

TEMPORARY CONSTRUCTION ACCESS AGREEMENT

This Agreement for Temporary Construction-Related Access and Activities (“**Agreement**”) is made and entered into as of September 11, 2024 (“**Effective Date**”), by and between the Azusa Unified School District (“**District**”) and Azusa JV Borrower, LLC (“**Developer**”). The District and Developer may be individually referred to as a “**Party**” and collectively referred to as the “**Parties.**”

RECITALS

A. The District owns that certain real property, located at 201 N. Vernon Avenue, Azusa, California, 91702, identified by APN No. 8615-018-901, and commonly referred to as the Mountain View Elementary School (“**District Property**”).

B. Developer owns that certain real property, located at 137 N. Barbara Avenue, Azusa California, 91702, identified by APN No. 8615-019-037, and adjacent to the District Property (“**Developer Property**”).

C. Developer seeks to reconstruct and make improvements to an existing concrete masonry unit wall located between the District Property and the Developer Property (“**CMU Wall Improvements Project**”).

D. Developer desires to use that certain portion of the District Property’s as generally depicted in **Exhibit “A”** attached hereto and incorporated herein (“**Access Area**”), for temporary construction-related activities. The Access Area shall consist of an area approximately two hundred and thirty one (231) feet long and five (5) feet wide, running along the southern border of the District Property.

E. The construction-related activities to be conducted in the Access Area by Developer, or on Developer’s behalf, for the CMU Wall Improvements Project will generally consist of, without limitation temporary removal and replacement of the CMU wall located between the Developer Property and District Property, grading, excavation for wall foundations, pouring of concrete, placement of block, placement of rebar, and grouting (collectively, “**Temporary Construction Work**”).

F. The Parties now desire to enter into this Agreement to set forth the terms and conditions of Developer’s performance of any Temporary Construction Work on and access to the District Property associated with the Developer’s CMU Wall Improvements Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto mutually agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Parties agree the foregoing Recitals are true and correct and are hereby incorporated into this Agreement by this reference.

2. Temporary Construction Work; Access. The District hereby grants to Developer, its employees, agents, representatives, consultants, and contractors the right to enter, access, and use those portions of the District Property consisting of the Access Area depicted in **Exhibit “A”** for purposes of ingress, egress, and the performance of the Temporary Construction Work for the CMU Wall Improvements Project. The Parties acknowledge and agree that the access granted hereunder and Developer’s performance of the Temporary Construction Work shall be subject to the following provisions:

2.1 Performance; Compliance with Laws. Developer shall exercise reasonable precautions to avoid damage to the District Property and to protect persons and property. Developer shall perform the Temporary Construction Work and CMU Wall Improvements Project in accordance with all applicable laws and regulations including, but not limited to, the Americans with Disabilities Act, the Prevailing Wage Law (California Labor Code section 1720 et seq.), all relevant building codes, and all relevant administrative agency statutes, ordinances, rules, regulations, orders, or requirements relating to pollution, protection of human health or safety, the environment, and Hazardous Materials (as defined herein). Developer will use commercially reasonable efforts to cause the Temporary Construction Work to be performed by well-trained, properly-licensed, and adequately-supervised workers in a good and workmanlike manner, free from design, material, and workmanship defects. Developer shall furnish, or cause to be furnished, all tools, equipment, apparatus, facilities, transportation, labor, and materials necessary to perform the Temporary Construction Work at Developer’s sole cost and expense.

2.2 Schedule. Prior to any commencement of the Temporary Construction Work on or impacting the District Property, Developer shall provide thirty (30) days’ prior written notice to the District of Developer’s detailed, proposed construction schedule for review and written approval by the District, which approval will not be unreasonably withheld, conditioned, or delayed so long as the proposed construction schedule will not unreasonably interfere with the District’s operations at the District Property, create an undue safety risk, or otherwise conflict with the terms and conditions of this Agreement. Any material amendment to the construction schedule shall be subject to the District’s prior review and reasonable approval.

2.3 Scope of Work. Prior to any commencement of the Temporary Construction Work, Developer shall provide thirty (30) days’ prior written notice to the District of Developer’s detailed, proposed scope of work, including any and all plans and specifications impacting the District Property, for review and written approval by the District, which approval will not be unreasonably withheld, conditioned, or delayed so long

as the proposed scope of work will not unreasonably interfere with the District's operations at the District Property, create an undue safety risk, or otherwise conflict with the terms and conditions of this Agreement. Upon approval, said scope of work, plans, and/or specifications shall hereby be deemed incorporated into the terms of this Agreement. Developer shall cause the Temporary Construction Work to be performed in conformance with the plans and specifications provided to and approved by the District. Any material amendment to the scope of work, plans, and/or specifications shall be subject to the District's prior review and reasonable approval.

2.4 Interference. Developer agrees to use all commercially reasonable efforts to limit as much interference and disruption as possible to the operations and facilities of, and to not create an undue safety risk at, the District Property. Developer shall not obstruct nor allow any of its contractors to obstruct access to the District Property without the District's express, prior written consent. To the extent reasonably possible, Developer shall perform the CMU Wall Improvements Project in the manner most likely to minimize injury, damage, disruption, noise, dust, loss, and negative impacts to the District Property.

2.5 Approvals. At Developer's sole cost, Developer shall obtain any and all required approvals, permits, licenses, permissions, certificates, or other documents ("**Approvals**") from all federal, state, and local governmental authorities having jurisdiction over all or any part of the CMU Wall Improvements Project including, without limitation, the City of Azusa ("**Authorities Having Jurisdiction**"), which may be necessary to perform the Temporary Construction Work. The District shall reasonably cooperate with Developer in obtaining said Approvals at no cost to the District.

2.6 Environmental Testing. To the extent that Developer conducts any testing, investigation, or other similar activity related to the CMU Wall Improvements Project on the District Property, Developer shall provide the District with a written summary describing, with reasonable specificity: (i) the nature of the invasive or destructive testing, investigation, or other activity that was performed; (ii) the date, time, location, and purpose of the invasive or destructive testing, investigation, or other activity; and (iii) the identity of the person or persons who conducted the invasive or destructive testing, investigation, or activity and the name of the company or firm, if any, that employed such person or persons. Developer shall provide the District with copies of all studies, reports, approvals, permits, licenses, permissions, certificates, clearances, and other documents including, but not limited to, those regarding Environmental Site Assessments (as described below), environmental impacts, Hazardous Materials, contamination, and soil removal, related to the CMU Wall Improvements Project. Developer shall also provide to the District split samples of any soil, groundwater, or other substance that Developer or its consultant or contractor removes from the District Property.

2.7 Hazardous Materials. The term "**Hazardous Materials**" includes, without limitation: (i) material that is flammable, explosive, or radioactive; (ii) petroleum products,

including by-products and fractions thereof; and (iii) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Agreement. Developer shall take all necessary steps to ensure that the Temporary Construction Work and the CMU Wall Improvements Project neither directly nor indirectly result in the release or threatened release of Hazardous Materials or contamination in, on, under, from, or affecting the District Property at any time. In the event that the Temporary Construction Work and/or the CMU Wall Improvements Project directly or indirectly result in Hazardous Materials or contamination in, on, under, or affecting the District Property at any time, Developer shall, at its sole cost and expense, mitigate such Hazardous Materials and contamination, to the sole satisfaction of the District.

2.8 Damage; Repairs. In the performance of any activities of the CMU Wall Improvements Project, Developer shall make all reasonable efforts to avoid damage to the District Property, including exploring and giving priority to any reasonable alternatives that avoid disturbing or causing damage to the District Property. In the event the District Property is disturbed or damaged by, without limitation, the Temporary Construction Work, the CMU Wall Improvements Project, or any other act or omission of Developer in the performance thereof, then Developer shall, at its sole cost and expense, repair (or cause to be repaired) such damage and restore (or cause to be restored) the District Property to a condition at least equal to the pre-construction condition to the District's reasonable satisfaction. The Parties shall cooperate with each other in Developer's performance of any such repairs to the District Property as required herein.

2.9 Maintenance. The Parties acknowledge and agree that the District shall have no responsibility for the maintenance, upkeep, replacement, or repair of the CMU Wall Improvements Project located on the Developer Property that may be needed on a regular, on-going, or future basis. The Parties acknowledge and agree that the District shall have responsibility for the maintenance, upkeep, replacement, or repair of the CMU Wall Improvements Project located on the District Property that may be needed on a regular, on-going, or future basis.

2.10 Clean Up. In connection with the CMU Wall Improvements Project's performance, Developer shall ensure that the District Property is kept in a safe and orderly condition, and that the Access Area is maintained in a reasonably clean condition outside of normal working hours. Upon completion of the Temporary Construction Work,

Developer will remove all debris of the CMU Wall Improvements Project from the District Property.

2.11 Protection of Work and Property. Developer shall erect and properly maintain at all times, as reasonably required by the conditions and progress of the CMU Wall Improvements Project, any necessary safeguards, signs, barriers, lights, and security persons for the protection of workers and the public. In an emergency affecting the safety of life, the District Property, the CMU Wall Improvements Project, or adjoining property, Developer, without needing to first obtain any special instruction or authorization from the District, is permitted to act at its reasonable discretion to prevent such threatened loss or injury.

2.12 Quiet Enjoyment. In connection with Developer's design, development, construction, placement, maintenance, repair, access, and other performance of the Temporary Construction Work and the CMU Wall Improvements Project in and around the District Property and/or Developer's access to and use of the Access Area, Developer shall not conduct any activity that materially impairs the District's quiet enjoyment and beneficial use of the District Property.

3. Term. This Agreement shall commence on the Effective Date and, except for those terms intended to survive, shall expire two (2) weeks following completion of the Temporary Construction Work and the CMU Wall Improvements Project ("**Term**"), unless otherwise agreed to in writing by the Parties.

4. Indemnification. Developer agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the District), and hold harmless the District, its governing board, officers, employees, administrators, independent contractors, subcontractors, agents, and other representatives ("**Indemnitees**"), against all suits, claims, damages, losses, and expenses, including but not limited to attorneys' fees, caused by, arising out of or resulting from Developer's performance of the Temporary Construction Work or the CMU Wall Improvements Project and/or any of Developer's obligations under this Agreement, except to the extent caused by the negligence or willful misconduct of the Indemnitees. Developer's defense and indemnification obligations hereunder shall survive the expiration or any earlier termination of this Agreement until all claims involving any of the indemnified matters against the Indemnitees are either concluded or fully, finally, and absolutely barred by the applicable statutes of limitations.

5. Insurance. Developer and/or all Developer contractors and subcontractors of any tier engaged in the performance of the Temporary Construction Work shall be required to obtain and maintain insurance policies of the type and with coverage amounts that are usual and customary to the type of business and/or exposures related to the work being performed, whether through a program of self-insurance or with an insurance company or companies that are rated "A-VII" or higher by A.M. Best's key rating guide, and are

authorized to do business in the State of California. Developer shall name the District as additional insureds by specific endorsement to their general liability policies. Developer shall provide to the Parties a thirty (30)-day notice of cancellation or material change in any insurance coverage required hereunder.

6. Dispute Resolution. In the event of a dispute between the Parties relating to performance of the Parties' obligations under this Agreement, the Parties will, before exercising any other right or remedy for resolution of the dispute, meet and confer in good faith to attempt to resolve the dispute through unassisted negotiation. Each of the Parties shall be represented in any such negotiation session by a representative(s) who is familiar with the facts of the dispute, and who has authority to negotiate on behalf of and to effectively recommend settlement to the Party that he or she represents. If the Parties are unable to resolve the dispute through such unassisted negotiations, then a Party may request the dispute be submitted to mediation for resolution.

7. General Provisions.

7.1 Entire Agreement. This Agreement contains the entire and complete agreement of the Parties with respect to the subject matter of this Agreement and supersedes all other previous or concurrent understandings, arrangements, or agreements, oral or written. No promises, representations, warranties, or inducements of any kind exist between any of the Parties to this Agreement except as expressly set forth in this Agreement.

7.2 Amendment. No addition to or modification of the terms of this Agreement shall be valid unless made in a written amendment to this Agreement, which is formally approved and signed by each of the Parties to this Agreement.

7.3 Captions. The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this Agreement and shall have no effect upon its construction or interpretation.

7.4 Notice. Any notices required or permitted to be given under the terms of this Agreement must be in writing and may be: (i) personally delivered; (ii) mailed by depositing such notice in the United States mail, first class postage prepaid; or (iii) sent by reputable overnight delivery service, addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to the District: Azusa Unified School District
Attention: Assistant Superintendent of Business Services
546 S. Citrus Avenue
Azusa, CA 91702
Voice: 626-858-6162
E-mail: ljamal@azusa.org

If to Developer: Azusa JV Borrower, LLC
Attention: Matt Hamilton
550 N. Larchmont Blvd., Ste. 201
Los Angeles, CA 90004
Voice: 949-791-8401
E-mail: Matt@hamiltonldi.com

7.5 Non-Assignability. Neither Party may assign this Agreement to any non-related third party without the prior written consent of the other Parties.

7.6 No Liens. Developer shall at all times keep the District Property free from any and all liens.

7.7 Waiver. The waiver by any Party to this Agreement of a breach of any provision of this Agreement must be in writing signed by the waiving Party, and any such waiver shall not be deemed to be a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

7.8 Severability. If any term, provision, covenant, or restriction in this Agreement is determined to be invalid, void, unenforceable, or otherwise inconsistent with applicable law, the remainder of the terms, provisions, covenants, and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated. It is hereby stipulated and declared to be the intention of Developer and the District that each would have executed the remaining terms, provisions, covenants, and restrictions set forth in this Agreement without including any of such terms, provisions, covenants, or restrictions that may be hereafter declared invalid, void, or unenforceable.

7.9 Authority. The District and Developer each certifies that it is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and each further certifies that the individual signing this Agreement on its behalf has been duly authorized to execute this Agreement on behalf of the Party and

may legally bind the Party to the terms and conditions of this Agreement.

7.10 Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of California without regard to its conflict of law provisions.

7.11 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts (including PDF copies), each of which shall be deemed an original as against the Party signing such counterpart and which together shall constitute one and the same instrument. The Parties agree that the signature pages of this Agreement may be executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement, with such scanned and electronic signatures having the same legal effect as original signatures.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates written below.

AZUSA UNIFIED SCHOOL DISTRICT

By: _____
Latasha Jamal
Assistant Superintendent of Business
Services

AZUSA JV BORROWER, LLC, a California
limited liability company

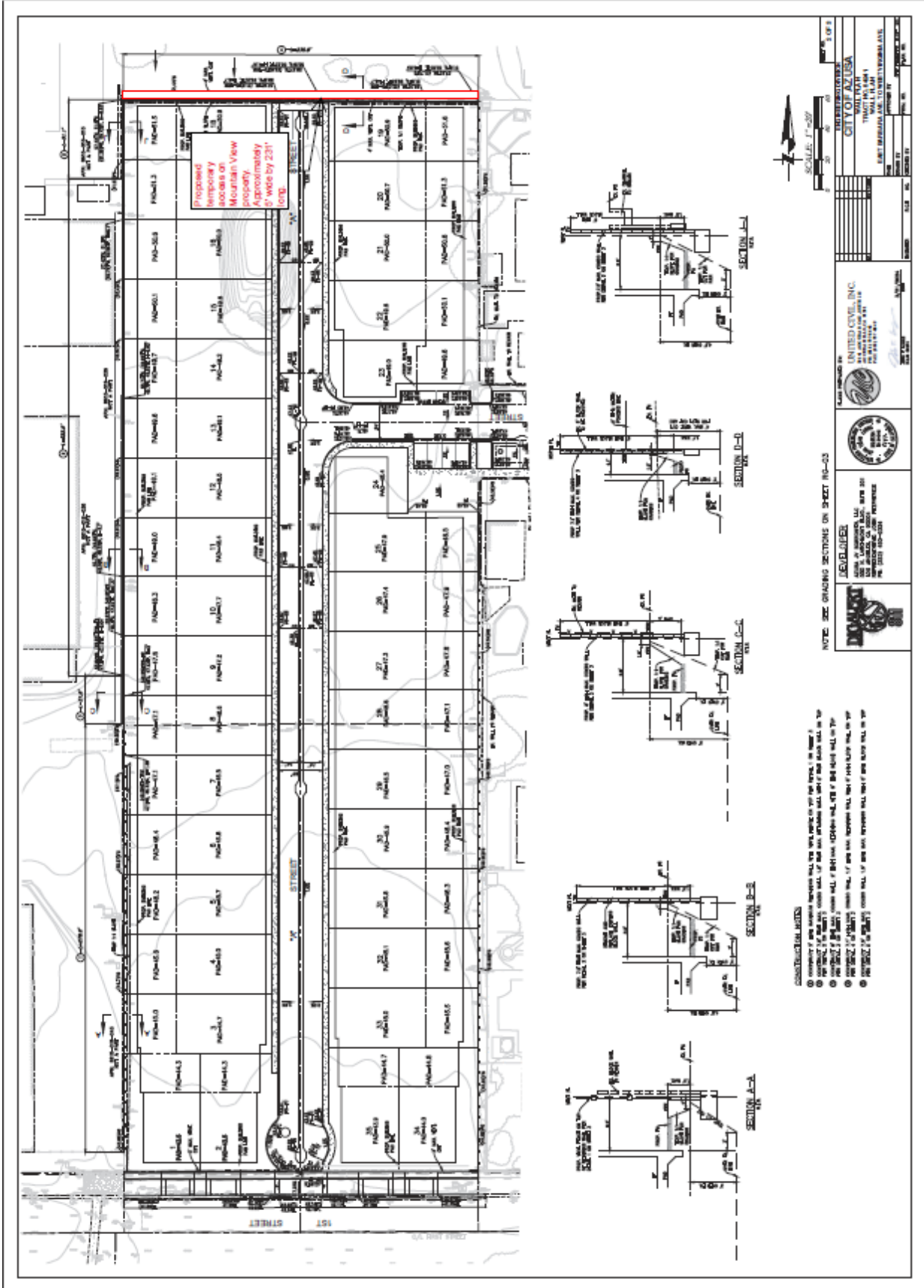
By: RCRE HLD AZUSA SPONSOR, LLC, a
California limited liability company
Its: Manager

By: HAMILTON LAND DEVELOPMENT,
INC., a California corporation
Its: Co-Manager

By: 

Matthew Hamilton, Principal

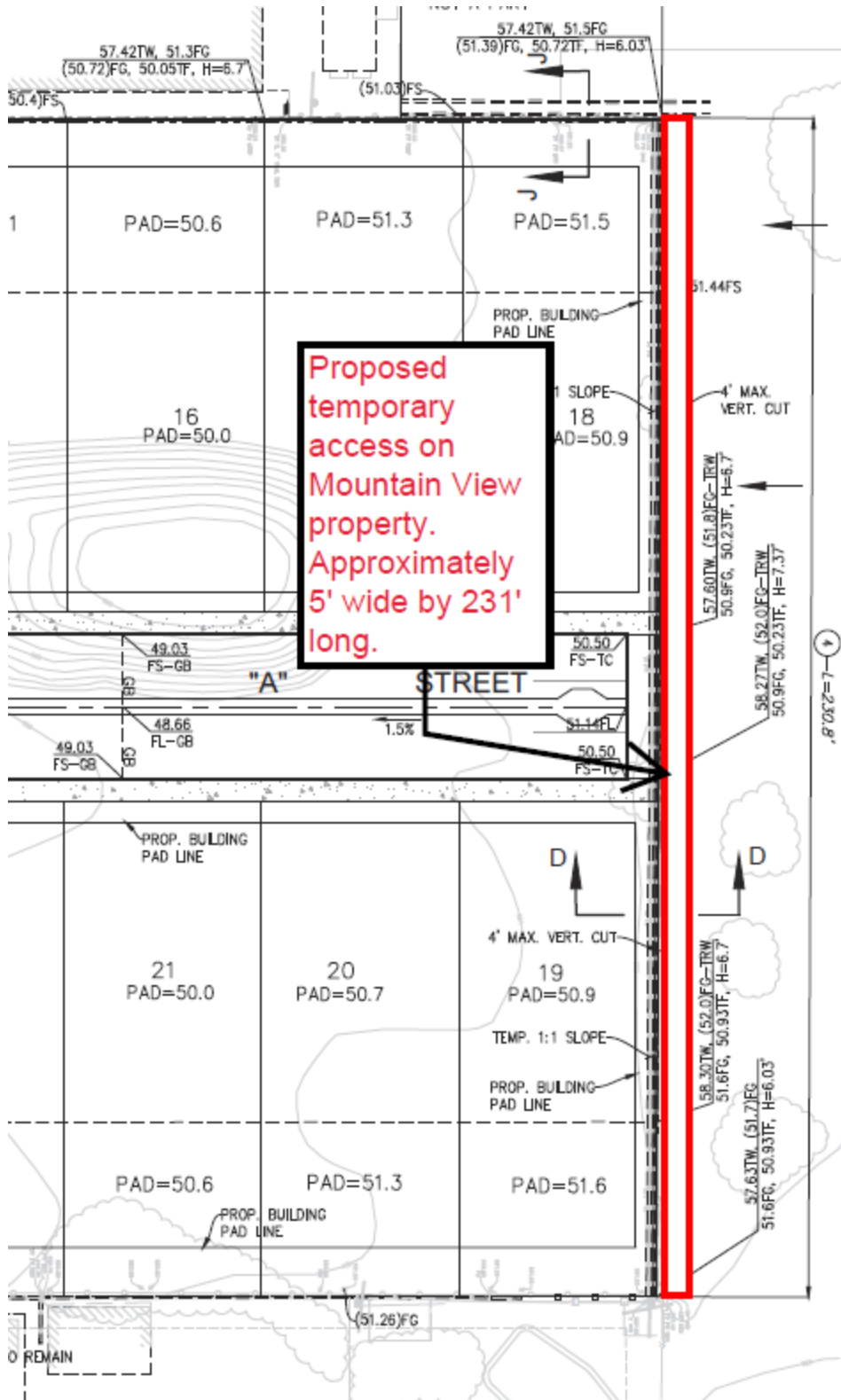
Exhibit A
(Depiction of Access Area)



- CONSTRUCTION NOTES**
- 1. PROPERTY OF AND SUBJECT MATTER OF THE CITY OF AZUSA, CALIFORNIA.
 - 2. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL UTILITIES AND STRUCTURES BEFORE CONSTRUCTION.
 - 3. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL UTILITIES AND STRUCTURES BEFORE CONSTRUCTION.
 - 4. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL UTILITIES AND STRUCTURES BEFORE CONSTRUCTION.
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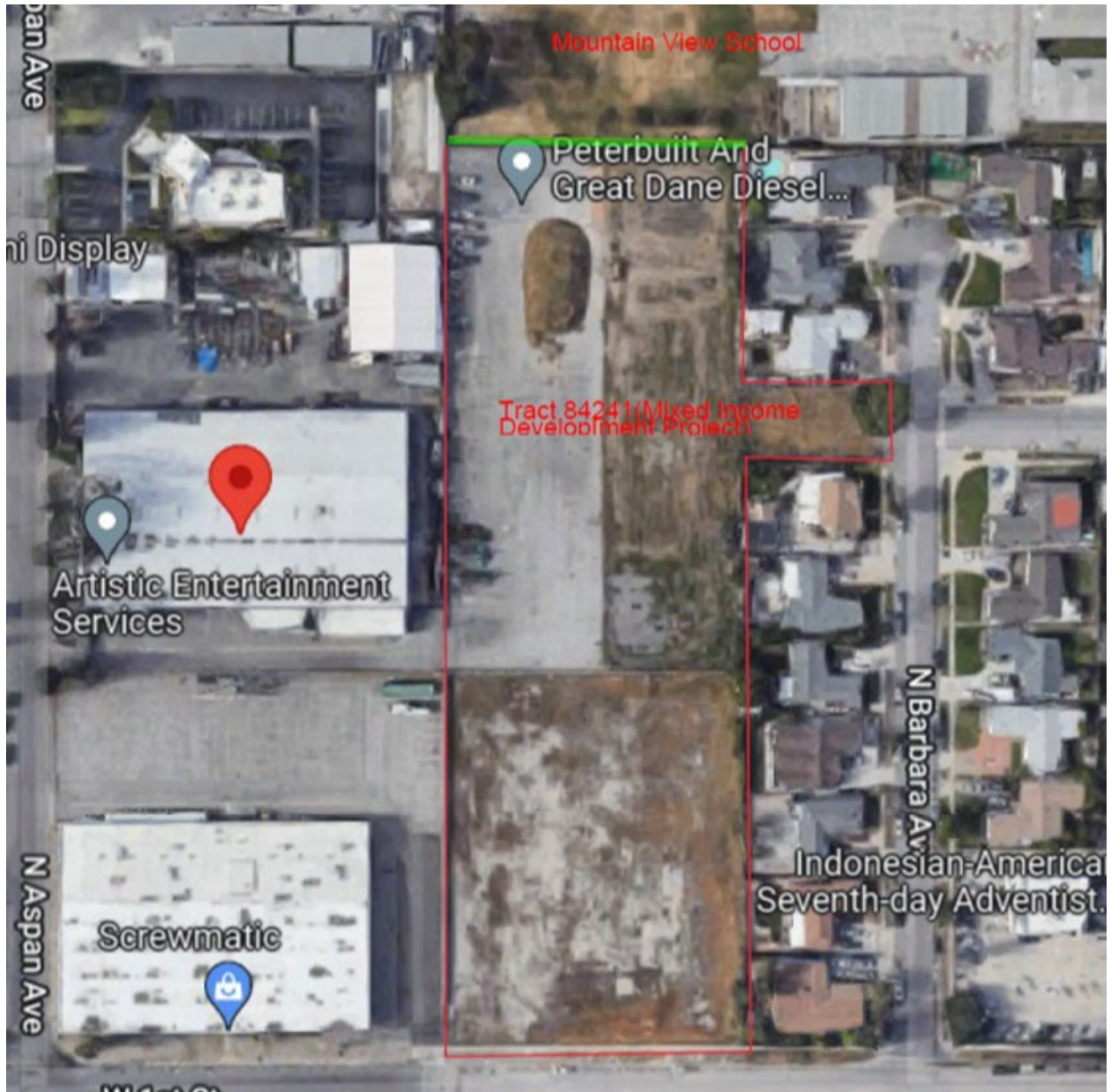
NOTE: SEE GRADING SECTIONS ON SHEET PG-03

Exhibit A-2



Proposed temporary access on Mountain View property. Approximately 5' wide by 231' long.

Exhibit A-3



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