

RIGHT OF ENTRY AND ACCESS AGREEMENT

This RIGHT OF ENTRY AND ACCESS AGREEMENT ("**Agreement**") is made and entered into as of July 16, 2019 ("**Effective Date**"), by and between the CITY OF WEST COVINA, a California municipal corporation ("**City**"), and SINGPOLI BD CAPITAL GROUP, LLC, a California limited liability company ("**Developer**"), as the assignee of the Letter of Intent dated May 23, 2019 by and between SINGPOLI GROUP, LLC, a California limited liability company and the City. City and Developer are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

Recitals

A. City, as successor in interest to the West Covina Redevelopment Agency, is the fee owner of that certain approximately 134 acres, consisting of seven (7) individual tracts of land with APNs: 8735-001-919, 8735-001-920, 8735-001-921, 8735-001-931, 8735-002-906, 8735-002-909, 8735-002-910, located in the City of West Covina, CA (the "**City Property**"). The City Property is more fully described in the attached **Exhibit A**.

B. City also holds a license agreement for approximately 85 acres of land adjacent to the City Property (the "**License Property**") which City proposes to sublicense to Developer for additional project amenities to be constructed with Developer's project. The License Property is more fully described in the attached **Exhibit B**.

C. City desires to explore whether the City Property and/or the License Property should be redeveloped with a hotel and recreational facilities which collectively could provide public access, public parking, a public park, walking trails, transient occupancy tax, and a public safety training center.

D. On April 30, 2019, the City Council selected Developer as the developer with whom City desires to negotiate regarding the potential sale of the City Property and the redevelopment of the City Property and License Property. Following such selection, on May 30, 2019, the Parties agreed to a Letter of Intent setting forth the terms under which the Parties will diligently pursue the negotiation of a proposed Purchase and Sale Agreement and a Development Agreement providing for the sale and development of the City Property and a sublicense for development of the License Property.

E. Developer desires to enter upon and gain access to the City Property and the License Property on a temporary basis to inspect the City Property and the License Property, and to perform certain due diligence activities in connection with the negotiation of the proposed Purchase and Sale Agreement and Sublicense.

F. City desires to grant entry upon and access over and to the City Property and the License Property (hereinafter collectively the "**Development Area**") to Developer and its employees, agents, representatives, consultants, contractors and subcontractors (collectively, "**Developer's Agents**") for the purposes of conducting the Inspections (as that term is defined below), subject to the terms and conditions set forth below.

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NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties agree as follows:

Agreement

1. Grant of License.

a. Subject to the terms and conditions of this Agreement, City hereby grants to Developer and Developer's Agents a temporary, non-exclusive license to enter on the Development Area at their own risk for the purpose of: (i) surveying the Development Area, (ii) performing a geotechnical analysis of the Development Area's soils, (iii) performing Phase I and/or Phase II (if any) environmental testing; and (iv) any other tests or inspections deemed necessary or useful by Developer (collectively, the "**Inspections**").

b. To access the City Property, Developer must coordinate access via the agent of BKK Corporation ("**BKK**") designated to control access to the facility. Currently such agents are Tetra Tech BAS Construction and SCS Engineers ("**BKK Agents**"). Developer may only access the City Property after signing in at the front gate with the BKK security guard, and between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday, unless special arrangements can be coordinated with the City and BKK Agents on a case by case basis. Developer and Developer's Agents will limit all activity on the property comprising the Class III landfill area to only the area currently under license to the City. Developer and Developer's Agents are forbidden from entering onto the Class I landfill area. At all times Developer and Developer's Agents are on the City Property or License Property, they must wear appropriate safety equipment consisting of, at a minimum, an orange visibility vest, safety glasses and a hard hat.

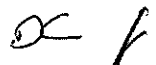
2. Conditions of the Inspections. City agrees to allow Developer and Developer's Agents entrance upon and access over and to the Development Area on the following conditions:

a. Developer shall conduct the Inspections at Developer's sole cost and expense, and at no cost, expense or liability to City;

b. Developer shall give City at least twenty-four (24) hours' notice via telephone or electronic mail prior to starting any Inspections on the Development Area. Developer shall give BKK Agents at least twenty-four (24) hours' notice via electronic mail prior to accessing the site;

c. Developer shall require Developer's Agents to be appropriately qualified and skilled to perform the Inspections authorized under this Agreement and to comply with the provisions of this Agreement during the performance of any such Inspections. Developer shall enter the Development Area in its present condition, and City shall not be obligated to make the Development Area safe or suitable for entry by Developer in any manner whatsoever;

d. City and BKK Corporation shall not be required to assume any responsibility for or protect against any loss, damage, theft or vandalism of any property or material which Developer or Developer's Agents may place upon the Development Area. All tools,



equipment and other personal property taken upon or placed upon the Development Area by Developer and/or Developer's Agents shall remain the property of Developer and/or Developer's Agents, as applicable, and must be removed by Developer no later than ten (10) days following the termination or expiration of this Agreement;

e. Prior to conducting any invasive or Phase II Inspections on the City Property ("**Intrusive Activity**"), Developer shall submit a reasonable work plan to the City Manager (or his/her designee) and coordinate with the City Manager (or his/her designee) with respect to Developer's access for such Intrusive Activity. Developer shall submit the above-referenced work plan, including a map identifying the general area where Developer proposes to conduct the Intrusive Activity and a general description of the intended purpose of such Intrusive Activity for the City Manager's approval (or his/her designee), which approval shall not be unreasonably withheld, conditioned or delayed. Such work plan shall identify any and all traffic control and safety measures necessary or desirable to secure the area where Developer proposes to conduct the Intrusive Activity. Once said work plan is approved by the City Manager (or his/her designee), no further permission from and/or notice to the City shall be required to allow Developer to conduct tests for soil stability on the City Property.

f. Developer shall not cause or allow any invasive inspections on the License Area absent the express prior written consent of the City and any other required approvals.

3. Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter until the Inspections have been completed to the reasonable satisfaction of Developer, but in no event longer than two years from the Effective Date of this Agreement.

4. Restoration Obligations. Promptly upon completion of any Inspection(s) of any portion of the Development Area, Developer, at no cost to City, shall repair any damage to and/or restore the Development Area to substantially its prior condition (including, without limitation, grading, repairing the surface, and/or replacing surface features) if and to the extent the need for such repair or restoration is caused by the Inspection(s); provided, however, that the foregoing shall not require Developer to repair any existing conditions on the Development Area encountered or discovered by Developer, or to remediate, encapsulate, dispose of, treat, transport or otherwise handle any hazardous or toxic materials except in the event and to the extent first placed on the Development Area by Developer or Developer's Agents. Developer shall promptly notify City of any discovery by it or its Agents of any damaged area or hazardous or toxic materials discovered on the Development Area during the Inspection(s) provided for herein.

5. Assumption of Risk and Releases. Developer and Developer's Agents who enter upon the Development Area under this Agreement shall do so entirely at their own risk. On behalf of itself and Developer's Agents (collectively, the "**Releasees**"), Developer assumes all risk of entering the Development Area and agrees that City and its elected officials, officers, agents, employees and representatives (collectively, "**City Parties**") and BKK and BKK's Agent, and their officials, officers, agents, employees and representatives (collectively, the "**BKK Parties**"), are released and shall not be liable in any manner for injury to or death of Developer or its Releasees arising from the Inspections.

6. Indemnification. Developer shall indemnify, defend (with counsel reasonably acceptable to City or selected by Developer's insurance company), protect and hold City and City Parties harmless from all liabilities, obligations, orders, claims, damages, governmental fines or penalties, and expenses of defense with respect thereto, including attorneys' fees and costs (collectively, "**Claims**") arising out of Inspections conducted on the Development Area and/or the entry thereon by Developer or Developer's Agents. Notwithstanding anything to the contrary in the foregoing, Developer's indemnity obligations under this Section 6 shall not extend to Claims occasioned by (i) the sole negligence or willful misconduct of City or any City Parties, (ii) Developer's discovery of existing conditions at the Development Area, or (iii) hazardous or toxic materials not first placed on the Development Area by Developer or Developer's Agents. Further, in no event shall any party be liable to City for any consequential, punitive or special damages including, without limitation, lost profits. The indemnity provided in this Agreement shall survive the termination or expiration of this Agreement for a period of one (1) year.

7. Insurance. Developer shall have or will take out and maintain or shall cause its contractor(s) to take out and maintain, a commercial general liability policy in the amount of no less than Two Million Dollars (\$2,000,000) combined single limit, covering occurrences arising out of any personal property damage or bodily injury caused by or resulting from Developer's or Developer's Agents' entry onto the Development Area to conduct inspections or otherwise. Such policy or policies shall be written on an occurrence form. Until Developer has completed all of the investigations and inspections permitted under this Agreement, Developer shall also obtain and maintain a comprehensive automobile liability policy in the amount of no less than One Million Dollars (\$1,000,000), combined single limit covering occurrences on the Development Area and shall furnish or cause to be furnished to City and BKK Agents evidence satisfactory to City and BKK Agents that Developer and any Developer's Agents with whom it has contracted for the performance of work on the City Property or otherwise pursuant to this Agreement carries Workers' Compensation insurance as required by law. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-. The commercial general liability and comprehensive automobile policies hereunder shall name City and City Parties, and BKK and the BKK Parties, as additional insureds. Developer shall furnish City and BKK Agents with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City or BKK, and the policy shall so provide. The required certificates and endorsements shall be furnished by Developer to City and BKK Agents prior to any entry upon the City Property or commencement of any of the Inspections.

8. Assignment. The parties acknowledge the potential that Developer may assign the rights to this Agreement to a business entity formed by Developer for the specific purpose of development of the anticipated project and City requires notice in writing within 48 hours of any assignment of this Agreement by Developer to a new business entity. Upon the event of an assignment of this Agreement, this Agreement shall be stayed and no right of entry is permitted by Developer or Developer's Agents until such time as new certificates of insurance from the Assignee business entity have been delivered to City, or proof that Developer's existing insurance policies are still in full force and effect.

9. Compliance with Laws. Developer and Developer's Agents shall obtain and maintain all governmental permits and approvals required (if any) for the Inspections conducted under this Agreement and shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements now in effect, or that become effective during the term of this Agreement.

10. Rights Limited. This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Inspections on the Development Area described herein and not as the grant of any property interest in the Development Area to Developer.

11. No Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of all or any portion of the Development Area to or for the general public or for any public purpose whatsoever.

12. Attorneys' Fees. In the event that any legal action or proceeding is commenced to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and expenses.

13. Notice. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, delivered by personal or courier delivery, or sent by nationally recognized overnight courier service to City's address and Developer's address below, or to such other place as designated in a written notice given to the other Party.

TO CITY:

City of West Covina
1444 West Garvey Ave. South
Room 305
West Covina, CA 91790
Attention: City Manager
Telephone: 626.939.8401
Email: DCarmany@westcovina.org

With a copy to:

Jones & Mayer
3777 N. Harbor Blvd
Fullerton CA 92835
Attention: West Covina City Attorney
Telephone: (714) 446-1400
Email: sep@jones-mayer.com

TO BKK:

Tetra Tech BAS Construction
2210 S. Azusa Avenue
West Covina, CA 91792
Telephone: (626) 965-0911
Kelly McGregor
Email: kmcgregor@bas.com

SCS Engineers
2210 S. Azusa Avenue
West Covina, CA 91792
Ken Ayster
Email: KAyster@scsengineers.com

TO DEVELOPER:

Kin Hui, Manager
Singpoli BD Capital Group, LLC
25 E. Foothill Blvd.
Arcadia, CA 91006
Phone: (626) 566-1888
Email: kinhui@singpoli.com

14. Entire Agreement. This Agreement constitutes the entire agreement between City and Developer pertaining to Developer's entry upon the Development Area and the performance of the Inspections.


15. Modification. This Agreement may not be modified except in writing by both of the Parties hereto.

16. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California, without reference to its choice of laws principles.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

18. Electronic Signatures. To expedite the execution of this Agreement, electronic signatures may be used in place of original signatures on this Agreement. City and Developer intend to be bound by the signatures on the email document, are aware that the other Party will rely on the electronic signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature.

19. Authority. Each Party and signatory hereto warrants and represents, as a material inducement to the other Party, that such signatory hereto is authorized to enter into and execute




this Agreement on behalf of the Party for which he, she or it signs, and has all necessary approvals and consents in that regard.

20. No Third-Party Beneficiaries. Each Party intends that the rights, obligations and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third-party beneficiaries to this Agreement.

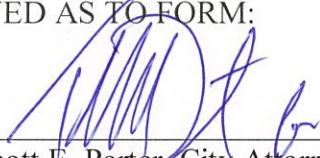
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

CITY:
CITY OF WEST COVINA, a California municipal corporation

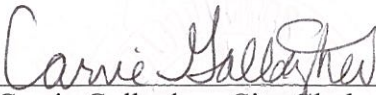
By: 
Name: David Carmany, Interim City Manager

Date: 7-24-19

APPROVED AS TO FORM:

By: 
Scott E. Porter, City Attorney

ATTEST:

By: 
Carrie Gallagher, City Clerk

DEVELOPER: SINGPOLI BD CAPITAL GROUP, LLC, a California limited liability company

By: 
Kin Hui, Manager

Date: 7/16/2019

Exhibit A

DEVELOPMENT OPPORTUNITY SITE

City Property 



Exhibit B

DEVELOPMENT OPPORTUNITY SITE

License Property ■

