

**FIRST AMENDMENT TO
DISPOSITION AND DEVELOPMENT AGREEMENT**

This First Amendment to Disposition and Development Agreement (this “**Amendment**”), dated for identification purposes only as of January __, 2021, is entered into by and between the CITY OF SANTA CLARA, a California municipal corporation (“**City**”), and CORE WINCHESTER, LLC, a California limited liability company (“**Developer**”), with reference to the following:

RECITALS

A. The City and Developer are parties to that certain Disposition and Development Agreement dated for identification purposes only as of March 26, 2019 (the “**Agreement**”). Capitalized terms not defined herein shall have the meaning given to them in the Agreement.

B. The Agreement provides that the City will provide Developer with a loan in the amount of \$15,700,000 for the development of the Affordable Project. The City and Developer have agreed that such loan shall be used for the development of both the Affordable Project and the Common Amenities Parcel.

C. Accordingly, the City and Developer desire to amend the terms of the Agreement in accordance herewith.

AGREEMENT

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

1. Amendments to the Agreement. Effective as of the date hereof, City and Developer hereby agree that the Agreement is hereby amended as follows:

(a) Recital F is hereby restated in its entirety to read as follows:

F. Developer requires assistance from City in order to develop and construct the Affordable Project and the Common Amenities Parcel. City has agreed to assist Developer with one or more loans in the aggregate amount not to exceed \$15,700,000, which shall be allocated in such amounts as approved by the City Representative between (a) the Affordable Project (the “**City Loan**”) provided that the Affordable Units are held for rent and rented to Qualified Tenants in accordance herewith, and (b) the Common Amenities Parcel (the “**Agrihood Loan**”); together with the Housing Loan, the “**City Financing**”) provided that the Common Amenities Parcel is developed and operated in accordance with this Agreement and the COAs. The total development cost of the Affordable Project is estimated to be approximately \$90,000,000. Developer intends to form a limited partnership (the “**Tax Credit Partnership**”) to own and finance the Affordable Project and who will be the successor in interest under this Agreement as to Developer’s rights and obligations regarding the Affordable Project. The Tax Credit Partnership would secure other construction and permanent financing

sources to cover the total cost of developing the Affordable Project. The anticipated funding sources for the Affordable Project include the sources shown in the Financing Summary attached as Attachment E to this Agreement.

(b) Section 1.1 of the Agreement is hereby amended by deleting the defined term “**Loan Proceeds**” and restating or adding, as applicable, the following defined terms in the appropriate alphabetical order:

“**Agrihood Assignment of Agreements**” means the Assignment of Agreements for the Agrihood Loan to be executed by the Agrihood Owner based on the City Assignment of Agreements and modified with the approval of Developer and the City Representative.

“**Agrihood Assignment of Rents and Leases**” means the Assignment of Rents and Leases to be executed by the Agrihood Owner based on the City Assignment of Rents and Leases and modified with the approval of Developer and the City Representative.

“**Agrihood Deed of Trust**” means the Non-Borrower Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) to be executed by the Agrihood Owner securing the Agrihood Loan based on the City Deed of Trust and modified with the approval of Developer and the City Representative.

“**Agrihood Environmental Indemnity**” means the Environmental Indemnity to be executed by the Agrihood Owner with respect to the Agrihood Loan based on the City Environmental Indemnity and modified with the approval of Developer and the City Representative.

“**Agrihood Loan**” is defined in Recital E.

“**Agrihood Loan Agreement**” means the Loan Agreement with respect to the Agrihood Loan based on the City Loan Agreement and modified with the approval of Developer and the City Representative.

“**Agrihood Loan Documents**” means the Agrihood Loan Agreement, the Agrihood Promissory Note, the Agrihood Deed of Trust, the Agrihood Assignment of Rents and Leases, the Agrihood Assignment of Agreements, the Agrihood Environmental Indemnity, the Agrihood Guaranty and any amendments and modifications thereto.

“**Agrihood Promissory Note**” means the Promissory Note evidencing the City Loan to be executed by a nonprofit corporation reasonably approved by the City in substantially the form attached to this Agreement as Attachment J, and modified with the approval of Developer and the City Representative.

“**Appraisal**” means the Appraisal of the Proposed Mixed Use Residential Site dated January 25, 2019, prepared by The Fillmore Group.

“**City Financing**” is defined in Recital E.

“**City Financing Documents**” means, collectively, the Agrihood Loan Documents and the City Loan Documents.

“**City Promissory Note**” means the Promissory Note evidencing the City Loan in substantially the form attached to this Agreement as Attachment J, subject to such changes as the Construction Lender and the Investor Limited Partner may request that are reasonably approved by the City; provided that the interest therein shall be determined at or prior to Closing and shall be a rate which provides similar aggregate streams of payments as if the City Loan were in the principal amount of \$15,700,000 and bearing 2% simple interest, as approved by the City Representative.

“**COAs**” means the Conditions of Rezoning Approvals PLN2016-12389, approved under the City of Santa Clara City Council Resolution No. 19-8660.

“**Property Purchase Price**” means collectively, the purchase price with respect to the Property in the total amount of \$15,700,000. The Purchase Price shall be allocated as follows (which allocation is substantially consistent with the Appraisal): \$0 is allocated to the Affordable Housing Parcel, \$6,300,000 is allocated to the Market Rate Parcel, \$9,400,000 is allocated to the Mixed Income Parcel, and \$0 is allocated to the Common Amenities Parcel.

(c) Sections 1.5, 3.3, 3.6.1(F), 3.6.2(E), 3.6.2(I), 3.8, 3.12, 3.14, and 8.7 of the Agreement are hereby amended by replacing all reference to “City Loan” and “City Loan Documents” with “City Financing” and “City Financing Documents”, respectively.

(d) Section 3.4 of the Agreement is hereby amended by adding the following paragraphs to the end thereof:

The City hereby agrees to provide the Agrihood Loan to a nonprofit corporation reasonably approved by the City that immediately contributes the Agrihood Loan proceeds, directly or indirectly, to the entity who will acquire title to the Common Amenities Parcel in accordance with Section 2.3.2 hereof (the “**Agrihood Owner**”) (provided that the City approves the documentation of such contribution, which approval shall not be unreasonably withheld, conditioned or delayed) and upon satisfaction of the conditions precedent stated in Attachment No. 6 of the City Loan Agreement, except that such conditions precedent shall be with respect to the development and operation of the Common Amenities Parcel and the Agrihood Promissory Note is not intended to be assigned to the Agrihood Owner.

The Agrihood Loan shall:

- (1) not bear interest;
- (2) not require any payments prior to the Maturity Date (as defined below);

(3) be forgiven 55 years after the receipt of the permanent certificate of occupancy with respect to the improvements to be developed upon the Common Amenities Parcel and provided that the Agrihood Owner complies with covenants to be agreed to between Developer and the City Representative (the “**Maturity Date**”);

(4) be evidenced and secured by the Agrihood Loan Documents.

(e) Section 3.5.2 of the Agreement is hereby amended by replacing all references to “City Lender Policy” with “Housing Lender Policy”.

(f) A new Section 3.5.3 is hereby added to the Agreement to read as follows:

3.5.3 Concurrently with the Closing, Title Company shall issue to the City, at Developer’s cost, a lender’s policy of title insurance in the amount of the Agrihood Loan, which at City’s option may be a 2006 ALTA extended coverage lender’s policy, together with such endorsements as are reasonably requested by the City (the “**Agrihood Lender Policy**”; together with the Housing Lender Policy, the “**City Lender Policy**”), insuring the lien of the City’s deed of trust with respect to the Agrihood Loan to be a first priority lien on the Common Amenities Parcel, and containing such endorsements as the City may reasonably require, which may include zoning, survey, access, parcel contiguity, environmental, tax parcel, and subdivision endorsements, subject only to the (A) the lien of non-delinquent real property taxes and assessments, (B) the Permitted Exceptions, (C) agreements expressly required by this Agreement to be recorded at the Closing, and (D) any exception to title which may be approved by the City.

(g) A new Section 3.7.1(M) is hereby added to the Agreement to read as follows:

(M) Agrihood Loan. Developer shall have met the requirements under Section 3.4 hereof.

(h) Attachments A-1, A-2, A-3, A-4 and B to the Agreement are hereby replaced with the Attachments A-1, A-2, A-3, A-4 and B attached hereto; *provided, however, that any dates in Attachment B attached hereto that occur on or after January 5, 2023, shall be extended only upon satisfaction of the condition precedent that the State make appropriate modifications to or waivers of the relevant provisions of the State Grant Deed to accommodate such extensions.*

2. Successors and Assigns. This Amendment shall be binding on and inure for the benefit of the parties hereto and their successors and assigns.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

4. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Developer have signed this Amendment as of the date and year first above written.

“CITY”

CITY OF SANTA CLARA,
a California municipal corporation

By: _____
Deanna J. Santana, City Manager

APPROVED AS TO FORM:

Brian Doyle, City Attorney

[SIGNATURE PAGE TO FIRST AMENDMENT TO
DISPOSITION AND DEVELOPMENT AGREEMENT]

“DEVELOPER”

CORE WINCHESTER, LLC,
a California limited liability company

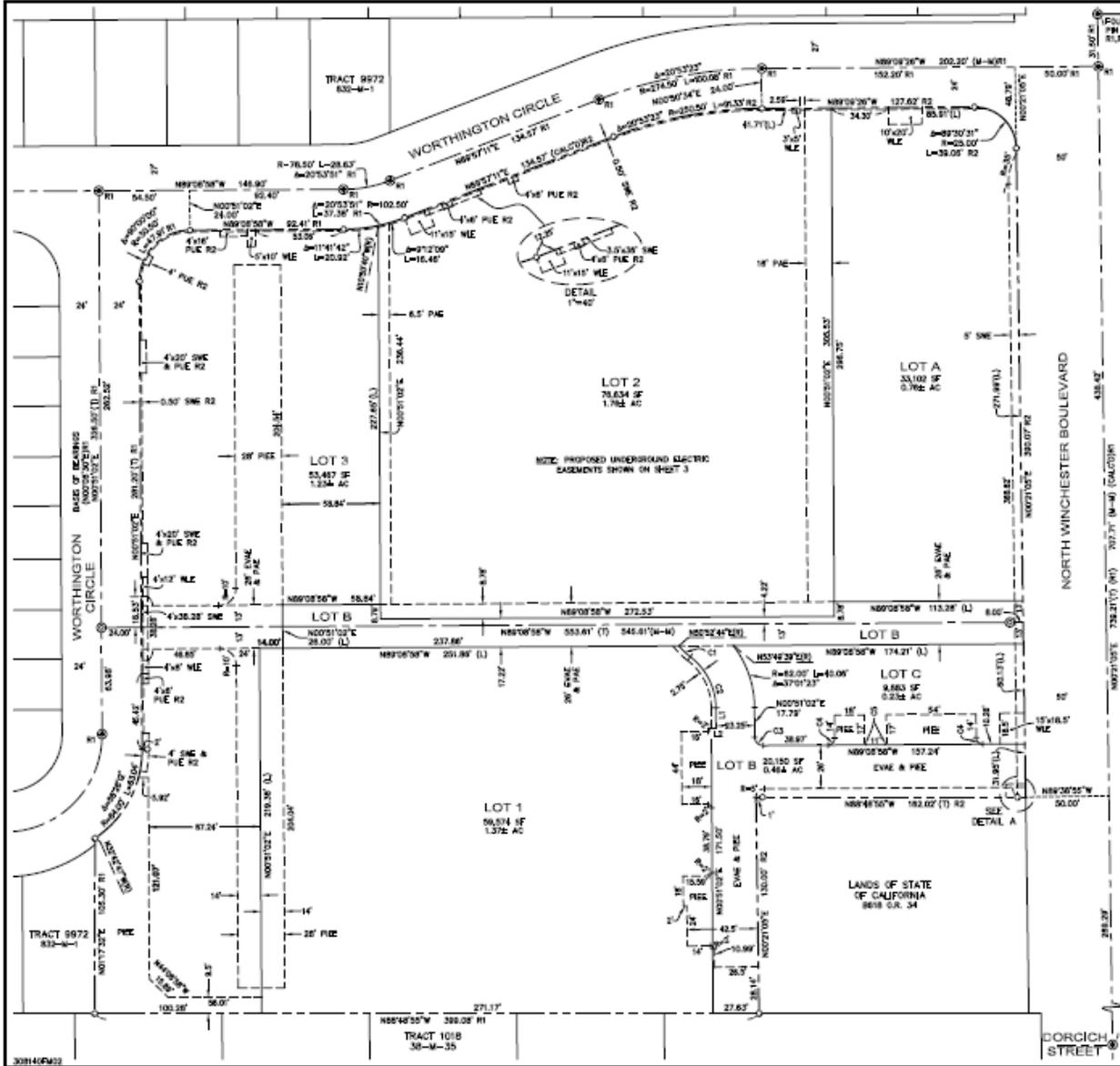
By: _____
Chris Neale, Manager

[SIGNATURE PAGE TO FIRST AMENDMENT TO
DISPOSITION AND DEVELOPMENT AGREEMENT]

ATTACHMENT A-1

DESCRIPTION OF MARKET RATE PARCEL

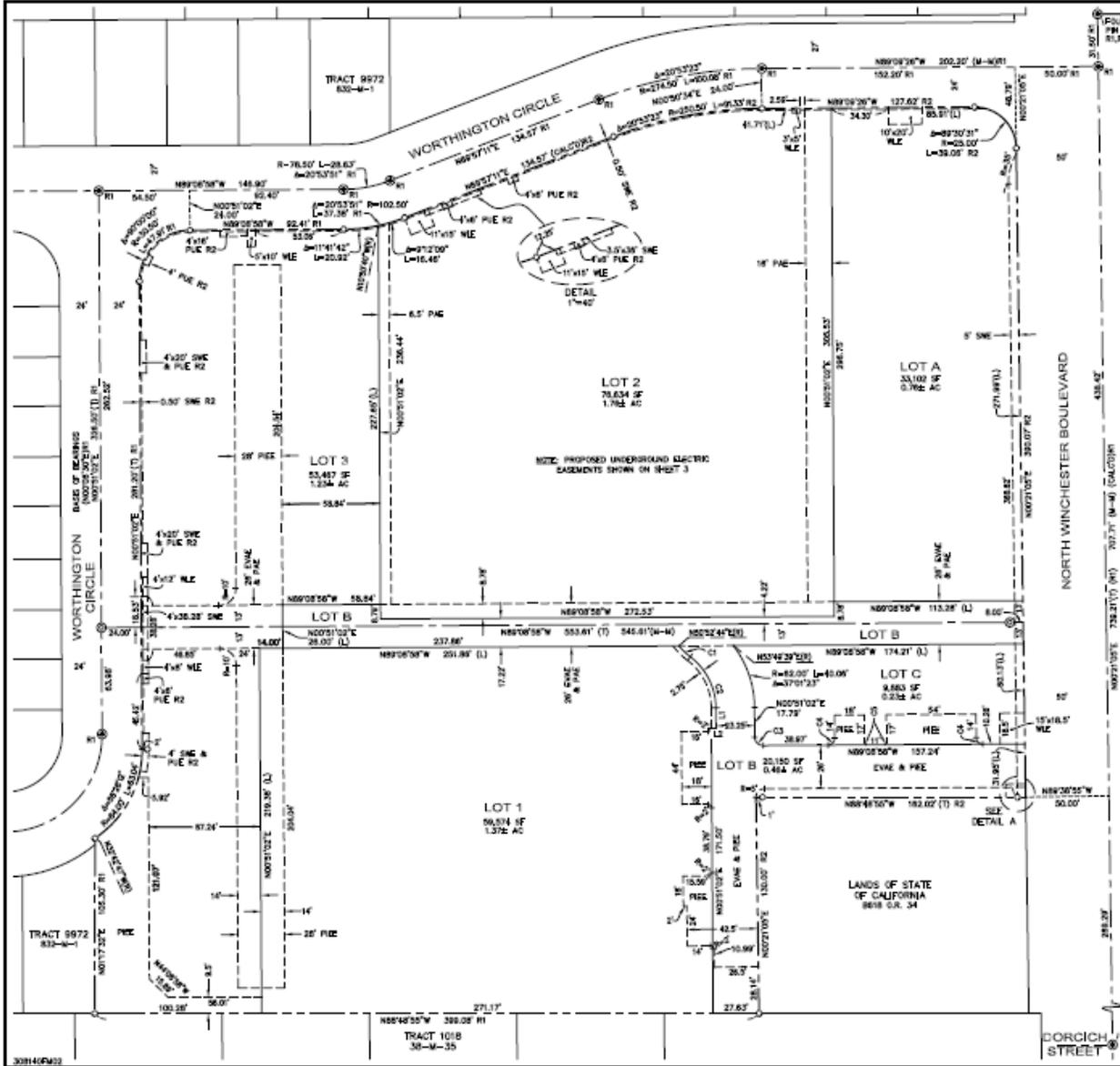
Lot 3 as depicted below



ATTACHMENT A-2

DESCRIPTION OF MIXED INCOME PARCEL

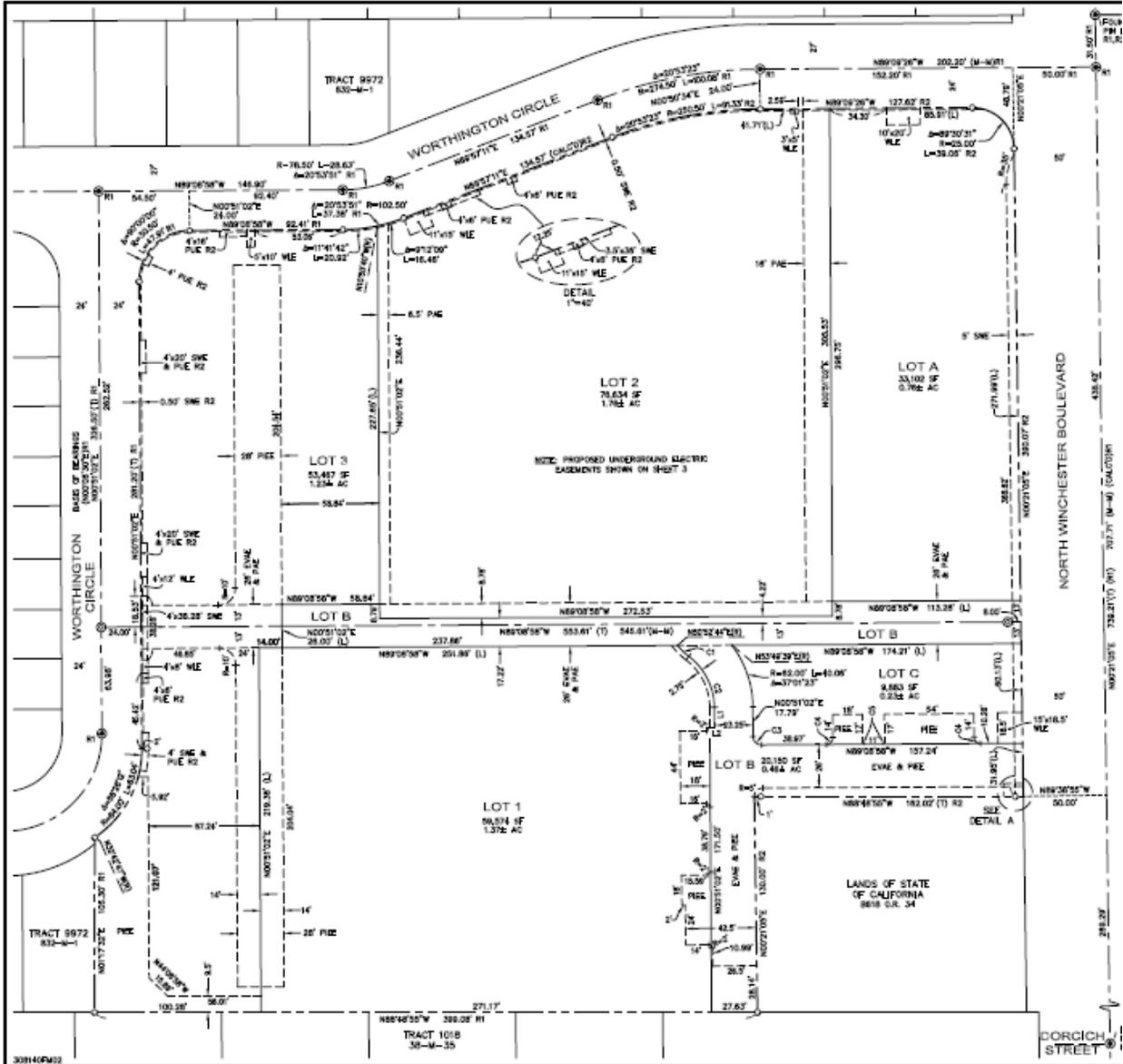
Lot 2 as depicted below



ATTACHMENT A-3

DESCRIPTION OF AFFORDABLE HOUSING PARCEL

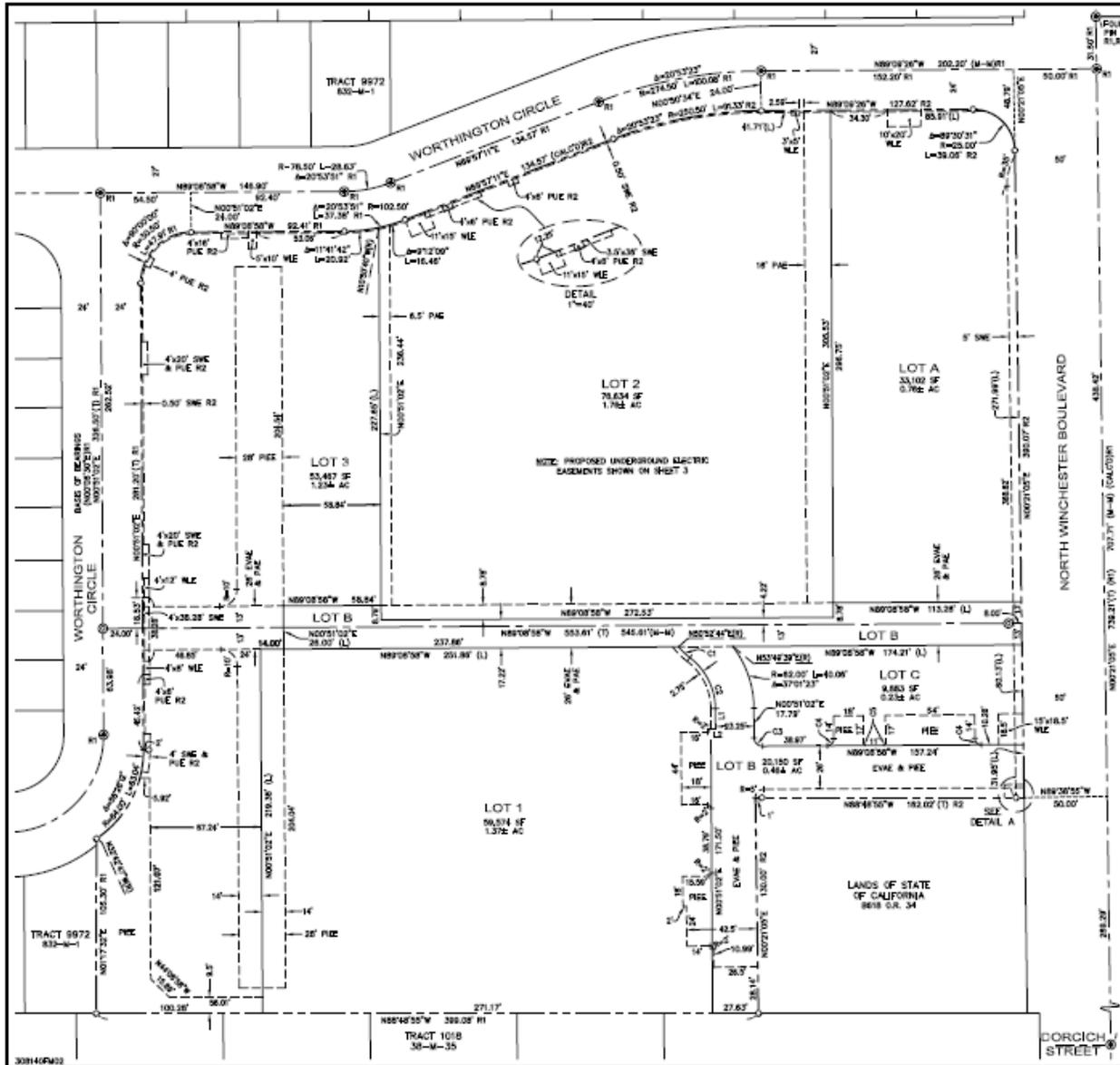
Lot 1 as depicted below



ATTACHMENT A-4

DESCRIPTION OF COMMON AMENITIES PARCEL

Lots A, B and C as depicted below



ATTACHMENT B

SCHEDULE OF PERFORMANCE

County Funding Approval	December 18, 2018
Public Hearing – DDA, PD Zoning, Tentative Map.....	January 29, 2019
Architectural Review Committee	August 21, 2019
Submit 4% CDLAC & TCAC applications	June 30, 2020
CDLAC, TCAC, Award	September 30, 2020
Final Map/Improvement Plan Approval	December 31, 2020
Building Permit Ready.....	January 31, 2021
Outside Closing Date	March 30, 2021
Construction Start	June 30, 2021
PIS.....	September 30, 2024
Construction Completion.....	October 31, 2024
100% Occupied.....	April 1, 2025
8609 Certification	April 1, 2026