

1 JERRY R. DAGRELLA, Bar No. 219948  
2 DAGRELLA LAW FIRM, PLC  
3 11801 Pierce Street, 2nd Floor  
4 Riverside, CA 92505  
5 Telephone: (951) 710-3043  
6 Facsimile: (951) 344-8372  
7 Email: dagrella@lawyer.com

8 Attorney for Plaintiff  
9 C.G.M. Development, Inc.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

12 C.G.M. DEVELOPMENT, INC., a  
13 California Corporation,

14 Plaintiff,

15 v.

16 CITY OF WEST COVINA; and DOES 1-  
17 10, inclusive,

18 Defendants.

Case No.

BC517971

**COMPLAINT FOR DAMAGES**

1. Breach of Contract;
2. Failure to Discharge a Mandatory Duty (Gov't Code § 815.6);
3. Negligence; and,
4. Equitable Indemnity

Plaintiff C.G.M. Development, Inc. ("Plaintiff") alleges as follows:

**PARTIES**

1. Plaintiff is a California corporation and full-service real estate development company doing business in the County of Los Angeles, State of California.

2. Defendant City of West Covina ("City") is organized and existing as a charter city under the Constitution of the State of California with the capacity to sue and be sued and is located in the County of Los Angeles, State of California.

3. Plaintiff is informed and believes and thereon alleges that defendants Does 1-10, and each of them, are in some manner responsible for the acts alleged in this Complaint. Plaintiff is unaware of the true names and capacities of Does 1-10, and therefore, sues such defendants by fictitious names. Plaintiff will seek leave to amend this Complaint to add such names and capacities when they are ascertained.

4. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each of the defendants was the agent and employee of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and employment.

**JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this Complaint. This Court also has jurisdiction over each defendant, as the acts and omissions alleged herein occurred in the County of Los Angeles.

6. Venue is proper in this Court because the City, the Property and the Project are located in the County of Los Angeles and the contract alleged herein was negotiated and entered in the County of Los Angeles.

**FACTS COMMON TO ALL CAUSES OF ACTION**

7. The City marketed for sale and represented to the public that it had the legal right, power and ability to sell to a private party a parcel of property located along West Covina Parkway and Garvey Avenue South ("the Property").



1           8.     Plaintiff performed substantial due diligence and feasibility studies in connection  
2 with the Property, procured financing, generated design and construction plans and entered into  
3 contracts for the purpose of developing a four story approximately 55,000 square foot office  
4 building ("the Project").

5           9.     On or about December 15, 2011, Plaintiff and the City entered into a Disposition  
6 and Development Agreement ("DDA") whereby Plaintiff agreed to purchase the Property for  
7 \$700,000.00 and the City agreed to undertake responsibility for environmental review and  
8 perform all acts necessary to ensure that the sale of the Property and approval of the Project were  
9 compliant with all applicable laws and regulations. In particular, but not as a limitation,

- 10           • Section 105.1(1) of the DDA provides that the City represents and warrants  
11 that "there are no physical or legal facts, circumstances, problems or  
12 governmental actions known to City with respect to the Property which, if  
13 disclosed to Developer, would materially or adversely impact decisions  
14 regarding acquisition and development of the Properties."
- 15           • Section 105.1(2) of the DDA provides that the City represents and warrants  
16 that "The City has no knowledge of any violations of governmental codes,  
17 ordinances, regulations or orders with respect to the Properties."
- 18           • Section 105.1(4) of the DDA provides that the City represents and warrants  
19 that the "City has performed all acts necessary to validly enter into this  
20 Agreement."
- 21           • Section 105.1(7) of the DDA provides that the "City represents and warrants to  
22 the Developer that there is no suit, legal action, arbitration or other  
23 proceeding... threatened against the City in which any party is making or has  
24 made a claim or defense that, if sustained, would materially and adversely  
25 affect the performance of City under this Agreement or material or adversely  
26 interfere with the ability of City to consummate the transactions contemplated  
27 herein."

- Section 202.7 of the DDA provides that the “City... agree[s] to perform all acts necessary to convey title in sufficient time for title to be conveyed in accordance with the foregoing provisions.”
- Section 208(1) of the DDA provides that “Full and complete California Environmental Quality Act (“CEQA”) analysis, noticing, documentation and public review will be undertaken by the appropriate lead agency prior to approval of the Development Entitlements.”

10. On January 10, 2012, the City Council formally approved the Project by majority vote in a public hearing.

11. On February 21, 2012, the West Covina Improvement Association filed a Petition for Writ of Mandate challenging the City’s legal ability to sell the Property to Plaintiff and alleging that the City failed to perform all acts necessary to ensure that the sale of the Property and approval of the Project were compliant with all applicable laws and regulations.

12. Notwithstanding the aforesaid Petition, the City reassured Plaintiff that it had the legal right, power and ability to sell the Property to Plaintiff, and that it had sufficiently and adequately performed all acts necessary to ensure that the sale of the Property and approval of the Project were compliant with all applicable laws and regulations.

13. On November 27, 2012, the Superior Court of Los Angeles granted the aforesaid Petition for Writ of Mandate, finding that that the City did not have the legal ability to sell the Property to Plaintiff and that the City failed to perform all acts necessary to ensure that the sale of the Property and approval of the Project were compliant with all applicable laws and regulations. Specifically, the Court ruled the City had violated the Surplus Land Act (Gov’t Code § 54220, *et seq.*), the California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*: “CEQA”), and the California Planning and Zoning Law (Gov’t Code § 65000, *et seq.*). The Court held,

“[the City] has ignored the Surplus Land Act... The failure of the local agencies to consider Surplus Land Act issues in this matter is a significant reason why the actions of the City are legally flawed. The record is clear that the City gave no consideration to other uses or of disposition of the land at issue to another agency for housing or park or open space before entering into the contract to sell the land to a private developer.” (Minute Order, p. 3.)



1 “The record also establishes that use of a mitigated negative  
2 declaration was inappropriate... the evidence establishes that there  
3 is a fair argument that the project will have several significant  
impacts that should have been analyzed in an EIR.” (Minute Order,  
pp. 3-4.)

4 “it is indisputable that the housing element of the City’s General  
5 Plan is out of date and that updated version of that had not been  
6 approved as of the date of the actions at issue here.” (Minute  
Order, p. 5.)

7 14. The Court ordered the City to “set aside its determination heretofore made, rescind  
8 its approval for the Project and to take no further steps toward implementing the Project until it  
9 fully complies with the requirements of CEQA, the Planning and Zoning Law, the Surplus Land  
10 Act, and all other applicable laws and regulations.” (Minute Order, p. 5.) The Court’s orders  
11 were incorporated into a final judgment entered on January 22, 2013.

12 **FIRST CAUSE OF ACTION**

13 **(Breach of Contract)**

14 15. Plaintiff re-alleges and incorporates by reference, as though fully set forth therein,  
15 each and every allegation contained in paragraphs 1 through 14 of this Complaint.

16 16. Plaintiff has performed all conditions, covenants, and promises on its part to be  
17 performed in accordance with the terms and conditions of the DDA, or has been excused from  
18 performance as a result of the City’s breach of the DDA and/or waiver of such performance.

19 17. The Court’s findings, if true, establish that the City failed to disclose material  
20 information to Plaintiff and violated numerous provisions of the DDA. In particular, but not  
21 limitation, the City has breached the DDA by failing to disclose that its attempted sale of the  
22 Property would violate the Surplus Land Act and the Planning and Zoning Law, failing to ensure  
23 compliance with CEQA, and failing to disclose that legal action was threatened against the City  
24 on these grounds and that such legal action, if successful, would materially and adversely affect  
25 the City’s ability to perform under the DDA.

26 18. Plaintiff incurred in excess of \$1.7 million in costs associated with the Project in  
27 reliance on the City’s representations that it had the legal right, power and ability to sell the  
28 Property to Plaintiff and that the City would perform all acts necessary to ensure that the sale of

1 the Property and approval of the Project were compliant with all applicable laws and regulations.  
2 As a direct and proximate result of the City's breach of the DDA, Plaintiff sustained actual  
3 damages in excess of \$1.7 million and consequential damages, including lost profits, in an  
4 amount in excess of \$4 million.

## 5 **SECOND CAUSE OF ACTION**

### 6 **(Failure to Discharge a Mandatory Duty (Gov't Code § 815.6))**

7 19. Plaintiff re-alleges and incorporates by reference, as though fully set forth therein,  
8 each and every allegation contained in paragraphs 1 through 18 of this Complaint

9 20. The City had a mandatory duty to comply with the Surplus Land Act, the Planning  
10 and Zoning Law and CEQA.

11 21. The Court's findings, if true, establish that the City failed to comply with the  
12 Surplus Land Act, the Planning and Zoning Law and CEQA.

13 22. As a direct and proximate result of the City's failure to perform its mandatory  
14 duties, Plaintiff has incurred actual and consequential damages in an amount to be determined at  
15 the time of trial, but believed to be in excess of the jurisdictional minimum of this Court.

## 16 **THIRD CAUSE OF ACTION**

### 17 **(Negligence)**

18 23. Plaintiff re-alleges and incorporates by reference, as though fully set forth therein,  
19 each and every allegation contained in paragraphs 1 through 22 of this Complaint

20 24. The City marketed for sale and represented that it had the legal right, power and  
21 ability to sell the Property to Plaintiff.

22 25. Under Section 208(1) of the DDA, Plaintiff was charged with the obligation to pay  
23 "[a]ll costs associated with the CEQA process," however, the City assumed all responsibilities  
24 associated with environmental review.

25 26. If the Court's findings are true, then the City employees falsely represented that  
26 the City had the legal right, power and ability to sell the Property to Plaintiff. Further, the City  
27 employees responsible for ensuring environmental compliance breached their duties to Plaintiff  
28 as, according to the Court, they "ignored the Surplus Land Act in [their] consideration of





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11801 PIERCE ST., 2ND FLOOR  
RIVERSIDE, CALIFORNIA 92505

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For actual and consequential damages, in an amount to be proven at trial;
2. For reasonable attorney's fees;
3. For costs of suit herein incurred; and,
4. For such other and further relief as the court may deem proper.

Dated: August 12, 2013

DAGRELLA LAW FIRM, PLC

By: \_\_\_\_\_

JERRY R. DAGRELLA

Attorney for Plaintiff C.G.M. Development,  
Inc.