped to have a shared left plus through lane, and a dedicated right turn lane. The additional westbound lane approach would improve vehicle delays and levels of service at the intersection. As part of the project, a crosswalk will be installed across Cypress Street on the west leg of the intersection of Kidder Avenue/Cypress Street. This improvement would provide for enhanced sight distance for pedestrians and bicyclists on the east side of the existing Metrolink train crossing. These requirements further the General Plan Policy that requires developers to mitigate development impacts in the form of street improvements and public dedications as well as other reasonable requirements. (Land Use Element Section III - Goals, Objectives and Policies C-1a (26))
- g. The residential component would provide needed housing to enable the City to provide dwelling units according to the Regional Housing Needs Assessment (RHNA) under the Housing Element of the General Plan. The proposed 63 dwelling units would contribute to the City’s remaining unmet need for 991 housing units, reducing the unmet housing need in the City by more than 6 percent. The Housing Element requires the City to adopt policies and practices that encourage the development of housing in the community, which has also been declared to be a matter of Statewide policy. (Covina Draft Housing Element Update, dated November 15, 2010).

SECTION 4. In consideration of the findings stated above, the Planning Commission of City of Covina hereby recommends that the City Council approve the Ordinance approving the Development Agreement DA 15-001, subject to the conditions of approval from all related land use entitlements, including General Plan Amendment GPA 15-001, Zone Change ZCH 15-001, Planned Community Development PCD 15-001, Tentative Tract Map TTM 73455 and Site Plan

Review SPR 15-009, which are deemed necessary to protect the public, health, safety and general welfare of the community.

SECTION 5. The Secretary to the Planning Commission shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED by the members of the Planning Commission of the City of Covina at a regular meeting thereof held on the 8th day of December, 2015.

CHARLES HODAPP, CHAIRMAN
CITY OF COVINA PLANNING COMMISSION

I hereby certify that the foregoing is a true copy of a resolution adopted by the Planning Commission of the City of Covina at a regular meeting thereof held on the 8th day of December, 2015, by the following vote of the Planning Commission:

AYES:

NOES:

ABSENT:

ABSTAIN:

COVINA PLANNING COMMISSION SECRETARY

ORDINANCE NO. 15- XXXX

AN ORDINANCE OF THE CITY OF COVINA APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN ONE CHARTER OAK, LLC AND THE CITY OF COVINA RELATED TO A PROPOSED DEVELOPMENT CONSISTING OF 63 SINGLE FAMILY LOTS ON 6.15 ACRES AND A PROPOSED PUBLIC PARK ON APPROXIMATELY 2 ACRES FOR PROPERTY GENERALLY LOCATED AT 800 NORTH BANNA AVENUE – APN: 8427-003-901

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the Development Agreement Statute) which authorizes cities to enter into agreements for the development of real property in order to establish certain development rights in such property; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements; and

WHEREAS, Applicant proposes to construct 63 detached single-family house, private streets, and small landscaped area on approximately 6.15 acres of land, and to convey approximately 2 acres of the remainder land to the City of Covina as a neighborhood park, for property generally located at 800 North Banna Avenue. The proposed development will require future approvals from the City, potentially including, but not limited to, general plan amendment, zone change, planned community development, tentative maps, final subdivision maps, site plan review, private streets, demolition permits, grading permits, building permits and certificates of occupancy; and

WHEREAS, a copy of the proposed Development Agreement is attached hereto and incorporated herein as Exhibit “A” to this ordinance; and

WHEREAS, as part of its consideration of the Project, the City prepared a Mitigated Negative Declaration on the Project pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*, “CEQA”), the Guideline for Implementation of the California Environmental Quality Act (14 California Code of Regulations, Sections 15000 *et seq.*, the “State EIR Guidelines”); and

WHEREAS, pursuant to the Development Agreement Statute, the Planning Commission held a duly noticed public hearing on December 8, 2015, on the proposed Project and has found that the proposed Development Agreement is consistent with objectives of the general plan, compatible with the uses authorized for the project area, in conformity with public convenience

and beneficial to the public welfare, and will not adversely impact the orderly development of property; and

WHEREAS, the City Council, after published notice, held a public hearing on _____ concerning the proposed Project, and has considered the reports and documents presented by City staff, the Planning Commission's recommendation, and the written and oral comments presented at the public hearing.

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

SECTION 1. Based on the full record of these proceedings, the City Council hereby finds the Development Agreement:

- 1) Is consistent with the General Plan and the City Council finds that the proposed project as conditioned, complies with all applicable provisions of the General Plan;
- 2) Is in conformity with public conveniences and good land use practices as the project approvals, mitigation monitoring program and development agreement will guarantee adequate infrastructure for the development and land uses that are compatible with their surroundings;
- 3) Will not be detrimental to the health, safety and general welfare as the project approvals, mitigation monitoring program and development agreement will guarantee adequate infrastructure, safety measures and public services such as police, fire, utilities and sanitation;
- 4) Will not adversely affect the orderly development of property or the preservation of property values because the proposed development is conditioned so as to be consistent with the General Plan and compatible with surrounding land uses.
- 5) Is consistent with the provisions of Government Code 65864 through 65869.5.

SECTION 2. Based upon the aforementioned findings, the City Council hereby approves the Development Agreement between ONE CHARTER OAK, LLC and the City of Covina attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 3. CEQA. The environmental effects of the proposed Development Agreement were analyzed in the Mitigated Negative Declaration (MND). The City Council reviewed the MND and found that it reflects the independent judgment of the City Council and its staff, and is an adequate and extensive assessment of the environmental impacts of the Development Agreement. The City Council certified and approved the MND as having been prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), made the necessary findings, and adopted a Mitigation Monitoring and Reporting Program through Resolution No. _____. Said Resolution is incorporated herein by this reference as though set forth in full. The City Council incorporates by this reference the findings and mitigation measures contained in the MND as to the environmental effects of the Development Agreement. Those actions apply equally to this approval and are incorporated

herein by this reference. The Director of Community Development shall file a Notice of Determination with the County Clerk under Title 14, California Code of Regulations Section 15075.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The Mayor is authorized to execute the Development Agreement on behalf of the City once this Ordinance is effective. The executed development agreement shall be recorded against the title to the property.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 125 E. College Street, Covina, CA 91723. The custodian of these records is the City Clerk.

SECTION 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Covina hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall become effective within thirty (30) days after its adoption.

SECTION 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the City Clerk shall cause to be published once the Ordinance, or a summary of thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Covina.

SIGNED AND APPROVED this _____ day of _____, 2016.

JOHN C. KING, MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

PLEASE RECORD AND WHEN RECORDED
RETURN TO:
City Clerk
City of Covina
125 East College Street
Covina, California 91723

Space above this line for Recorder's use only
No recording fee under Government Code Sections 2783 and 6103

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into effective as of _____, 2015, (hereinafter the "Effective Date") by and between the CITY OF COVINA (hereinafter "CITY"), a municipal corporation, and ONE CHARTER OAK, LLC, a California limited liability company (hereinafter "OWNER").

RECITALS

A. OWNER has an equitable interest in all of the real property ("Property") described on Exhibit "A" and depicted on Exhibit "B." CITY adopted and approved zoning and other entitlements for the Property on _____, allowing for development of the Property with up to 63 dwelling units (the "Project").

B. Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorize CITY to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and reducing the economic costs of such development. OWNER has therefore asked, and CITY has agreed, that a Development Agreement should be approved and adopted for this Property in order to memorialize and secure the respective expectations of CITY and OWNER.

E. The City Council of the CITY (hereinafter "City Council") has found that this Agreement is in the best public interest of the CITY and its residents, that approving this Agreement constitutes a present exercise of the CITY's police power, and that the Project is consistent with the goals and policies of the CITY's General Plan and imposes appropriate standards and requirements with respect to the development of the Property in order to maintain the overall quality of life and of the environment within the CITY. Prior to its approval of this Agreement, CITY considered the environmental impacts of the Project and completed its environmental review of the Project through the adoption of [CEQA DOCUMENT].

F. On _____, 2015, the Planning Commission of CITY held a duly-noticed public hearing on the OWNER's application for approval of this Agreement, made certain

findings and determinations with respect thereto, and recommended to the City Council that this Agreement be approved. On _____, 2015, the City Council also held a duly-noticed public hearing on the OWNER'S application for approval of this Agreement, considered the recommendations of the Planning Commission., and found that this Agreement is consistent with CITY's General Plan.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, or all letters capitalized, when used in the Agreement. The defined terms include the following:

1.1.1 "*Agreement*" means this Development Agreement.

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

1.1.3 "*City Council*" means the City Council of the CITY.

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

1.1.5 "*Development Approvals*" means all permits, licenses, consents, rights and privileges, and other actions subject to approval or issuance by CITY in connection with Development of the Property issued by CITY on or before the Effective Date of this Agreement, including but not limited to:

- (a) General Plan Amendment 15-001;
- (b) Planned Community Development District 15-001;
- (c) Zone Change 15-001;
- (d) Tentative tract map 73455 and final tract map subdivision and parcel maps; and

(e) Site Plan Review 15-009.

1.1.6 “*Development Plan*” means the plan for Development of the Property, including without limitation the planning and zoning standards, regulations, and criteria for the Development of the Property, contained in and consistent with Exhibit “C.”

1.1.7 “*Development Requirement*” means any requirement of CITY in connection with or pursuant to any Development Approval for the dedication of land, the construction or improvement of public facilities, the payment of fees or assessments in order to lessen, offset, mitigate or compensate for the impacts of Development on the environment, or the advancement of the public interest.

1.1.8 “*Effective Date*” means the date the Ordinance approving this Agreement takes effect.

1.1.9 “*Land Use Regulations*” means all ordinances, resolutions, codes, rules, regulations and official policies of CITY adopted and effective on or before the Effective Date of this Agreement governing Development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications, all as applicable to the Development of the Property. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

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

1.1.10 “*OWNER*” means ONE CHARTER OAK, LLC, a California limited liability company and, where specified in this Agreement, its successors in interest to all or any part of the Property.

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

1.1.12 “*Project*” means the Development of the Property consistent with the Development Plan.

1.1.13 “*Property*” means the real property described in Exhibit “A” and shown on Exhibit “B” to this Agreement.

1.1.14 “*Reservation of Authority*” means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.15 “*Subsequent Development Approvals*” means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Property.

1.1.16 “*Subsequent Land Use Regulations*” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement, other than the Development Plan.

1.1.17 “*Term*” shall mean the period of time from the Effective Date until the termination of this Agreement as provided in subsection 8.1, or earlier termination as provided in Section 6.

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

Exhibit “A” Legal Description of the Property.

Exhibit “B” Map showing Property and its location.

Exhibit “C” Tentative Tract Map 73455.

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, Development and CITY actions on applications for Subsequent Development Approvals respecting the Property shall be subject to the terms and provisions of this Agreement.

2.2 **Interest in Property.** OWNER represents and covenants that it has an equitable interest in the Property.

2.3 **Assignment.**

2.3.1 *Right to Assign.* OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, *et seq.*), and in so doing assign its rights and obligations under this Agreement as the same may relate solely to the portion of the Property being sold, transferred, or assigned to any person,

partnership, joint venture, firm or corporation at any time during the term of this Agreement.

2.3.2 Release of Transferring OWNER. Upon the sale, transfer or assignment of all or a portion of the Property, the transferring OWNER shall be released of all obligations under this Agreement that relate solely to the portion of the Property being sold, transferred, or assigned; provided that the obligations under this Agreement that relate to the portion of the Property being sold, transferred, or assigned are expressly assumed by and made enforceable against the transferee, pursuant to a written agreement executed by the transferee and provided to CITY not less than fourteen (14) days prior to the effective date of the transfer, and also recorded against the title of the transferred portion of the Property concurrently with the transfer. Notwithstanding the foregoing sentences of this Section 2.3.2, transferring OWNER shall remain responsible for all obligations set forth in the Development Plan that do not relate solely to the portion of the Property beings sold, transferred, or assigned.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. Development allowed under the Development Plan is hereby vested specifically with the Property, and OWNER retains the right to apportion development rights between itself and any subsequent OWNER, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Development Plan and the Land Use Regulations and any such transfer complies with Section 2.3.2 and any other applicable section of this Agreement.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be those contained in the Development Plan and those Land Use Regulations not inconsistent with the Development Plan.

3.3 Subsequent Development Approvals. CITY shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters as established by the Land Use Regulations, for all or a portion of the Property at OWNER's option. The CITY further agrees that, unless otherwise requested by OWNER or as authorized by this Agreement, it shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the CITY, and that pursuant to Section 66452.6 (a) of the California Government Code, any tentative subdivision map approved for the Property, or any portion thereof, shall also be extended for a period equal to the Term of this Agreement.

3.4 **Timing of Development.** The parties acknowledge that OWNER cannot at this time predict when or the rate the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of Development resulted in a later-adopted initiative restricting the timing of Development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.5 **Changes and Amendments.** The parties acknowledge that Development of the Project will likely require Subsequent Development Approvals, and that in connection therewith OWNER may determine that changes are appropriate and desirable in the existing Development Approvals or Development Plan. In the event OWNER finds that such a change is appropriate or desirable, OWNER may apply in writing for an amendment to prior Development Approvals or the Development Plan to effectuate such change, and CITY shall process and act on such application notwithstanding anything in this Agreement that may be to the contrary. CITY shall have no obligation to grant any such application by OWNER that modifies the overall intensity or density of Development, or otherwise is a substantial modification of the Development Plan having significant adverse environmental impacts. If approved in a form to which OWNER has consented in writing, any such change in the Development Approvals or Development Plan shall be incorporated herein as an addendum, without the need for further formal approval of such modified Agreement by the City Council, and it may be further changed from time to time as provided in this Section. Any change in the Development Approvals or Development Plan made in accordance with the procedures required by the Land Use Regulations and with the written consent of the OWNER shall be conclusively deemed to be consistent with this Agreement, without any further need for any amendment to this Agreement or any of its Exhibits.

3.6 **Reservation of Authority.**

3.6.1 *Limitations, Reservations and Exceptions.* Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Property:

(a) Processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations not inconsistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code,

Uniform Solar Energy Code, Uniform Swimming Pool, Spa and Hot Tub Code, Uniform Housing Code, Uniform Administrative Code, National Electrical Code, and any other Uniform Code, and also adopted by CITY as Subsequent Land Use Regulations.

(d) Regulations which may be in conflict with the Development Plan but which are necessary to protect the public health, safety, and welfare. To the extent possible, any such regulations shall be applied and construed consistent with Section 3.6.4 below so as to provide OWNER with the rights and assurances provided under this Agreement.

(e) Regulations which are not in conflict with the Development Plan and this Agreement. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of Development of the Property, or attempting to assess any additional fees or taxes on Development of the Property, or imposing architectural or landscaping requirements or reviews, shall be deemed to conflict with the Development Plan and this Agreement and shall therefore not be applicable to Development of the Property.

(f) Regulations which are in conflict with the Development Plan provided OWNER has given written consent to the application of such regulations to Development of Property.

(g) Federal and State laws and regulations which CITY is required to enforce as against the Property or the Development of the Property.

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

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

3.6.4 Intent. The CITY acknowledges that OWNER has reasonably entered into this Agreement and will proceed with the Project on the assumption that CITY has adequately provided for the public health, safety and welfare through the Land Use Regulations. In the event that any future, unforeseen public health or safety emergency arises, CITY agrees that it shall attempt to address such emergency in

such a way as not to impact Development of the Property in accordance with the Development Plan, and if that is not possible, to select that option for addressing the emergency which has the least adverse impact on Development of the Property in accordance with the Development Plan. CITY specifically also agrees that it will not adopt any Development moratorium applicable to the Property except as a last resort response to such an emergency, and then shall maintain any such moratorium with respect to the Property only for so long as required for the CITY to address the emergency in such a way as to permit the Project to be completed according to OWNER's timetable.

3.6.5 *Taxes, Assessments and Fees.* This Agreement shall not prevent the City from enacting, levying or imposing any new or increased tax, assessment or fee that is levied or imposed on a CITY-wide basis.

3.7 **Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not subject to control by CITY may possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies.

3.8 **Tentative Maps.** If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with Development of the Property, is a vesting map under the Subdivision Map Act (Government Code Section 66410, *et seq.*), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to OWNER, then and to that extent the rights and protection afforded OWNER under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, Development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.9 **Cooperation in Completing Development Plan.** CITY agrees to cooperate with OWNER as necessary and lawful, without cost to CITY, for the successful completion of the Development Plan and fulfillment of Development Requirements, including, without limitation, accomplishment of each and every one of the requirements or conditions that may be imposed on the Development by the CITY or by other public agencies.

4. PERIODIC REVIEW.

CITY shall review OWNER's performance every twelve (12) months at the anniversary of the adoption of the Agreement. OWNER shall cooperate with such review and shall demonstrate good faith compliance with the terms of this Agreement. If, at the conclusion of such review, CITY finds that OWNER is in substantial compliance with this Agreement, CITY shall, upon OWNER's written request, issue an Estoppel Certificate to the Developer in a form satisfactory to the City Attorney. Notwithstanding the foregoing, CITY may give notice to OWNER of a default of OWNER's obligations or any non-compliance by OWNER at any time, regardless of the status of any performance review, pursuant to Section 6 of this Agreement. CITY's failure to conduct, or delay in conducting, any performance review hereunder shall not constitute a waiver by CITY of any non-compliance or default by OWNER.

5. PUBLIC BENEFIT.

In consideration for the rights and benefits to OWNER under this Agreement, OWNER provides to CITY the following public benefits:

(a) *Public Parkland Conveyance:* OWNER shall convey to CITY a parcel of real property within the Property, comprising approximately 1.95 acres, for development and use by CITY as a public park. OWNER shall convey such real property to CITY for the price of \$_____, which the parties mutually acknowledge is below the fair market value of such real property as of the date of this Agreement. The conveyance of such real property shall be documented by a separate contractual instrument and accompanying grant deed.

6. DEFAULT, REMEDIES AND TERMINATION.

6.1 Rights of CITY after Default. In the event of a default by OWNER, CITY shall have hereunder all legal and equitable remedies as provided by law including, without limitation, the recovery of money damages or the termination of this Agreement, following the occurrence of a default or breach to enforce any covenant, obligation or agreement set forth herein. Before CITY may terminate this Agreement or take action to obtain judicial relief CITY shall comply with the notice and cure provisions of Section 6.3.

6.2 OWNER Remedy Limited to Specific Performance. The nature of a development agreement under the Development Agreement Statute is a very unusual contract involving promoting a very large development project facing many complex issues including geologic, environmental, finance, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to OWNER by CITY. For purposes of enforcement, therefore, OWNER'S sole remedy for any breach of this Agreement shall be the remedy of Specific Performance and not the recovery of money damages of any kind from CITY. Before the OWNER takes action to obtain a judicial order for Specific Performance against the City, OWNER shall comply with the notice and cure provisions of Section 6.3.

6.3 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary Default cannot be cured within such thirty (30) day period, and if and, as long as the Defaulting Party does each of the following:

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
2. Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the default;
3. Promptly commences to cure the default within the thirty (30) day period;
4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure;
5. Diligently prosecutes such cure to timely completion then

The Defaulting Party shall not be deemed in breach of this Agreement once the breach has been timely cured. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default under this Agreement if the breach or failure involves the payment of money but the Defaulting Party has failed to completely cure the monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

6.4 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other agreements ("Termination Notice"). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate the Agreement and such other agreements as the Non-Defaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party's election to terminate any agreements will only be waived or resolved (i) if the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) if the Non-Defaulting Party elects to revoke the Termination Notice.

6.5 Waiver of Breach. By not filing a challenge to CITY'S action to enact any Development Approval within the period established by applicable law, OWNER shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final subdivision map on any portion of the Property, OWNER shall be deemed to have waived any claim that any condition of approval of such final subdivision map is improper or that the condition of approval constitutes a breach of the provisions of this Agreement.

6.6 Attorneys Fees. In the event either party to this agreement is forced to bring legal action to enforce its rights under this Agreement, and notwithstanding the limitation of OWNER'S remedies under Section 6.2, the prevailing party in any such action shall be entitled to recover its reasonable attorney's fees and costs of suit.

7. RELEASES AND INDEMNITIES.

7.1 Third-Party Litigation.

7.1.1 Non-liability of CITY. As set forth above, CITY has determined that this Agreement is consistent with the General Plan and that the General Plan and Development Approvals meet all of the legal requirements of State law. The Parties acknowledge that:

A. In the future there may be challenges to legality, validity and adequacy of the General Plan, the Development Approvals and/or this Agreement; and

B. If successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 7, neither Party shall have liability under this Agreement for any failure of the CITY to perform under this Agreement or the inability of the OWNER to Develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination resulting from any claim or litigation that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

7.1.2 Revision of Land Use Restrictions. If, for any reason, the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, or applicable laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary and as agreed by the Parties, in order to comply with such judicial decision.

7.1.3 Participation in Litigation: Indemnity. To the full extent permitted by law, OWNER shall indemnify and defend CITY and its elected and appointed boards, commissions, officers, agents and employees (each, an "Agent"), and will hold and save them and each of them harmless from any and all claims, litigation and damages (including but not limited to attorneys' fees and costs) against the City and/or Agent, and OWNER shall be solely responsible for any judgment arising therefrom. CITY shall provide OWNER with prompt notice of the pendency of such action and shall request that OWNER defend such action. OWNER may utilize the City Attorney's office or use competent legal counsel of its choosing, but shall reimburse CITY for any necessary legal cost incurred by CITY including, without limitation, reasonable costs incurred by the City Attorney to monitor activities of counsel chosen by the OWNER. OWNER'S obligation to pay the cost of the action, including judgment, shall extend until judgment is entered and completely satisfied. OWNER shall have the right, in its sole and absolute discretion, to determine that it does not want to defend any litigation, or appeal any judgment, attacking this Agreement or the Development Approvals in which case the CITY shall allow the OWNER to settle the

litigation on reasonable terms OWNER determines, in its discretion, provided OWNER shall confer with CITY before acting and cannot bind CITY to terms CITY deems to be not in CITY'S best interests. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed.

7.2 Hold Harmless: Developer's Construction and Other Activities. OWNER shall indemnify, defend, save and hold CITY and its officers, agents and employees harmless from any and all claims, damages of any kind and litigation which may arise, directly or indirectly, from OWNER's or OWNER's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by OWNER or by any of OWNER's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for OWNER or any of OWNER's agents, contractors or subcontractors. Nothing herein is intended to make OWNER liable for the acts of CITY's officers, employees, agents, contractors of subcontractors.

7.3 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than CITY's default as provided herein.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the 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. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided CITY determines such interpretation or modification is consistent with the intent and purposes of this Agreement.

8.1.1 Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this

Agreement, CITY shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder; and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the Property or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 **Term of Agreement.** Unless earlier terminated as provided in Section 4 or Section 6 hereof, this Agreement shall continue in full force and effect for a period of six (6) calendar years from the Effective Date.

9.2 **Recordation of Agreement.** This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.3 **Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

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

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

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

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

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

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

9.10 **Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's

control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

9.12 **Successors in Interest.** As provided in Section 65868.5 of the Government Code, and except as otherwise provided in this Agreement, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon, and inure to the benefit of, CITY and OWNER, and their respective successors and assigns.

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

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

9.15 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the Development of private property and the owner of such property.

9.16 **Further Actions and Instruments.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

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

9.18 **Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the

intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.

9.19 **Authority to Execute.** The person or persons executing this Agreement on behalf of OWNER warrants and represents that he/they have the authority to execute this Agreement on behalf of his/their corporation, partnership or business entity and warrants and represents that he/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

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

CITY: CITY OF COVINA

By _____
Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

(SEAL)

OWNER: ONE CHARTER OAK, LLC

By _____
Title _____

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

State of California)
County of Los Angeles)

On _____, 2015, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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

State of California)
County of Los Angeles)

On _____, 2015, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit "A" Legal Description of the Property.

Exhibit "B" Map showing Property and its location.

Exhibit "C" Tentative Tract Map 73455 - Development Plan for the Development of the Property.